

A.F.R

Neutral Citation No. - 2025:AHC:116751-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 115 of 2025

Appellant :- State of U.P.

Respondent :- Dhirendra Kumar S/O Nand Kishor Jaiswal

Counsel for Appellant :- Ashutosh Kumar Sand

Counsel for Respondent :- Pranvesh,Saurabh Kesarwani

Hon'ble Siddharth,J.

Hon'ble Avnish Saxena,J.

(Per Justice Avnish Saxena)

1. This application for leave has been moved belatedly under Section 378(3) Cr.P.C. by the State challenging the judgment of acquittal dated 4th July, 2024 passed by the Court of Additional Sessions Judge/F.T.C., Bulandshahr in Sessions Case No.2649 of 2022 (State Vs. Dhirendra Kumar) arising out of Case Crime No.210 of 2022, Police Station-Sikandrabad, District- Bulandshahar, whereby the trial court has acquitted the accused/respondent for offence under Sections 498-A, 304-B, 504, 506 I.P.C. and Sections 3, 4 of Dowry Prohibition Act.

2. It is contended by Smt. Manju Thakur, learned A.G.A.-Ist appearing for the State that the trial court has not properly appreciated the evidence of prosecution and decided the case only on the basis of conjunctures and surmises; the judicial mind has not been applied while appreciating the testimonies of witnesses; the prosecution has proved the case beyond reasonable doubt, which has been overlooked by the trial court; the trial court has wrongly recorded the findings and considered the improvements and contradictions in the statements of witnesses as material discrepancies; the trial court has ignored the testimonies of witnesses, who have clearly proved the unnatural death of deceased within seven years of marriage in the matrimonial home, for non-fulfilment of dowry demand; the trial court has ignored the death of deceased by hanging, registration of prompt F.I.R. and collecting of sufficient material by the Investigating Officer to establish the role of accused in the matter of dowry death. It is, therefore, stated that the

acquittal recorded by the trial court is misconceived, not sustainable in the eyes of law, therefore, leave is to be granted to the State for adjudication of appeal on merit.

3. Sri Pranvesh and Sri Saurabh Kesarwani, learned counsel for the opposite party have stated that the learned trial court has rightly appreciated the evidences, oral and documentary on record and rightly acquitted the accused. Learned counsel have specifically drawn the attention of this Court towards suicide note left by the deceased, proved by the prosecution, being document of prosecution. The State cannot ignore the important document, wherein the deceased has committed suicide due to stress in studies and wrote in specific terms that for the suicide, neither her parents nor her in-laws shall be held responsible. This suicide note has rightly been considered by the trial court in the light of testimonies of witnesses of fact, P.W.-1, Santosh Bihari Kumar, P.W.-2, Smt. Meena Devi and P.W.-3, Deepak Kumar. The contradictions in the testimonies of witnesses of fact are material in nature, viz., the deceased was stated to be two months pregnant at the time of committing suicide, which is not corroborated by the medical evidence. The witnesses, who are mother and brothers of deceased have not stated about the first marriage of deceased and what happened to that marriage, in their examination in chief, but reflected from their cross-examination. Moreover, the trial court has also considered the testimonies of witnesses of fact that the deceased was under stress of studies. It is, therefore, stated that the leave cannot be granted as the accused, who is already acquitted would be made to suffer and there is no evidence against the accused. The learned counsel has relied on the case of ***Karan Singh Vs. State of Haryana***¹ and ***Charan Singh alias Charanjeet Singh Vs. State of Uttarakhand***².

4. This Court has taken into consideration the rival submissions made by the parties and perused the record.

¹ 2025 (131) ACC 302 Supreme Court

² (2023) 3 S.C.R. 511 Supreme Court

5. The brief conspectus of the case shun unnecessary details is such that the F.I.R. has been registered by Santosh Bihari Kumar (informant, P.W.-1) against accused Dhirendra Kumar, opposite party at P.S. Sikandrabad, District Bulandshahr at 03:41 hours on 07.03.2022, got registered as Case Crime No.210 of 2022 for offence under Sections 498-A, 304-B, 316, 504, 506 I.P.C. and Sections 3,4 of Dowry Prohibition Act, 1961. The context of the written information reveals that the informant is residing at District Gurgaon, Haryana. His sister, Pinky Kumari was married to Dhirendra Kumar son of Nand Kishore Jaiswal, resident of Bakhtiyarpur, Haqiqatpur, Patna, Bihar, on 12th July, 2021 as per Hindu rites and ceremonies. On 7th March, 2022, he got a news that his sister, who was residing at Mohalla, Gayatri Nagar, SDM Colony, Sikandrabad committed suicide. Dhirendra continuously tortured his sister for dowry. His sister was two months pregnant with Dhirendra Kumar, but he disowned the child. He refused to bear the expenses of education and fooding of the deceased and threatened her to kill. He also used to abuse her and demanded extra dowry, due to which the informant's sister has committed suicide.

6. The inquest on the death body was carried out on 07.03.2022 between 18:00 hours to 23:20 hours, at the matrimonial home, by Nayab Tehsildar, Sulabh Gupta (P.W.-6), in presence of inquest witnesses Santosh Bihari Kumar; Sabir Alam, Ram Kumar Sharma, Akash Tibatiya and Rahul Yadav. It is mentioned in the inquest report that the deceased hanged herself from the ceiling fan with a cloth. A suicide note has also been recovered from the deceased. The same has been sealed. The suicide note is duly proved as Exhibit Ka-11, written in blue ink containing date, signature and phone numbers in red ink. The page used is the page of notebook. Written in Hindi with some words in english. The text of the suicide note is reiterated below:-

“

07.03.2022

मैं Pinki Jaiswal M.ED 3rd Semester (D.S.B.)
Campus Kumaun University Nainital की छात्रा अपने

ससुराल में study stress की वजह से पूरी होशों हवास में आत्महत्या करने जा रही हूँ। इसकी जिम्मेदारी मैं खुद लेती हूँ, मेरे आत्महत्या के पीछे ना मेरे Husband धीरेन्द्र कुमार जयसवाल ना मेरे ससुराल के कोई सदस्य जिम्मेदार है, और ना ही मेरे माँ पिताजी या Family के कोई सदस्य जिम्मेदार है। Pulis Sir से मेरी विनती है कि वे मेरे ससुराल वालों और मायके वाले को मेरी मौत के बाद किसी को परेशान न करें।

इस घर में मेरे मायके से मिला हुआ कुछ समान और कपड़े गहने हैं जिसे ट्रक में रख दिया गया है, उस समान को मेरे भाई जी जो Delhi Gurgav में रहते हैं उनको सारा समान सौंप दिया जायेगा मेरी इच्छा यही है क्योंकि शादी में ढेर सोरा पैसे खर्च हुए थे मेरी लास्ट इच्छा यही है कि मेरे मरने के बाद माँ पिताजी टेंशन नहीं करेंगे।

Pinki Jaiswal.

Husband Mo No.-7380414315

big brother-8929240771

Father Enlaw- 9934212869

DR Hlaml big Mam (M.ed) 8954348345

मेरे Husband Maa G (Mother Inlaw को अचानक tabiyत खराब होने पर Delhi गए हैं। ”

7. The post mortem examination on the death body of deceased has been carried out by Dr. Harendra Singh (P.W.-5) at Mortuary of District Hospital Bulandshahar on 08.03.2022 started at 12:05 p.m. and completed at 12:50 p.m. The only ante mortem injury reported is **“a ligature mark of size 26 cm x 3 cm present on all around the neck above thyroid cartilage with the note of 4 cm right side of neck mark obliquely place 5 cm below from left ear 2 cm below from right ear and 6 cm below to chin on exploration underneath tissue found white hard and hellenising hyoid bone found intact.” In respect to genital organ, it is found that “utereus size 11cm x 10 cm large in shape. Non-gravida”**. The cause of death is asphyxia due to ante mortem hanging and time since death is about three-fourth of the day.

8. The suicide note was recovered from the deceased, the hand writing of the suicide note had been compared from the register of the

deceased and also compared from the hand writing of the accused in the report of FSL team unit Bulandshahr.

9. After investigation, the charge sheet has been submitted and Section 316 I.P.C. has been dropped, as the deceased was not found pregnant.

10. The prosecution has produced three witnesses of fact, namely, P.W.-1 Santosh Bihari Kumar, brother of deceased and first informant; P.W.-2 Smt. Meena Devi, mother of deceased; and P.W.-3 Deepak Kumar, cousin brother of deceased. The formal witnesses produced were constable P.W.-4, Yogesh Kumar/the scribe of chik F.I.R.; P.W.-5 Dr. Harendra Singh, who has conducted post mortem examination on the dead body of deceased and prepared post mortem report; the Naib Tehsildar, Sulabh Gupta, P.W.-6, who has inspected the death body and prepared the inquest report and other necessary papers for sending the death body for post mortem examination; P.W.-7, C.O., Suresh Kumar has investigated the matter. The defence has produced the defence witness D.W.-1, Harpal Singh, the landlord of the house in tenancy of accused and deceased, who also resides near the tenanted house and usually visit the house of accused and deceased.

10. The learned trial court has acquitted the accused on appreciation of evidence with following observation:-

(i) From the statement of P.W.-1 Santosh Bihari Kumar, P.W.-2 Meena Devi and P.W.-3 Deepak Kumar, it has been revealed that deceased died an unnatural death within seven years of marriage, but it is also observed that the deceased was initially married to Ram Babu, a tailor at Motihari, Bihar. There was no divorce case or any other matrimonial case between Ram Babu and deceased but a written agreement was there. The marriage with accused is stated to be second marriage solemnized on 12th July, 2021 and deceased committed suicide on 7th March, 2022.

(ii) The trial court did not find any evidence from the ocular testimony or witnesses of fact that there was any demand of dowry. This

observation of the trial court was based on the testimonies of the witnesses of fact that there was no specific date and time of the demand and what was demanded. It has also been inferred that the witnesses were ignorant about the fact of pregnancy of deceased, not corroborated as per post mortem report and the statement of Dr. Harendra Singh, P.W.-5. It is also observed on this issue that the witnesses of fact had stated that the deceased was pursuing her M.Ed from Kumaun University after completing her B.Ed from Rudrapur and the expenses on study of deceased was borne by the accused.

(iii) The learned trial court thereafter considered the suicide note of the deceased, which is duly proved by the prosecution witnesses, particularly P.W.-7, Investigating officer, Suresh Kumar. This suicide note was found to be in the hand writing of the deceased in the report of FSL, which further proved that the suicide note is not in the hand writing of the accused. This suicide note is proved as Exhibit Ka-11. The register from which the hand writing was compared was of deceased and not of accused as the specimen hand writing of the accused was not matched from the suicide note by the prosecution as Exhibit ka-12 & 13.

(iv) The learned trial court considered the suicide note in view of Section 32(1) of Indian Evidence Act, 1872, and gave full credence to it.

(v). The trial court further found from the statement of P.W.-1, Santosh Bihari Kumar that on 6th March, 2022, he was with his deceased sister but left in the morning of 7th March, 2022. He has also stated in his testimony that accused and his mother went to Delhi.

(vi). The learned trial court has considered that the four important ingredients to hold accused guilty in dowry death case laid down in the case of ***Ram Kamar Vs. State of Rajasthan***³ have not been proved by the prosecution except that the death of a bride is within seven years of marriage and was an unnatural death. No other ingredient that the bride was subjected to cruelty soon before her death and the cruelty was with respect to the demand of dowry have not been proved.

3 2009 (1) JT 197

11. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. in **State of M.P. Vs. Sharad Goswami**⁴; **State of Rajasthan Vs. Shera Ram**⁵, **Shivaji Sahabrao Bobade Vs. State of Maharashtra**⁶.

12. The Supreme Court in the case of **Ramesh Babulal Doshi Vs. State of Gujarat**⁷ has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

13. The Supreme Court in the case of **Sadhu Saran Singh Vs. State of U.P.**⁸ has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an

4 (2021) 17 SCC 783

5 (2012) 1 SCC 602

6 (1973) 2 SCC 793

7 (1996) 9 SCC 225

8 (2016) 4 SCC 357

appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

14. The Supreme Court in the case ***Basheera Begam Vs. Mohd. Ibrahim***⁹ has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

15. The Supreme Court in the case of ***Kali Ram Vs. State of H.P.***¹⁰ has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

16. This Court has taken into consideration the statements of witnesses of fact, namely, Santosh Bihari Kumar, Smt. Meena Devi and Sri Deepak Kumar in the light of statements of formal witnesses, namely, Constable Yogesh Kumar, Dr. Harendra Singh, Nayab Tehsildar, Sulabh Gupta, C.O. Suresh Kumar and the documents proved by these witnesses as well as exhibited during the trial.

⁹ (2020) 11 SCC 174

¹⁰ (1973) 2 SCC 808

17. P.W.-1, Santosh Bihari Kumar, in his cross-examination stated that the marriage of his deceased sister and accused took place on 12th July, 2021. His sister committed suicide by hanging on 7th March, 2022. Accused used to torture his sister, who was two months pregnant and accused has disowned the child. He also torture her in refusing to fulfil the demand of deceased to continue with her study. Did not provide her food. In his further examination, he stated that the expenses for the studies of his sister was not borne by him. This witness is not trustworthy on this point because the deceased was studying. It is not the case that deceased was earning. Then it is inferred that the accused was funding the studies of deceased. Moreover, a day before committing of suicide by the deceased, he was with the deceased and further stated that in the morning, the accused along with his mother left for Delhi. Thus, the requirement of atrocity and cruelty committed on the bride soon before the death is not proved as the informant himself was present soon before the death with the deceased.

18. P.W.-5, Smt. Meena Devi has stated that she has spent Rs.3,25,000/- during the marriage of deceased with accused and also gifted a laptop to her daughter. No incident of atrocity for demand of dowry by the accused is mentioned by this witness. This witness as well as P.W.-1 Santosh Bihari Kumar have specifically stated about the pregnancy of deceased, which was found to be a false ground of alleged torture by accused, as the post mortem falsifies the claim of pregnancy. The testimony of this witness also not sufficient to establish the crime of dowry death.

19. Deepak Kumar, P.W.-3, who has stated in his testimony that accused committed atrocities on the deceased for demand of dowry is a resident of Bihar and was at Bihar at the time of incident. He has also given vague statement about the demand of dowry; though stated that on 6th March, 2022 he had a conversation with accused on phone when the accused intimated him that he will kill his sister and also get him killed. This conversation is not substantiated by any corroborated evidence.

20. The suicide note which is recorded as dying declaration, proved by the prosecution is an important piece of evidence, which speaks entirely a different story altogether. P.W. -1 Santosh Bihari Kumar, is not conversant about the contents of suicide note though admitted its recovery.

21. The suicide note reiterated, hereinabove, is written on a register page, reveals that the deceased in the opening words has mentioned that she is pursuing her M.Ed third Semester from Kumanu University, Nainital and committing suicide due to study stress. It is the statement of witnesses of fact that the deceased was a very good student and was under the stress of study. It is further mentioned in the suicide note that she herself is responsible for the suicide and further wrote that her husband- Dharendra Kumar Jaiswal, her in-laws are not responsible for her death by suicide. She further wrote that her mother, father and family members are also not responsible for her death. In the suicide note, she further prayed the police personnel not to harass her in-laws and parents for the said suicide. Lastly, she has mentioned that she has some gold and clothes kept in the trunk, which shall be given to her brother, who resides at Gurgaon, because he has spent money in the marriage of deceased. The last sentence in the suicide note is that her husband had taken the mother-in-law to Delhi due to her ill health.

22. As such, considering the entire gamut of facts in the light of evidence, this Court is of the view that there is no ground to grant leave to the State under Section 378(3) Cr.P.C./419(3) B.N.S.S. The application for leave to appeal deserves to be **dismissed**.

23. Before parting with, we would be like to stress upon the legal principles applicable while dealing with appeal in case of acquittal provided under Section 378 Cr.P.C./419 BNSS and the extent of interference by the appellate Court when the acquittal is recorded by the trial court. We would like to elaborate it at some length, as we have noticed in this case, the cursorily way in which the government appeal is being filed, without considering the judgment, the evidence on the trial

court record, the appreciation of evidence in the judgment and sustainability of application for leave.

24. The legislature while legislating the provision of Section 378 Cr.P.C. (419 B.N.S.S.) makes it an exception and not as a rule as provided against conviction. Therefore, purposefully incorporated a word 'direct' in sub-section (1)(a), (1)(b) of Section 378 Cr.P.C. to exercise this power to 'direct', the public prosecutor to file an appeal against acquittal, must be used sparingly and with circumspection. This shows that the direction cannot be exercised without application of mind and in cursorily fashion. Section 378 Cr.P.C. is reiterated underneath:-

“378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),
—

*(a) the District Magistrate may, in any case, **direct** the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*

*(b) the State Government may, in any case, **direct** the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.*

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).”

25. **Scope of appeal under Section 378 Cr.P.C.**

It is a settled principle of law that while deciding an appeal against the judgment of acquittal, the appellate court has the power to re-appreciate the evidence on record, but when two views are reasonably possible, based on evidence, the view that favours the accused should be adopted.

26. In the present case, the prosecution, since the stage of investigation has gathered the material, which evince that the accused is not guilty, because on the one hand, the Investigating Officer has relied on the suicide note and on the other hand has recorded the statements of witnesses of fact, who themselves are shaky witnesses. The Investigating Officer has not ventured into the first marriage of deceased solemnized in the year 2009, and married second time with the accused, as the case is of abetment to suicide and weighing of all the circumstances is essential. Moreover, the reading of suicide note and the diary writing in the register proved before the Court does not give impetus to the guilt of the accused, but the investigating officer has submitted charge-sheet. During the trial, the trial Judge has found that the witnesses of fact cannot be relied upon, non-trustworthy on the point of demand of dowry and cruelty soon before the death for the demand of said dowry and on considering the suicide note, proved by the prosecution, as dying declaration, acquitted the accused. To the utter dismay, the State has challenged the judgment of acquittal.

27. In such circumstances, how the State Government has directed the public prosecutor to file an appeal in the case.

28. In the celebrated judgment of ***Rajesh Prasad Vs. State of Bihar and another***¹¹ the Supreme Court in paragraphs 21 to 30 dealt with the principles of law enunciated through the dictums, right from privy

¹¹ 2022 (3) SCC 471

counsel to the present day. The said paragraphs are reiterated underneath:-

*“21. Before proceeding further, it would be useful to review the approach to be adopted while deciding an appeal against acquittal by the trial court as well as by the High Court. Section 378 CrPC deals with appeals in case of acquittal. In one of the earliest cases on the powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in **Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)]** considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under: (SCC OnLine PC)*

“16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

“... But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”

It was stated that the appellate court has full powers to review and to reverse the acquittal.

22. In *Atley v. State of U.P. [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653]* , the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in *Sanwat Singh v. State of Rajasthan [Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 : (1961) 1 Cri LJ 766]* : (*Sanwat Singh case [Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 : (1961) 1 Cri LJ 766]* , AIR pp. 719-20, para 9)

*“9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in **Sheo Swarup [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)]** afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons” are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact*

and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

The need for the aforesaid observations arose on account of observations of the majority in **Aher Raja Khima v. State of Saurashtra** [**Aher Raja Khima v. State of Saurashtra**, AIR 1956 SC 217 : 1956 Cri LJ 426] which stated that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial court was wrong”.

23. M.G. Agarwal v. State of Maharashtra [**M.G. Agarwal v. State of Maharashtra**, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”.

24. In Shivaji Sahabrao Bobade v. State of Maharashtra [**Shivaji Sahabrao Bobade v. State of Maharashtra**, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Krishna Iyer, J., observed as follows: (SCC p. 799, para 6)

“6. ... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.”

25. This Court in Ramesh Babulal Doshi v. State of Gujarat [**Ramesh Babulal Doshi v. State of Gujarat**, (1996) 9 SCC 225 : 1996 SCC (Cri) 972], spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows: (SCC p. 229, para 7)

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.”

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.

26. In Ajit Savant Majagvai v. State of Karnataka [**Ajit Savant Majagvai v. State of Karnataka**, (1997) 7 SCC 110 : 1997 SCC (Cri) 992], this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial court: (SCC pp. 116-17, para 16).

“16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) *In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.*

(2) *The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*

(3) *Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.*

(4) *In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.*

(5) *If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.*

(6) *The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.*

(7) *The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”*

27. *This Court in **Ramesh Babulal Doshi v. State of Gujarat [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972]** observed vis-à-vis the powers of an appellate court while dealing with a judgment of acquittal, as under: (SCC p. 229, para 7)*

“7. ... While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions.”

28. *This Court in **Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]** , highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.*

29. *After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following*

words: **(Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)**

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

30. In Nepal Singh v. State of Haryana [Nepal Singh v. State of Haryana, (2009) 12 SCC 351 : (2010) 1 SCC (Cri) 244] , this Court reversed the judgment [State of Haryana v. Nepal Singh CRA-D No. 99-DBA of 1993, order dated 21-7-1997 (P&H)] of the High Court which had set aside the judgment of acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappraisal of the evidence.”

29. It is a settled law that in the case of acquittal, a double presumption is drawn in favour of accused. Firstly, the presumption of innocence, which is a fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he has been proven guilty by a competent court of law. Secondly, when the accused is acquitted after the trial.

30. The scope of appeal against acquittal is legislated and developed with time by way of judicial pronouncement is required to be taken into consideration by the appellate court, but the Government being a welfare

state is also duty bound to follow it, as the fundamental right of life and liberty of a person is at stake.

31. The scope of appeal in the case of acquittal of accused after a full trial cannot be challenged in appeal in a routine manner.

32. The State Government before giving direction to public prosecutor to present an appeal is under a legal obligation to state in clear words its direction that there is substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusion and apparent mistake, which warrants appeal. Mere writing of these phrases does not suffice, it should be made clear and explicit in an application for leave to appeal provided under Section 378(3) Cr.P.C./ Section 419(3) B.N.S.S.

33. The role of the State while dealing with issuance of ‘direction’ to public prosecutor to file an appeal against acquittal is dealt with in various judicial pronouncements. Some quotes are reiterated underneath:-

(I) Public Prosecutor v Mayandi¹² [Madras High Court]- *“It is an accepted maxim that the right of appeal against an acquittal vested in the Crown should be used sparingly and with circumspection.”*

(II) Emperor vs. Pursomal Germinal and another¹³ [In the court of Judicial Commissioner, Sind] *“.....But we do say that, it is not proper in an appeal against an acquittal for Government to attempt to snatch a conviction by making out another case against the accused. We think that an appeal against an acquittal is a serious matter. The liberty of a person once acquitted is again to be put in jeopardy, and we think we are justified in asking that cases, in which an appeal against an acquittal is to be made, should be carefully considered in all their aspects before the appeal is filed, and that Government should be bound in argument and should consider themselves bound in argument to the grounds raised in the memorandum of appeal.....”*

¹² AIR 1933 Mad 230

¹³ AIR 1938 Sind 108

(III) **State v. Ganga Sahai**¹⁴ [Allahabad High Court] “....I do not consider that this was an appeal which should have been filed by Government. “Government may be expected if not as a matter of law, at any rate of conduct, in litigious matters, to set a very high standard”, see — ‘Crown v. Me. Neil’, 31 C.L.R. 76. They should not have filed an appeal when there is no evidence at all against the accused.”

(IV) **State of U.P. v. Ram Ajorey and Others**¹⁵ [Allahabad High Court] “The law is well settled that appeal from acquittal are allowed only in exceptional circumstances. It is an extraordinary remedy. The appeal by Government should be made judiciously and only in cases where the judgment is so clearly wrong that its maintenance would amount to a serious miscarriage of justice or when a principle is involved or the question is one of great importance or of great public importance. The burden is on the Government to show that the acquittal is wrong and strong and urgent grounds must be made out to justify interference.”

34. Therefore, we are of staunch view that the State before issuing direction to public prosecutor to present this appeal in case of acquittal has not applied it’s judicial mind. Unconsiderate to the fact that life and liberty of the accused, who is enjoying double presumption of his innocence in a criminal case, has been twice at jeopardy and hence, would be suitably compensated.

35. Thus, the accused, the opposite party- **Dhirendra Kumar S/O Nand Kishor Jaiswal**, residing at Harpal Singh Solanki Ka Makan, Mohalla Gayatri Nagar, S.D.M. Colony, Sikandrabad, Uttar Pradesh, Bharat and permanent resident of Bakhtiyarpur Haqiqatpur, Bakhtiyarpur, Patna, Bihar, Bharat, who got an ‘honourable acquittal’ [per **Baljinder Pal Kaur Vs. State of Punjab and others**¹⁶ and **Inspector General of Police Vs. S. Samuthiram**¹⁷] shall be paid compensation of Rs.2 lakhs within 30 days from the date of this order,

14 AIR 1953 All 211

15 1991 All LJ 669

16 (2016) 1 SCC 671

17 (2013) 1 SCC 598

which is just and proper compensation for vexatious criminal prosecution.

36. Office to send a copy of this judgment along with record to the court concerned for effecting compliance. A copy shall also be sent to Secretary/D.L.S.A., Bulandshahr for following action.

37. The appeal is accordingly, **dismissed**.

Order Date :- 18.07.2025

Shivangi

(Avnish Saxena, J.)

(Siddharth, J.)