

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 1162 OF 2011**

Mallappa & Ors. ....Appellants  
Versus  
State of Karnataka ....Respondent

**J U D G M E N T**

**SATISH CHANDRA SHARMA, J.**

1. The wheels of justice may grind slow, but they grind fine. Mallappa S/o Ningappa Kanner, Hanamanth S/o Ningappa Kanner and Dharamanna S/o Ningappa Kanner are the appellants before us who were put on a trial, as accused no. 3, 4 and 5, for the commission of murder of deceased namely Marthandappa and were acquitted by the Trial Court/Fast Track Court-I at Gulbarga on 24.03.2005. The judgment was not meant to finally

seal the fate of the appellants as the State of Karnataka preferred an appeal against the order of the Trial Court before the High Court of Karnataka which was registered as Criminal Appeal No. 1363/2005. On 31.05.2010, the High Court reversed the order of acquittal and held the appellants guilty of the commission of murder of deceased Marthandappa. Accordingly, the appellants stood convicted and were sentenced to undergo life imprisonment. The appellants stand before us assailing the order of conviction of the High Court and praying for a declaration of innocence.

2. Pertinently, eight accused persons were tried and acquitted by the Trial Court. The High Court agreed with the acquittal of all the accused persons, except the three appellants before us.

### **PROSECUTION CASE**

3. The case of the prosecution begins from one Nagamma, who is the wife of Accused No. 5 and deceased Marthandappa was allegedly having an illicit relationship with her. On account of the alleged illicit relationship, the relations between A1-A8 and Marthandappa were strained. On 28.06.1997, the

fateful day, Marthandappa (the deceased), PW3 and PW4 were travelling in a bullock-cart from village Aidbhavi to the village Nagaral for cultivating their lands. They left the house of PW-2 (father of the deceased) at around 9 A.M. in a bullock cart to go to village Nagaral. PW-2 had agricultural lands at Aidbhavi as well as Nagaral. While they were travelling to village Nagaral, they crossed village Shantpur as they were proceeding on the bullock-cart towards Nagaral village. At around 4 P.M., when their bullock-cart arrived near the land of Balwantappa Channur, A1 to A8 came out of their hiding place and stopped the bullock-cart.

4. As per the prosecution case, A3, A4 and A6 were armed with axes (MO<sup>1</sup>s. 5, 6 &7), A5 was armed with knife (MO8) and A1, A2, A7 and A10 were armed with clubs (MOs 9, 10 and 1). The accused persons started by threatening Marthandappa stating that on account of his illegal acts, village women folk are not able to lead their life peacefully and then they proceeded towards Marthandappa, with the intention to kill him. A3 assaulted him with an axe on his right

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<sup>1</sup> MO = Material Object

leg and caused injuries. A4 also assaulted him with an axe five/six times on the right side of the stomach. A5 assaulted with a knife on the lip and back of Marthandappa, A6 assaulted with an axe on the right and left temple region and chin of Marthandappa. He also assaulted with an axe on the lap of Marthandappa. As the offensive act continued, A7 assaulted with a bullock-cart peg on the head of Marthandappa. A1, A2 and A8 assaulted with clubs on the back of Marthandappa.

5. Fearing for his life, PW-4 tried to run away and at that point of time, A3 assaulted him with an axe on the head, back and on the scrotum. PW-4 sustained injuries, became unconscious and fell on the ground.

6. PW-3, an eye witness of the incident, rushed to save himself and went inside the jali-trees. He saw the incident hiding from that particular place. Eventually, Marthandappa fell on the ground and A1 to A8, believing that Marthandappa was no more, left the place. Finding it safe for him, PW3 then went to Marthandappa and found that Marthandappa was no more. He noticed that PW-4 was also lying

unconscious with blood flowing out of his injuries. Thereafter, PW-3, fearing for his life, kept on hiding amidst the jali-trees and sometime during the night, he left the jali-trees and left for Devpura. On the next day, PW-3 reached the house of PW-2 at Aidbhavi and informed him regarding the incident. PW-2 then visited the scene of offence and saw the dead body of Marthandappa. He also saw PW-4 lying on the ground in an unconscious condition. Thereafter, on 29.06.1997 at around 3 P.M., he went to P.S. Shorapur and lodged a written complaint to the PW-10 as per Ex.P1 and PW-10 registered a case as Crime No. 78/97 and sent FIR (Ex.P13) through PW-1 to the Judicial Magistrate First Class<sup>2</sup>, Shorapur. The copy of FIR was handed over to JMFC at around 4:30 P.M.

7. The facts further reveal that on 29.06.1997 at about 12:30 P.M., PW-4 went to the Government Hospital, Shorapur, and met the doctor (PW-8). He showed his injuries to PW-8 and PW-8 found three injuries (simple) on PW-4 and gave treatment to him, and later sent him for further treatment to the Government Hospital, Gulbarga. The doctor at

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<sup>2</sup> Hereinafter referred as "JMFC"

Gulbarga treated PW-4 and issued a simple injury certificate to PW-8 (Ex.P12). After registering the case, PW-10 went to the scene of offence at Shorapur village along with PW-9 and saw the dead body of Marthandappa and collected panchas (PW-7 and Malleshi). In the presence of Panchas, he conducted inquest mahazar on the dead body of Marthandappa, as per Ex.P9. On 29.06.1997, between 4.30 P.M. to 6.00 P.M. and thereafter, he handed over the dead body of Marthandappa to PW-9 with the requisition letter (Ex.P2) directing PW-9 to take the dead body to Government Hospital, Kakkera for getting the post-mortem examination done. PW-9 took the dead body of Marthandappa to the Government Hospital, Kakkera, and handed over the dead body to PW-5 (doctor) for post-mortem examination on 30.06.1997 at about 6.30 A.M. On 29.06.1997, PW-10, in the presence of Panchas (PW7 and Malleshi) conducted mahazar of scene of offence as per Ex.P10. From the scene of offence, he seized MO-1 (bullock-cart peg), MO-12 (pair of chappal), MO-13 (towel), MO-14 (blood stained mud), MO-15 (sample mud), MO-16(taita) and MO-17 (waist thread) and slips were affixed bearing signatures of the Panchas on them.

8. On 30.06.1997, PW-5 (doctor) conducted post-mortem examination on the dead body of Marthandappa from 6.30 am to 9.30 am. The doctor found 9 ante mortem injuries on him and issued a post-mortem report as per Ex.P3 stating the cause of death to be haemorrhage shock as a result of laceration of liver tissue. Notably, the report stated the time of death to be 36 to 48 hours prior to the post mortem examination. The doctor further handed over clothes and articles (MOs) found on the dead body as well as the dead body to PC (PW9). Thereafter, PW9 handed over the dead body to the relatives of Marthandappa for burial. The clothes and articles found on the dead body were brought to Kakkera by PW9, who produced them before PW-10. PW-10 seized them in the presence of panchas (PW7 and Malleshi) and also conducted mahazar of seizure as per Ex.P11 (MOs 1 to 4). Thereafter, he went to Aidbhavi village and recorded the statement of witnesses. Thereafter, he went to Mudagal and recorded the statement of Nagamma (wife of A5).

9. On 01.07.1997, PW-10 recorded statement of Balvantappa. On 04.07.1997, at about 5.30 A.M. at Tintini Bridge, PW-10 arrested A5 and interrogated

him. A5 gave him information that he could produce knife from his house, thereby leading to discovery as per Ex.P14. A5, thereafter, took PW10 and panchas (PW6 and Yamanappa) to his house situated in Aidbhavi vilage and from his house, he produced one knife (MO-8) and one axe (MO-5). PW-10 seized them as per Ex.P14. PW-10, thereafter obtained judicial custody remand of A5 from JMFC, Shorapur and obtained permission to retain properties. On 14.07.1997 at about 4.00 A.M., PW-10 arrested A1 to A4 from Shorapur Bus Stand and brought them to the police station for interrogation. A1 gave information leading to discovery as per Ex.P15. A2 gave information leading to discovery as per Ex.P16 and A3 gave information leading to discovery as per Ex.P17. Thereafter, on 15.07.1997, A1 led police and panchas (PW6 and Yamanappa) to his house and from his house, he produced one stick (MO9) before the police and panchas and PW-10 conducted mahazar of seizure as per Ex.P5. PW-10 took the signatures of the panchas on it. Thereafter, A2 led police and panchas to his house and from his house, he produced one stick (MO-10). PW-10 conducted mahazar of seizure of these articles, as per Ex.P7. A3



led police and panchas to his house at Aidbhavi and from his house, he produced one axe (MO7) and PW-10 seized the same as per mahazar (Ex.P6) and took signatures of the panchas on it. PW-10 thereafter obtained judicial custody remand of A1 to A4 from JMFC, Shorapur. On 25.07.1997, PW10 arrested A7 from his house and remanded him to judicial custody and on 17.07.1997 at 6.30 a.m., arrested A6 from Gurgunta bus stand and interrogated him. A6 gave him information leading to discovery as per Ex.P18 and from his house, one knife (MO8) was recovered and PW-10 seized it under mahazar Ex.P8. Thereafter, A6 was also remanded to judicial custody. On 07.10.1997, PW-10 sent all the seized articles to FSL, Bangalore through PW9.

10. On 07.08.1997, PW-10 recorded the statement of PW4. On 22.08.1997, PW10 collected post-mortem report (Ex.P3) from the doctor (PW-5). On 30.08.1997, PW9 returned from Bangalore FSL Office and PW-9 produced all the articles in re-sealed condition before PW10 and seized them. On the same day, he collected injury certificate of Laxman (PW4) as per Ex.P12. On 14.09.1997, PW-10 received FSL report as per Ex.P19 and Ex.P20.

11. After completing investigation, he filed the charge-sheet before JMFC, Shorapur on 29.09.1997. The JMFC Court, Shorapur, passed the order of committal on 19.01.1998 and the accused persons appeared before the Principal Sessions Judge, Gulbarga on 22.03.2002. The Principal Sessions Judge framed charges against the accused persons for the commission of offences under Sections 147, 148, 149, 302, 307 and 504 of the Indian Penal Code and all the accused persons pleaded not guilty and claimed trial. The prosecution examined PW1 to PW10 as witnesses for the prosecution, got marked Ex.P1 to Ex.P21 as well as MOs. 1 to 17 as exhibits and materials in support of the prosecution case and closed the prosecution evidence. The defence marked Ex.D1 in support of their case. The trial court, after appreciating the evidence on record, acquitted all the persons under Section 235 Cr.P.C. The order of acquittal was assailed before the High Court and vide order dated 31.05.2010, the High Court convicted A3 to A5 (present appellants) and upheld the acquittal order with respect to accused Nos. 1, 2, 6, 7 and 8.

12. In the course of this proceeding, we have been informed that appellant no. 3 is no more, and the

present appeal is confined only to appellant Nos. 1 and 2.

13. Before we proceed to lay down the case set up by the parties before us, we may briefly highlight the reasons that prevailed upon the trial court while ordering acquittal. The trial court, after appreciating the evidence on record, acquitted the accused persons by assigning the following reasons:

- i. The evidence of eyewitness PW3 is not worthy of credit and his conduct after the alleged murder was artificial.
- ii. PW3 witnessed the assault on the deceased as well as on PW4, as per the prosecution version, however, he chose to hid behind the bushes till the sunset as he got frightened.
- iii. PW-3 admitted that there were number of buses plying on the route between Lingasgur to Shorapur and Gulbarga. However, his version, that he could catch the bus only on the next day at 6.00 A.M., is artificial. He could have availed the transport facility on 28.06.1997 itself after the assailants had left.
- iv. PW-3 states that his relatives are residing in Nagara village, which is 4 km from the scene, but he did not go and inform them.

v. PW-3 did not inform the people at Devpura or the passengers plying in the bus in which he travelled to go to Gurugunte. From there, he caught another bus to Aidbhavi village. The incident took place around 4 P.M. and it took more than 18 hours for PW-3 to inform the father of the deceased PW-2. In the meanwhile, although he had opportunity, he did not inform the out-post police, which must have come in the course of his journey from Devpura to Aidbhavi.

vi. PW-3 admitted that he was conscious that he should get PW-4 treated after the incident, yet he did not make any sincere effort to get him treated. The deceased and PW-4 were assaulted by the accused. There was no reason for the accused persons to not assault PW-3. His version that he escaped and hid behind the bushes is artificial. Further, the evidence of PW-4 that he was unconscious till he was taken to hospital is artificial. There is no evidence to show the nature of treatment given to PW4 and to show his physical condition at Gulbarga Hospital.

vii. The father's name of PW-4 is shown as Siddaramegowda, whereas in the MLC register the name of the father of PW-4 is shown as Narasappa.

viii. In the wound certificate, it is mentioned that PW-4 "self admitted" at the hospital. The doctor PW-8 states that

PW-4 was unconscious. In the wound certificate of PW-4, it is stated that the assault took place in the night. Whereas, the FIR shows that the incident took place around 4 P.M. in the day hours. The Trial Court finds that the evidence of PW-3 and PW-4 is incredible and thus, acquitted the accused.

14. The High Court, in appeal, after re-appreciating the evidence on record, held that the post-mortem report supported the case of the prosecution that the death of Marthandappa was homicidal. It further held that the prosecution has successfully proved the motive and occurrences of incidents on the basis of evidence of PW-3 and PW-4. The High Court further held that Wound Certificate of PW-4 corroborated the evidence of PW-4 regarding the injuries caused to him in the assault.

15. On the question of credibility, the High Court held that PW-4 is an injured witness and he has categorically stated that A1, A2, A7 and A8 assaulted the deceased with clubs on the head and on back, and A3, A4 and A6 assaulted the deceased with axe. His evidence established that A7 assaulted the deceased with knife and he was assaulted by A3 with

an axe. The High Court has arrived at the conclusion that evidence of PW-4 is quite natural and there is nothing to disbelieve his veracity. It has also been observed that PW-4, after the assault, was found lying unconscious. He was admitted to the hospital on the next date at 12.30 P.M. The contents of the wound certificate at Ex.P8 show that PW-4 was semi-conscious and it corroborates the version of PW-4 about his condition that he fell unconscious and was semi-conscious at the time when he was admitted to the hospital.

16. In those circumstances, the High Court has arrived at a conclusion that there is no reason to disbelieve the evidence of PW-4, and also that he was a witness to the assault on the deceased and was also a victim of assault.

17. The High Court also considered the evidence of PW-3 who was the eye witness of the incident. The High Court has observed that PW-3 certainly had several options, like informing by-standers at the bus-stop, going to Nagara village or going to the police, but he went to the village of the deceased father at his Aidbhavi village as he was keen on

informing PW-2, as he was the most appropriate person to be informed about the incident. In such circumstances, the High Court has arrived at the conclusion that the conduct of PW-3 in not informing others and going to Aidbhavi village to inform PW-2, could not be a reason to disbelieve his statement. The High Court has arrived a conclusion that the evidence of PW-3 and PW-4, if read together, proves the alleged incident and the evidence of PW-3 and PW-4 establishes that A1, A2, A7 and A8 assaulted the deceased with clubs, however, there are no injuries reflected on the dead body of the deceased.

18. It has been further held that in respect of A3 to A6, the evidence of PW-3 and PW-4 is consistent and establishes their involvement in the assault and proves their guilt. The manner of assault in the overt acts of A3 to A6 corresponds with the injuries noted in the wound certificate and the post-mortem report. In those circumstances, the High Court has set aside the acquittal of A3, A4 and A5, and convicted them for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and confirmed the order of acquittal in respect of A1, A2, A7 and A8.

19. Assailing the order of the High Court, the appellants submit that the High Court has erred in re-appreciating the entire evidence without finding any fault with the appreciation of evidence by the Trial Court. They submit that re-appreciation of the entire evidence at the appellate stage is not permissible until and unless a grave error has been identified in the view taken by the Trial Court. It is further submitted that if appreciation of evidence leads to two possible views, then the decision of the Trial Court could not be reversed merely because another view was possible.

20. *Per contra*, it is submitted by the respondent State that the Trial Court did not appreciate the evidence in a proper manner which led to the acquittal of the accused persons. It is further submitted that the testimonies of PW-3 and PW-4 were incorrectly rejected by the Trial Court despite the fact that one of them was an eye witness of the entire incident and the other one was a victim of the assault. It is further submitted that once a grave error is found in the decision of the Trial Court, the High Court is fully empowered to re-appreciate the entire evidence and reach a different conclusion.



21. We have heard the rival submissions of the parties and have also carefully gone through the record.

22. We may now proceed to answer the principal question i.e. whether the High Court was correct in reversing the order of acquittal of the Trial Court and thereby convicting the accused persons under Section 302 IPC.

23. At the outset, it is relevant to note that accused Nos. 1 to 5 are brothers *inter se* and accused no. 6 to 8 are relatives of accused Nos. 1 to 5, residing at Aidbhavi, Taluk Lingasgur. The complainant PW-2 (Narsappa) is the father of the deceased Marthandappa and PW-4 and PW-3 are the nephews of PW2, and they are residing at village Aidbhavi. The accused persons are not unknown to the victims and complainant.

24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption

continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial

Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The '*two-views theory*' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and

liabilities in the eyes of law. In ***Selvaraj v. State of Karnataka***<sup>3</sup>,

“13. Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in ***Jagan M. Seshadri v. State of T.N.*** [(2002) 9 SCC 639] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus:

“9. ...We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.”

(emphasis supplied)

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<sup>3</sup> (2015) 10 SCC 230

In **Sanjeev v. State of H.P.**<sup>4</sup>, the Hon'ble Supreme Court analyzed the relevant decisions and summarized the approach of the appellate Court while deciding an appeal from the order of acquittal. It observed thus:

“7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be overturned (see **Vijay Mohan Singh v. State of Karnataka**<sup>5</sup>, **Anwar Ali v. State of H.P.**<sup>6</sup>)

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see **Atley v. State of U.P.**<sup>7</sup>)

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see **Sambasivan v. State of Kerala**<sup>8</sup>)”

27. In this case, the case of the prosecution substantially rests on the testimonies of PW-3 and PW-4 read with various documents, especially the reports of medical examination and post mortem.

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<sup>4</sup> (2022) 6 SCC 294

<sup>5</sup> (2019) 5 SCC 436

<sup>6</sup> (2020) 10 SCC 166)

<sup>7</sup> AIR 1955 SC 807

<sup>8</sup> (1998) 5 SCC 412

PW3 is the eye witness of the incident. His testimony has been rejected by the Trial Court by terming it as artificial. PW-3 deposed that he was present at the place of incident when the accused persons started assaulting the deceased and PW-4 on 28.06.1997 at around 4 P.M. PW-3 deposed that A3 had assaulted PW-4 as he was running for his life along with PW-3. PW-4 was attacked from the back and PW-3 successfully managed to hide behind the bushes. Notably, PW-3 hid behind the bushes and observed the assault till Marthandappa was dead and PW-4 was unconscious. He then came out to check them and fearing for his life, he again rushed behind the bushes. He admitted that he was hiding behind the bushes till sunset. Thereafter, he came out and started walking towards Devpura, although he admitted that there were a number of buses plying on the route. But PW-3 takes no bus and keeps walking towards Devpura. On reaching there, he sat at the bus stand and kept on sitting there. Fast forward to the next morning, PW-3 catches the bus only at 6 A.M. on the next morning. The explanation as to how PW-3 spent the entire intervening night of 28-29.06.1997 is missing from the chain of

circumstances. The statement that he was simply sitting at the bus stand for the entire night, while Marthandappa was dead and PW-4 was severely injured and unconscious, fails to inspire confidence. More so, when the entire reason for hiding behind the bushes was the fear of life. Despite such fear, PW-3 did not choose to inform the police out-post, on the way from Devpura to Aidbhavi, and rather, he kept on sitting at the Devpura bus stop. He also admitted that his relatives were residing around 4 km from the place of incident at Nagaral. However, he chose not to inform them either. He also admitted that he took no steps to provide medical treatment to PW-4 who was lying unconscious at the place of incident as a result of the assault. The said fact could have been entertained if the place of incident was completely secluded. Such is not the case, as it is admitted that the place of incident fell on a bus route and buses were indeed plying.

28. It was almost 18 hours after the assault that PW-3 managed to reach Aidbhavi to inform PW-2 about the incident. The High Court found the conduct of PW-3 to be perfectly natural, as it was understandable that PW-3 wanted to inform PW-2

before anyone else. Such conduct would have been justified if PW-2 was residing in close proximity of the place of incident. The very fact that PW-3 did not even contemplate about providing medical help to PW-4 or to seek protection from the local police despite such a drastic assault and instead, chose to wait for 18 hours, raises a reasonable doubt on the credibility of his version. This circumstance assumes a greater importance in light of the fact that PW4 was the cousin brother of PW3 and not some stranger. The conduct of PW-3 was not that of a reasonable man placed in such circumstances and the Trial Court was right in terming it as artificial.

29. The conduct of PW-3 renders his very presence at the place of incident as doubtful. Despite a heavy assault by multiple accused persons, he did not suffer any injury at all. That too when he was indeed chased by A3 while attacking PW-4. It is extremely doubtful that the assailants simply chose to give up on PW-3 and did not pursue him behind the bushes, despite knowing that PW-3 could turn out to be an eye witness of the incident. The story that follows the story of hiding behind the bushes is equally doubtful and leaves one speculating. The timelines, the route



taken by PW-3, complete disregard for severely injured PW-4, failure to inform the police post despite access to it etc. are some of the factors that raise a reasonable doubt on the entire story. The chain of circumstances created by the testimony of PW-3 is not consistent with the outcome of guilt.

30. The version of PW-4 is that he was attacked from the back by A3 and thereafter, he fell unconscious. As per his testimony and the testimony of PW-3, PW-4 was attacked by an axe on his head, back and scrotum. The first point of corroboration is to be seen from the circumstances following the assault. The assault on PW-4 took place at around 4 P.M. and he was admittedly unconscious thereafter. He remained as such until he was “self-admitted” in the hospital at around 12:30 P.M. the following day. The second point for corroboration of this version could be taken from the wound certificate issued by PW-8 during the treatment of PW-4 at Government Hospital, Shorapur. The Trial Court relied upon the wound certificate and noted a contradiction between the condition of PW-4 at the time of admission. In the certificate, PW-4 is stated to be “self-admitted” but at the same time, he is stated to be unconscious. The

High Court rejected this contradiction as material by observing that PW-4 was semi-conscious at the time of admission and therefore, he could have admitted himself in the hospital. However, the inherent contradictions in the statement of PW-4 are not limited to this point.

31. The injuries found on PW-4, as per the wound certificate, were simple in nature. PW-8 gave some treatment to PW-4, however the nature of treatment is not indicated. Thereafter, PW-8 forwarded him to a hospital at Gulbarga where injury certificate Ex.P12 was prepared. Ex.P12 also recorded the nature of injury to be simple in nature. The nature of injury is to be corroborated with the nature of assault, as deposed by PW-4 and PW-3. They deposed that A3 had attacked PW-4 with an axe at three sensitive places i.e. head, back and scrotum. The attack was so severe that PW-4 immediately fell unconscious. In the ordinary course of natural events, an injury inflicted by an axe, that too in a manner that the injured immediately fell unconscious and remained unconscious for almost 20 days, could not have been a simple injury. More so, a simple injury of a standard that required no admission in the hospital.

32. Furthermore, PW-4 travelled to the hospital at Shorapur by a bus, but he failed to inform any passenger about the assault. Despite such injuries, including on the head, no one noticed his condition. He was unconscious for over 20 days and after he regained consciousness, his statement was recorded by PW-10. It is difficult to comprehend as to how a severely injured person, who could not gain consciousness before 20 days, managed to go to the hospital on his own by using a public bus and later, to another hospital at a different place. It is difficult to comprehend that PW-4 was conscious enough to undertake two journeys to two different hospitals, by public transport, but did not have the senses to give a statement to the IO PW-10 before the passage of almost 30 days. During cross examination, PW-4 had deposed that he had sustained injuries on head and testicles only, and there was no other injury. The said statement was a material improvement from the versions initially put forth by PW-3 and PW-4 whereby, PW-4 had sustained injuries on the back as well. However, no such injury was recorded in the wound certificate and in all likelihood, the improvement was made for that reason. The

testimony of PW-4 is impeachable for another reason – the time of the offence. As per his version, the time of assault was around 4 P.M., whereas, as per the wound certificate Ex.P12, the time of injury was at night. Similar issue with respect to timing was noticeable in the post mortem report as well.

33. Notably, all these aspects have been carefully analysed and appreciated by the Trial Court, but the High Court rejected all the doubts by observing that PW-4 was an injured witness and there was no reason to disbelieve his testimony. The High Court omitted to take note of two material aspects – the fact that the statement of PW-4 was recorded after a period of one month from the date of incident and the factum of family relationship between the deceased and PW-4. The former aspect raises a grave suspicion of credibility, whereas the latter raises the suspicion of being an interested witness. In normal circumstances, where a testimony is duly explained and inspires confidence, the Court is not expected to reject the testimony of an interested witness, however, when the testimony is full of contradictions and fails to match evenly with the supporting evidence (the wound certificate, for instance), a Court

is bound to sift and weigh the evidence to test its true weight and credibility.

34. Pertinently, the Trial Court had reached its decision after a thorough appreciation of evidence and we have no doubt in observing that the view taken by the Trial Court was indeed a legally permissible view. The High Court went on to reverse the decision by taking its own view on a fresh appreciation of evidence. Moreover, the High Court did so without recording any illegality, error of law or of fact in the decision of the Trial Court. In our considered view, the same was not permissible for the High Court, in light of the law discussed above. Setting aside an order of acquittal, which signifies a stronger presumption of innocence, on a mere change of opinion is not permissible. A low standard for turning an acquittal into conviction would be fraught with the danger of failure of justice.

35. So far as the question of independent appreciation of evidence by the High Court is concerned, be it noted that the High Court was fully empowered to do so, but in doing so, it ought to have appreciated the evidence in a thorough manner. In

the present case, the High Court has not done so. Even the aspects discussed by the Trial Court have not been fully addressed and the High Court merely relied on a limited set of facts to arrive at a finding. The factors which raised reasonable doubts in the case of the prosecution were ignored by the High Court. For instance, the contradictions pertaining to time, which were carefully analyzed by the Trial Court, were not examined by the High Court at all. Similarly, the contradictions qua the nature of injuries were also not discussed. In an appeal, as much as in a trial, appreciation of evidence essentially requires a holistic view and not a myopic view. Appreciation of evidence requires sifting and weighing of material facts against each other and a conclusion of guilt could be arrived at only when the entire set of facts, lined together, points towards the only conclusion of guilt. Appreciation of partial evidence is no appreciation at all, and is bound to lead to absurd results. A word of caution in this regard was sounded by this Court in **Sanwat Singh**

**v. State of Rajasthan**<sup>9</sup>, wherein it was observed thus:

“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 case [LR 61 IA 398] 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.**”

(emphasis supplied)

36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play

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<sup>9</sup> AIR 1961 SC 715

while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;



(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

37. In this case, the appellants, as a separate argument, have also submitted that the case is not based on circumstantial evidence and is based on direct evidence of PW-3 and PW-4, and therefore, the principles of circumstantial evidence shall not apply. The submission is erroneous for various reasons. *First*, the direct evidence of PW-3 and PW-4 is to be tested on its own strength, especially in light of their subsequent conduct after the incident. As per their version, they were accessories to the fact, however, their subsequent conduct left much to be desired and therefore, their direct testimony was found to be incredible, as already discussed above. *Secondly*, in the absence of credible direct evidence, the case essentially falls back on the circumstantial evidence, and *thirdly*, the prosecution has failed to complete the chain of circumstances. The contradictions between oral testimonies and medical examination reports, failure to seize essential materials from the

scene of crime, failure to explain the mode of conveyance while going from one place to another, failure to prove the presence of PW-3 at the place of incident, failure to corroborate the injuries etc. are some of the deficiencies in the chain of circumstances. It would be apposite to refer to the decision of this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***<sup>10</sup>, wherein the “*Panchsheel*” or five principles of circumstantial evidence were laid down as follows:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793] where the observations were made:

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long

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<sup>10</sup> (1984) 4 SCC 116

and divides vague conjectures from sure conclusions.”

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.”

38. The circumstances in this case are far from conclusive and a conclusion of guilt could not be drawn from them. To sustain a conviction, the Court must form the view that the accused “must have” committed the offence, and not “may have”. As noted in ***Sharad Birdichand Sarda***<sup>11</sup>, the distinction between “may have” and “must have” is a legal distinction and not merely a grammatical one.

39. In light of the foregoing discussion, we hereby conclude that the High Court had erred in reversing the decision of acquittal, without arriving at any

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<sup>11</sup> Supra

finding of illegality or perversity or error in the reasoning of the Trial Court. Even on a fresh appreciation of evidence, we find ourselves unable to agree with the findings of the High Court. Accordingly, the impugned order and judgment are set aside. We find no infirmity in the order of the Trial Court and the same stands restored. Consequently, the appellants are acquitted from all the charges levelled upon them. The appellants are directed to be released forthwith, if lying in custody.

40. The captioned appeal stands disposed of in the aforesaid terms. Interim applications, if any, shall also stand disposed of.

41. Parties to bear their own costs.

.....J.  
[ Bela M. Trivedi ]

.....J.  
[ Satish Chandra Sharma ]

New Delhi  
February 12, 2024