REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1121 OF 2016

Anwar Ali and another ...Appellants

Versus

The State of Himachal Pradesh ...Respondents

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.09.2016 passed by the High Court of Himachal Pradesh in Criminal Appeal No. 464 of 2012, by which the High Court has allowed the said appeal preferred by the respondent – The State of Himachal Pradesh and has reversed the judgment and order of acquittal passed by the learned trial Court and consequently has convicted the

appellants – original accused for the offences punishable under Sections 302 read with 34, 392, 201 and 420, IPC and has sentenced the appellants herein – original accused to undergo life imprisonment for the offences punishable under Section 302 read with 34, IPC, the appellants – original accused have preferred the present appeal.

2. That the appellants herein – original accused were charged for the offences punishable under Sections 302 read with 34, 392, 420 and 201, IPC for having committed the murder of one Deepak. That the dead body of the deceased was found on 2.9.2010 near bypass Bihali Road, Chandigarh. That the dead body was seen by one Jashwinder Singh, PW4, who informed the police station, Bhunter. On receiving such information, the police came on the spot; recorded the statement of PW4; prepared Rukka and sent the same through Constable Pushparaj, PW2 to police station, Bhunter. FIR was registered by Head Constable Tara Chand. That the dead body was identified by the father of the deceased. The investigating officer, PW18 conducted the investigation. The dead body was sent for post mortem.

SHO/SI Narayan received a secret information on 5.9.2010 that one vehicle (jeep) was lying at Chandigarh in abandoned condition. IO along with the other police officers went to Chandigarh and recovered the abandoned vehicle from Sector 45C, Chandigarh. On checking the jeep, one envelope was found to have been recovered containing mobile phone, three photographs and the documents of the vehicle were lying on the dash board of the jeep. IO took into possession the vehicle and the documents vide memo. IO dialled from recovered mobile to his own mobile and the number was detected as 9805523262. From the recovered photographs, the accused were searched at place Pandoh Bajaura Aut. Both the accused were arrested on 8.9.2010. During the investigation, the IO recovered the crates from Punjab. IO also recovered one knife and the rope on 09.09.2010, alleged to have been used in commission of the offence. After conclusion of the investigation, IO filed chargesheet against the accused persons for the aforesaid offences.

2.1 To prove the case against the accused, the prosecution examined in all 9 witnesses, out of 19 witnesses shown in the chargesheet, details of which are given below:

Sl.No.	Name
01.	Biri Singh (attesting witness on recovery of cloths) (Ex. P.W. 2/C & Ex. P.W.2/D)
02	Dinesh Singh (attesting witness on recovery of Jeep, photographs, Mobile) Ex. P.W. 1/A
03.	Lucky (witness on recovery of clothes)
04	Subhash (Father of deceased)
05	Rampal, witness of disclosure statement as per PW3
06	Niranjan Singh He was attesting witness on the seizure of crates from Ropar (Ext. P.W. 1/B)
07	Jyoti Kumar, Witness on recovery of crates from Ropar
08	Rajendra Kohli + Sushil Kumar
09	H.C. Pune Ram

The prosecution also brought on record the documentary evidence of the aforesaid witnesses. After conclusion of the recording of the evidence, statement of the accused persons under Section 313, Cr.P.C. were recorded.

Before the trial Court, the prosecution mainly relied upon the disclosure statements, recovery of vehicle (jeep), recovery of knife and rope from the spot, recovery of mobile and photographs (from the jeep). Before the trial Court, the case was based on

circumstantial evidence as there was no direct evidence. That on appreciation of evidence on record, both oral as well as documentary, the learned trial Court by a detailed reasoning did not believe the disclosure statements, recovery of knife and rope alleged to have been used for commission of the offence, recovery of mobile and the recovery of photographs from the jeep. That on appreciation of evidence, the learned trial Court found that the prosecution withheld the material information with respect to the sniffer dogs and on appreciation of evidence found that the recoveries were made earlier and the panchnama of the same were prepared subsequently on which PW5 and PW6 put their signatures. Having found that the prosecution has failed to establish and prove the complete chain of events and that it was a case of circumstantial evidence, by a detailed judgment and order, the learned trial Court acquitted both the accused for the offences for which they were tried.

2.2 On appeal by the State, by the impugned judgment and order, the High Court has reversed the judgment and order of acquittal passed by the learned trial Court and consequently has convicted the accused for the offences punishable under

Sections, 302 read with 34, 392, 420 and 201, IPC. By the impugned judgment and order, the High Court has sentenced the appellants – original accused to undergo life imprisonment for the offence under Section 302 read with 34, IPC. The High Court has also sentenced the appellants to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.25,000/- each for the offence under Section 392, IPC, and in default of payment of fine, further rigorous imprisonment for a period of three months. The High Court has also sentenced the appellants to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/- each for the offence under Section 420, IPC, and in default of payment of fine, further rigorous imprisonment for a period of three months. The High Court has also sentenced the appellants to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- each for the offence under Section 201, IPC, and in default of payment of fine, further rigorous imprisonment for a period of three months. However, all the sentences were directed to run concurrently.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in reversing the

judgment and order of acquittal and convicting the appellants for the aforesaid offences, the appellants-original accused have preferred the present appeal.

3. Learned counsel appearing on behalf of the appellants-accused has made the following submissions:

i) that the High Court has exceeded in its jurisdiction in reversing the well-reasoned judgment and order of acquittal passed by the learned trial Court and consequently convicting the accused;

ii) that the High Court has reversed the judgment of the acquittal on suspicion, surmises and conjectures;

iii) that the learned trial Court, as such, committed no error in acquitting the accused;

iv) that the learned trial Court on appreciation of evidence disbelieved the recovery of knife and rope at the instance of the accused and it was held that a very important link of the chain was missing;

v) that the learned trial Court gave a specific finding on appreciation of evidence on doubtful disclosure statements;

vi) that the High Court has failed to appreciate and consider that the knife, which is alleged to have been recovered on the disclosure statements of the accused persons, had already been recovered on 2.9.2010 with the help of sniffer dogs, which was established from the evidence of PW4 and PW5;

vii) that the High Court ought to have appreciated that the recovery of knife and rope alleged to have been recovered on the disclosure statements of the accused persons on 09.09.2010 was concocted one and to fill up the gaps in the prosecution case;

viii) that even the recovery of photographs, mobile phone of PW7 and the jeep from Chandigarh on 6.9.2010 is itself very doubtful, which came to be considered in detail by the learned trial Court;

ix) that even the conduct of Bhuntar police and the IO in not informing or taking help of the jurisdictional police and Chandigarh police while conducting investigation in those areas, as required under Section 166(3) Cr.P.C. and other

lapses has made the entire prosecution case full of doubts and suspicious;

x) that even the IO has not tried to examine any independent witness of Chandigarh, though several people were there at the time of recovery;

xi) that even the recovery of mobile of PW7 is very doubtful. The IO never tried to find out the call details of recovered mobile. Even he did not look into call-log of the mobile himself in order to find out the contact details of the real culprits. Even the IO did not enquire that after robbing the mobile of PW7, who were the persons contacted by the miscreants; how was the mobile used by the accused; whether the mobile was taken to Ropar by the accused; who were the persons taking mobile to Chandigarh and kept in the jeep with the photographs of the appellants? All these questions could have been easily solved from the call-log/call details of the mobile if it was really stolen and recovered from the jeep;

xii) that even the prosecution has not examined the best material witnesses like Biri Singh, Dinesh Singh, Lucky,

Subash (the father of the deceased), Ram Pal, Niranjan Singh and Jyoti Kumar. It is submitted that non-examination of material witnesses on recovery and seizure memos has proved fatal for the prosecution and has created serious doubts on the prosecution case. It is submitted that there is absolutely no reason as to why these material witnesses were not examined by the prosecution, and most of the police witnesses only were produced in the court, It is submitted that non-examination of material witnesses is fatal for the prosecution;

xiii) that it is an admitted position that it is a case of circumstantial evidence. Therefore, before convicting the accused, the prosecution has to prove the complete chain of events which will lead to the only conclusion that it is the accused who alone has committed the offence. It is submitted that in the present case the prosecution as such has failed to complete the chain of events; and

xiv) that there are material contradictions and even the recovery of jeep, knife and rope, photographs from the jeep, as observed and held by the learned trial Court, is doubtful

and creates serious doubts and therefore the learned trial Court rightly acquitted the accused, which ought not to have interfered with by the High Court.

3.1 Making the above submissions and taking us to the deposition of PW4, PW5 and PW18 and relying upon the decisions of this Court in the cases of *Babu v. State of Kerala, (2010) 9 SCC 189; Bannareddy v. State of Karnataka (2018) 5 SCC 790; State of Rajasthan v. Mukesh Kumar alias Mahesh Dhaulpuria (2019) 7 SCC 678; and State of Rajasthan* v. *Madan alias Madaniya, (2019) 13 SCC 653*, it is prayed to allow the present appeal and set aside the impugned judgment and order passed by the High Court and restore the well-reasoned judgment and order of acquittal passed by the learned trial Court.

4. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondent – State of Himachal Pradesh.

4.1 It is submitted that in the present case the High Court has after re-appreciation of entire evidence on record, found the accused guilty for the unnatural death of Deepak Kumar

deceased. It is submitted that as such the re-appreciation of the entire evidence by the first appellate court is permissible;

4.2 It is submitted that the High Court, on re-appraisal of the entire evidence on record, has considered the following circumstances pointing to the guilt of the accused:

a) recovery of jeep, mobile phone and photographs from Chandigarh
b) recovery of weapon of offence on the disclosure statement of appellant no.1 – Anwar Ali
c) recovery of crates on the disclosure statement of appellant no.1 – Anwar Ali
d) recovery of clothes of accused
e) medical evidence
f) no defence evidence led

4.3 It is submitted that the High Court has given cogent reasons while considering the afore-stated circumstances against the accused. It is submitted that the High Court has convicted the accused on re-appreciation of the entire evidence on record, more particularly the deposition of PW1, PW3, PW4, PW5, PW11 and PW18.

4.4 Now so far as the submission on behalf of the accused on non-examination of independent witnesses at the time of recovery and non-compliance of the provisions of Section 100(4) Cr.P.C. and other related provisions is concerned, it is submitted by the

learned counsel appearing on behalf of the respondent-State that the persons who were gathered at the time of recovery were mere spectators and none had come forward to act as a witness in the matter.

It is submitted that even otherwise as held by this Court in the case of *Ronny v. State of Maharashtra*, (1998) 3 SCC 625 that even if the witness has been brought by the investigating agency along with them, they cannot be disbelieved only on that ground.

4.5 In the alternative, it is submitted by the learned counsel appearing on behalf of the respondent-State that non-compliance of the directory provisions contained in Section 100 Cr.P.C. can at the most be treated as defective investigation but that cannot come in the way of dispensation of justice. Heavy reliance is placed upon the decision of this Court in the case of *C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567 (para 55)*.

It is submitted that as held by this Court in the case of *State of Punjab v. Balbir Singh, (1994) 3 SCC 299 (para 6)*, a defective investigation if any does not vitiate the trial. It is submitted that as held by this Court in the case of *Sudha Renukaiah v. State of Andhra Pradesh, (2017) 13 SCC 81*, in

which the decision in the case of *Muniappan (supra)* was relied upon, that even if the IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the court to examine the prosecution evidence *de hors* such lapses.

4.5 It is further submitted that in the present case the recovery of weapon of offence; recovery of jeep; recovery of photographs and the stolen mobile phone of PW7; recovery of crates have been established and proved by the prosecution beyond doubt by examining the relevant witnesses, which as such, were not believed by the learned trial Court for minor contradictions. It is submitted that therefore the order of acquittal passed by the learned trial Court warranted interference by the High Court.

4.6 Now so far as the submission on behalf of the accused that in the present case the High Court has committed a grave error in interfering with the order of acquittal passed by the learned trial Court is concerned, it is submitted that in the present case of circumstantial evidence, the factum probandum or the primary fact stands established and having regard to the common cause and natural events and to human conduct and their relations,

the complete chain of circumstances indicating the guilt of the accused is established. Reliance is placed upon the decision of this Court in the case of *G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593 (paragraphs 22 to 24).*

Heavy reliance is also placed on the recent decision of this Court in the case of *Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436,* paragraphs 30, 31. 31.1, 31.2, 31.3, 31.4 and 32 of the said decision. It is submitted that in the aforesaid decision, after considering the entire law on interference by the High Court with an order of acquittal, it is observed and held that once the appeal is entertained against the order of acquittal, the High Court would be entitled to re-appreciate the entire evidence independently and come to its own conclusion. However, ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same was arrived at after proper appreciation of the evidence. It is submitted that it is further observed that where the Sessions Judge has absolutely made a wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case and if the High Court is satisfied that the order of acquittal passed by the learned trial Court is perverse and suffers from infirmities, it is always open

for the High Court to interfere with the order of acquittal passed by the learned trial Court.

4.8 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length. We have gone through in detail the judgment and order of acquittal passed by the learned trial Court as well as the impugned judgment and order passed by the High Court interfering with the order of acquittal passed by the learned trial Court and thereby convicting the accused. we have also gone through the relevant evidences, both oral as well as documentary.

5.1 At the outset, it is required to be noted that this is a case of reversal of acquittal by the High Court in a case of circumstantial evidence. Therefore, the first and foremost thing which is required to be considered is, whether in the facts and circumstances of the case, the High Court is justified in interfering with the order of acquittal passed by the learned trial Court?

5.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

5.2.1 In the case of *Babu (supra),* this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

> **12.** This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram* v. *State of U.P (1975) 3 SCC 219*, *Shambhoo Missir* v. *State of Bihar (1990) 4 SCC 17, Shailendra Pratap* v. *State of U.P (2003) 1 SCC 761*, *Narendra Singh* v. *State of M.P (2004) 10 SCC 699*, *Budh Singh* v. *State of U.P (2006) 9 SCC 731*, *State of U.P.* v. *Ram Veer Singh (2007) 13 SCC 102*, *S. Rama Krishna* v. *S. Rami Reddy (2008) 5 SCC 535*, *Arulvelu* v. *State (2009) 10 SCC 206*, *Perla Somasekhara Reddy* v. *State of A.P (2009) 16 SCC 98* and *Ram Singh* v. *State of H.P (2010) 2 SCC 445*)
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> **13.** In *Sheo Swarup* v. *King Emperor AIR 1934 PC 227,* the Privy Council observed as under: (IA p. 404)
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> "… 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."

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu* v. *State AIR 1954 SC 1*, *Balbir Singh* v. *State of Punjab AIR 1957 SC 216*, *M.G. Agarwal* v. *State of Maharashtra AIR 1963 SC 200*, *Khedu Mohton* v. *State of Bihar (1970) 2 SCC 450*, *Sambasivan* v. *State of Kerala (1998) 5 SCC 412*, *Bhagwan Singh* v. *State of M.P(2002) 4 SCC 85* and *State of Goa* v. *Sanjay Thakran (2007) 3 SCC 755*)

15. In *Chandrappa* v. *State of Karnataka (2007) 4 SCC 415,* this Court reiterated the legal position as under: (SCC p. 432, para 42)

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

(*2*) The Code of Criminal Procedure, 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."

16. In *Ghurey Lal* v. *State of U.P (2008) 10 SCC 450,* this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the

demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan* v. *Naresh (2009) 9 SCC 368,* the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

"*20.* … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P.* v. *Banne (2009) 4 SCC 271,* this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)

"(*i*) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(*ii*) The High Court's conclusions are contrary to evidence and documents on record;

(*iii*) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(*iv*) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(*v*) This Court must always give proper weight and consideration to the findings of the High Court;

(*vi*) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in *Dhanapal* v. *State (2009) 10 SCC 401*.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(emphasis supplied)

5.2.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

> **"20.** The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra* v. *Delhi Admn (1984) 4 SCC 635*, *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons 1992 Supp (2) SCC 312*, *Triveni Rubber & Plastics* v. *CCE 1994 Supp. (3) SCC 665*, *Gaya Din* v. *Hanuman Prasad (2001) 1 SCC 501*, *Aruvelu v. State (2009) 10 SCC 206* and *Gamini Bala Koteswara Rao* v. *State of A.P (2009) 10 SCC 636*)."
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> (emphasis supplied)

5.2.3 It is further observed, after following the decision of this Court in the case of *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10*, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

5.3 In the recent decision of *Vijay Mohan Singh (supra)*, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in *Umedbhai Jadavbhai (1978) 1 SCC 228*. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)

> "*10*. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In *Sambasivan v. State of Kerala (1998) 5 SCC 412*, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

> "*8*. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal *Doshi v. State of Gujarat (1996) 9 SCC 225* viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal

passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309*, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P. AIR 1955 SC 807*, in para 5, this Court observed and held as under: (AIR pp. 809-10)

"*5.* It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

> It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.
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> It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.
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> If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh* v. *State AIR 1952 SC 52*; *Wilayat Khan* v. *State of U.P AIR 1953 SC 122*) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.
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> **31.4.** In *K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355*, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."
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> (emphasis supplied)

5.4 It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused

and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the case of *Babu (supra),* it is observed and held in paragraphs 22 to 24 as under:

> **"22.** In *Krishnan* v. *State (2008) 15 SCC 430,* this Court after considering a large number of its earlier judgments observed as follows: (SCC p. 435, para 15)
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> "*15.* … This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:
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> (*i*) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (*ii*) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
>
> (*iii*) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (*iv*) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other 200 hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir* v. *State of Maharashtra (1982) 2 SCC 351*)"
>
> **23.** In *Sharad Birdhichand Sarda* v. *State of Maharashtra (1984) 4 SCC 116* while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153)
>
> (*i*) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(*ii*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(*iii*) the circumstances should be of a conclusive nature and tendency;

(*iv*) they should exclude every possible hypothesis except the one to be proved; and

(*v*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A similar view has been reiterated by this Court in *State of U.P.* v. *Satish (2005) 3 SCC 114* and *Pawan* v. *State of Uttaranchal (2009) 15 SCC 259*.

24. In *Subramaniam* v. *State of T.N (2009) 14 SCC 415*, while considering the case of dowry death, this Court observed that the fact of living together is a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive proof, and there must be some evidence to arrive at a conclusion that the husband and husband alone was responsible therefor. The evidence produced by the prosecution should not be of such a nature that may make the conviction of the appellant unsustainable. (See *Ramesh Bhai* v. *State of Rajasthan (2009) 12 SCC 603*)."

(emphasis supplied)

5.5 Even in the case of *G. Parshwanath (supra)*, this Court has in paragraphs 23 and 24 observed as under:

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred

from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is to be considered, whether in the facts and circumstances of the case, the High Court is justified in interfering with the order of acquittal passed by the learned trial Court?

6.1 In the present case, the prosecution as well as the High Court considered the recovery of photographs; recovery of mobile phone belonging to PW7, recovery of the knife and rope at the instance of the accused and on alleged disclosure statements of the accused on 9.9.2010. The prosecution also relied upon the

recovery of jeep in which the photographs of the accused were found. The prosecution also relied upon the disclosure statement of the accused Anwar Ali with respect to recovery of crates and for the aforesaid prosecution heavily relied upon the testimony of PW5, PW6 and PW7. However, it is required to be noted that on appreciation of the entire evidence on record, the trial Court found material contradictions in the deposition of the witnesses of disclosure statements and the recovery of the knife and rope on 9.9.2010 and thereby did not believe the recovery of knife, rope, crates on the basis of the disclosure statements made by the accused and that too recovered on 9.9.2020. However, the High Court without giving any cogent reasons has interfered with the findings of fact recorded by the learned trial Court solely by observing that those contradictions were minor contradictions and therefore the learned trial Court was not justified in acquitting the accused solely on the basis of such minor contradictions. However, on considering the entire evidence on record, we are in complete agreement with the view taken by the learned trial Court. The contradictions which came to be considered by the learned trial Court cannot be said to be minor contradictions. In the present case, according to the prosecution

and PW18-IO, on the basis of disclosure statements made by the accused on 8.9.2010, the knife and rope were recovered on 9.9.2010. However, PW4 and PW5 have categorically stated in their deposition that the police brought the sniffer dogs on 2.9.2010 and the sniffer dogs recovered rope, knife etc. on 2.9.2010. So, according to even PW4 and PW5, the rope and knife were recovered on 2.9.2010 with the help of sniffer dogs. However, neither in the FIR there was a mention of recovery of knife and rope on 2.9.2010 with the help of sniffer dogs nor the IO in his examination-in-chief has stated so. It is required to be noted that the accused were arrested on 8.9.2010 and prior thereto on 2.9.2010 the investigating officer visited the spot from where the knife and rope was recovered on 2.9.2010. In cross-examination, the IO admitted that he visited the spot from where the knife was recovered with sniffer dogs on 2.9.2010. He has also admitted in the cross-examination that this fact has not been mentioned in the FIR or in the statement of any witness. Thus, the prosecution and the IO suppressed the material facts. Even in the cross-examination, the IO has stated that the sniffer dog had done nothing on the spot. In the cross-examination, he has also specifically stated that "it is incorrect to suggest that the

sniffer dog had traced the strings Ex. P52, knife Ex. P59 and vest Ex. P54. However, PW4 and PW5 in their deposition have categorically stated that the knife and rope were recovered on 2.9.2010. The aforesaid cannot be said to be minor contradictions. Therefore, the trial Court was justified in not believing the disclosure statements of the accused and the recovery of the knife, rope etc. on 9.9.2010 as alleged by the prosecution. From evidence, it emerges that the knife, rope and vest were recovered on 2.9.2010 i.e., much prior to 8.9.2010 when the accused were arrested.

7. Even the recovery of jeep from Chandigarh and recovery of photographs and the recovery of mobile phone belonging to PW7 from the jeep also create serious doubts. According to the prosecution and the IO, he received a secret information that one jeep is lying in abandoned condition on the Chandigarh road and though the distance was around 300 kilo meters, he straightway went to Chandigarh and recovered the jeep in the presence of Bhunter people brought by him. The Investigating Officer did not follow the procedure as required to be followed under Section 166 (3 & 4), Cr.P.C. Even he did not comply with the provisions of Section 100 (4) Cr.P.C. Non-following of the aforesaid provisions

alone may not be a ground to acquit the accused. However, considering the overall surrounding circumstances and in a case where recovery is seriously doubted, non-compliance of the aforesaid play an important role.

8. Even the recovery of the mobile phone from the jeep belonging to PW7 also creates doubt. Though, PW7 has stated that his mobile was stolen or cheated, he never filed any complaint earlier. Even the IO has not tried to have the call details of the mobile. He has not tried to verify from the call details the conversation to or from the mobile.

Even the disclosure statement of the accused with respect to crates being sold to PW6 is concerned, it is required to be noted that in the present case the so-called disclosure statement is found to be suspicious and doubtful. Cogent reasons have been given by the learned trial Court for the same.

9. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in the case of *Suresh Chandra Bahri v.*

State of Bihar 1995 Supp (1) SCC 80 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in the case of *Babu (supra)*, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paragraphs 25 and 26, it is observed and held as under:

> **"25.** In *State of U.P.* v. *Kishanpal (2008) 16 SCC 73,* this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)
>
> "*38.* … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.
>
> *39.* The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."
>
> **26.** This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar* v. *State of T.N (2009) 9 SCC 152*)."
>
> (emphasis supplied)

10. Considering the aforesaid facts and circumstances of the case, the findings recorded by the learned trial Court, which were based on appreciation of the entire evidence on record cannot be said to be either perverse or contrary to the evidence on record and/or it cannot be said that the trial Court did not consider any material evidence on record. Trial Court was justified in recording the acquittal by observing that prosecution has failed to complete the entire chain of events. Therefore, we are of the opinion that in the facts and circumstances of the case, the High Court is not justified in reversing the order of acquittal passed by the learned trial Court. Under the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside.

11. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 20.09.2016 passed by the High Court of Himachal Pradesh in Criminal Appeal No. 464 of 2012 is hereby quashed and set aside, and the judgment and order dated 15.06.2012 passed by the learned Additional Sessions Judge, Fast Track Court, Kullu, Himachal Pradesh in Sessions Trial No. 05 of 2011 is hereby

restored. The accused-Appellants, namely, Anwar Ali son of Gama Ali and Sharif Mohammad son of Sampat Mohammad be set at liberty forthwith, if not required in any other case.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
SEPTEMBER 25, 2020.

.....J.
[M.R. SHAH]