REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1656 OF 2013

VIJAY MOHAN SINGH ...APPELLANT

VERSUS

STATE OF KARNATAKA ...RESPONDENT

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 08.02.2013 passed by the High Court of Karnataka, Circuit Bench at Gulbarga in Criminal Appeal No. 202 of 2008, by which the High Court has allowed the said appeal preferred by the State of Karnataka and quashed and set

aside the judgment and order of acquittal dated 20.12.2007 passed by the learned Presiding Officer, Fast Track Court-IV, Bidar (hereinafter referred to as the learned 'trial Court'), by which the learned trial Court acquitted original accused no.1 (the appellant herein) for the offences punishable under Sections 302 read with 34, 498A, 304-B read with 34 of the IPC, and Sections 3,4 & 6 of the Dowry Prohibition Act, 1961, and consequently convicted original accused No.1 for the offence punishable under Sections 302 of the IPC and sentenced him to undergo imprisonment for life and also convicted the appellant herein under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, original accused No.1 has preferred the present appeal.

2. The prosecution case in nutshell is as under:

That the marriage of the appellant with deceased Abhilasha was celebrated on 11.12.2002 at Gurudwara Temple at Bidar. It is alleged that before the marriage, the accused A1 to A3 demanded Rs.50,000/- and five tolas of gold as dowry from the parents of the deceased, but it was agreed to give 6 tolas of gold and domestic articles/utensils and accordingly marriage was

performed. It is also alleged that after six months of the marriage, all the accused started demanding additional dowry of Rs.50,000/- for investing it as capital for the electric shop run by original accused No.1 and by demanding so, A1 to A3 gave both mental and physical cruelty to the deceased, despite the advice of PWs 1, 2, 6 and 14 not to do so, but even then they continued it and on 13.2.2005 at 3:15 p.m., they picked up a quarrel on the ground that how the deceased did not bring the said cash of Rs.50,000/-. It is further alleged that with the intervention of the neighbours the deceased and accused were separated and then the deceased phoned to her parents at about 5:00 p.m. It is further alleged that at that time A1(the appellant herein) asked the deceased how and why she phoned to her parents and by saying so he is going to murder her and then A1(the appellant herein) poured kerosene on the deceased and lit fire and ran away from the spot. That the deceased sustained grievous burnt injuries and it is the neighbours who shifted her to the Government Hospital at Bidar and thereafter to Osmania Hospital at Hyderabad and the deceased breathed her last at 5:45 p.m. on 17.02.2005.

2.1 That the father of the deceased lodged the first information report against the appellant herein –original accused No.1 and four other persons – family members of original accused No.1, initially for the offences under Sections 498A, 307 read with 149 of the IPC and Section 4 of the Dowry Prohibition Act, 1961, which was registered as FIR Crime No. 31/2005. That thereafter, the victim succumbed to the injuries and died in the hospital, and therefore, the offences under Section 302 read with 34 of the IPC, Section 304-B read with Section 34 of the IPC and Sections 3, 4 & 6 of the Dowry Prohibition Act, 1961 were added. During the investigation, the investigating officer recorded the statement of concerned witnesses, namely, parents of the victim, neighbours in the neighbourhood of the house of the accused. He also collected the medical evidence. The dying declaration of the victim was recorded by the Metropolitan Magistrate (PW28). After conclusion of the investigation and having found *prima facie* case, the police filed a charge sheet against all the accused for the offences punishable under Sections 498A, 304-B, 302 read with Section 34 of the IPC, and Sections 3, 4 & 6 of the Dowry Prohibition Act, 1961. As the case was exclusively to be triable by the Court of Sessions, the learned Magistrate

committed the case to the learned Principal Sessions Judge, Bidar, which was registered as Sessions Case No. 83/2005. The accused pleaded not guilty, and therefore, all of them came to be tried for the aforesaid offences.

2.2 To prove the case against the accused, the prosecution examined as many as 28 witnesses. Through the aforesaid witnesses, the prosecution brought on record the relevant documentary evidence including the dying declaration of the victim. Thereafter, the defence led the evidence and examined two witnesses as DW1 & DW2 including the minor son. That the further statement of the accused were recorded under Section 313 Cr.P.C. by pointing the incriminating circumstances against the accused persons. The case of the accused was of a total denial. That on appreciation of the evidence and considering the material on record and considering the submissions made on behalf of the accused as well as the prosecution, by judgment and order dated 20.12.2007, the learned trial Court acquitted all the accused for the offences for which they were tried. While acquitting the accused, the learned trial Court did not accept

Exhibit P2 as a dying declaration. The learned trial Court also did not accept the demand of dowry.

3. Feeling aggrieved and dissatisfied with the order of acquittal passed by the learned trial Court acquitting the accused for the offences punishable under Sections 302 read with 34, 498A, 304-B read with 34 of the IPC, and Sections 3,4 & 6 of the Dowry Prohibition Act, 1961, the State of Karnataka preferred appeal before the High Court of Karnataka, Circuit Bench at Gulbarga being Criminal Appeal No. 402/2008. On re-appreciation of the entire evidence on record and by giving cogent reasons in detail, by the impugned judgment and order, the High Court has set aside the order of acquittal passed by the learned trial Court so far as acquitting original accused No.1 – husband of the deceased is concerned and has held him guilty for the offences punishable under Section 302, 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961. While convicting original accused No.1, the High Court has sentenced original accused No.1 to undergo imprisonment for life with fine of Rs.10,000/-, and in default of payment of fine, to undergo further 5 months rigorous imprisonment for the offence

punishable under Section 302 of the IPC. The High Court has also sentenced original accused No.1 to undergo two years imprisonment and fine of Rs.5,000/-, and in default of payment of fine, to undergo three months rigorous imprisonment for the offence punishable under Section 498A of the IPC. The High Court has also sentenced original accused No.1 to undergo six months and fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for one month for the offence under Section 4 of the Dowry Prohibition Act. The High Court has further directed that all the sentences imposed shall run concurrently.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original accused No.1 has preferred the present appeal.

5. Shri Venkateswara Rao Anumolu, learned advocate appearing on behalf of the accused has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the order of acquittal passed by the learned trial Court.

5.1 It is further submitted by the learned advocate appearing on behalf of the accused that once the learned trial Court gave the cogent reasons while acquitting the accused, though it was permissible for the High Court to re-appreciate the entire evidence on record, the High Court has not at all dealt with and/or considered the reasons which weighed with the learned trial Court while acquitting the accused.

5.2 It is further submitted by the learned advocate appearing on behalf of the accused that while reversing the judgment and order of acquittal passed by the learned trial Court, the High Court has not at all considered the scope and ambit of the appeal against acquittal.

5.3 It is further submitted by the learned advocate appearing on behalf of the accused that, as held by this Court in catena of decisions, if two views are possible on the evidence adduced in the case, one pointing out to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It is further submitted by the learned advocate appearing on behalf of the accused that the High Court being the first appellate Court would be justified in

re-appreciating the entire evidence on record to arrive at a just conclusion, however, once there was an order of acquittal passed by the learned trial Court, as while so re-appreciating the evidence, the appellate Court should first analyse the findings of the trial Court and then for valid reasons to be recorded, the appellate Court can reverse such finding of the trial Court.

5.4 It is further submitted by the learned advocate appearing on behalf of the accused that in the present case while re-appreciating the evidence and reversing the order of acquittal passed by the learned trial Court, the High Court has not at all analysed the findings of the trial Court, and has given its own findings without even considering the grounds on which the learned trial Court acquitted the accused. It is submitted that therefore the High Court has exceeded in its jurisdiction while exercising the appellate jurisdiction against the order of acquittal passed by the learned trial Court.

5.5 In support of the above submissions, learned advocate appearing on behalf of the accused has heavily relied upon the following decisions of this Court, *Chandu vs. State of Maharashtra, (2002) 9 SCC 408 (para 7); Surinder Singh vs. State*

of U.P. (2003) 10 SCC 26 (Paras 18 & 19); Devatha Venkataswamy alias Rangaiah vs. Public Prosecutor, High Court of A.P. (2003) 10 SCC 700 (para 5); Main Pal vs. State of Haryana (2004) 10 SCC 692 (Para 12); Chanakya Dhibar (dead) vs. State of W.B. (2004) 12 SCC 398 (Para 18); Kalyan Singh vs. State of M.P. (2006) 13 SCC 303 (Para 7); Bannareddy vs. State of Karnataka (2018) 5 SCC 790 (paras 10 & 11); Madathil Narayanan vs. State of Kerala (2018) 14 SCC 513 (paras 8 & 9); and Mohd. Akhtar @ Kari vs. State of Bihar JT 2018 (12) SC 68 : (2019) 2 SCC 513.

5.6 It is further submitted by the learned advocate appearing on behalf of the accused that even otherwise on merits also, the High Court has committed a grave error in holding the appellant – original accused No.1 guilty for the offences punishable under Sections 302 and 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961.

5.7 It is further submitted by the learned advocate appearing on behalf of the accused that while convicting the appellant – original accused no.1 for the offence under Section 302 of the IPC, the High Court has materially erred in relying upon and/or considering the alleged dying declaration. It is

submitted that the High Court has failed to appreciate the relevant aspect that the alleged dying declaration was recorded on printed papers with certain corrections and/or different quality of papers with uncertain statements. It is submitted that the High Court has not properly appreciated the relevant aspect that the deceased got burn injuries to the extent of 90% inside the locked room, but the kerosene stove without any lid containing 800 ML of kerosene and the match box which was lying in the same room did not catch fire and for which there was no explanation by the prosecution.

5.8 Making the above submissions and relying upon the above decisions of this Court, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order of conviction passed by the High Court.

6. Learned counsel appearing on behalf of the respondent – State, while opposing the present appeal, has vehemently submitted that in the facts and circumstances of the case, and on re-appreciation of the entire evidence on record, which is permissible while exercising the powers in an appeal against the order of acquittal, the High Court has not committed any error in

reversing the judgment and order of acquittal passed by the learned trial Court and consequently convicting the accused for the offence punishable under Section 302 of the IPC.

6.1 It is vehemently submitted by the learned counsel appearing on behalf of the respondent – State that having found that the findings recorded by the learned trial Court, recorded while acquitting the original accused, are perverse and contrary to the evidence on record and thereafter on re-appreciation of evidence, the High Court has found the accused guilty, the same is not required to be interfered with by this Court.

6.2 It is vehemently submitted by the learned counsel appearing on behalf of the respondent – State that as such, as held by this Court in catena of decisions, the powers of appellate Court in an appeal against acquittal are no less than in an appeal against conviction. It is further submitted that as held by this Court in catena of decisions, the High Court while hearing an appeal against the order of acquittal can re-appreciate the entire evidence on record and having done so and having found the dying declaration reliable, there is no infirmity with the conviction of the appellant under Section 302 of the IPC.

6.3 It is vehemently submitted by the learned counsel appearing on behalf of the respondent – State that in the present case, the High Court has considered in detail the medical evidence; the dying declaration and the other prosecution witnesses who fully supported the case of the prosecution that it was the appellant herein – original accused no.1 who committed the crime and therefore the High Court has rightly convicted the appellant herein – original accused no.1.

6.4 It is submitted that if the reasonings and the grounds on which the learned trial Court acquitted the accused are seen, they are perverse and contrary to the evidence on record. It is submitted that while acquitting the original accused, the learned trial Court wrongly gave more importance to some minor contradictions. However, did not consider the overwhelming evidence in the form of medical evidence and the dying declaration which came to be proved. It is submitted that therefore the High Court has rightly convicted the accused by reversing the judgment and order of acquittal passed by the learned trial Court.

6.5 Now so far as the submission on behalf the appellant that while quashing and setting aside the order of acquittal, the High Court failed to examine the reasons on which the order of acquittal was passed and therefore the High Court exceeded in exercise of its jurisdiction, while sitting as an appellate Court against the judgment and order of acquittal is concerned, learned counsel appearing on behalf of the respondent-State has submitted that merely on the aforesaid ground and if otherwise on re-appreciation of evidence by this Court, it is found that the learned trial Court was not justified in recording the acquittal of the accused and that the evaluation of the evidence made by the trial Court was manifestly erroneous and even otherwise on merits the ultimate conclusion of the High Court in convicting the accused is found to be correct, solely on the aforesaid ground that the High Court did not consider/examine the reasons on which the order of acquittal was passed, the conviction of the accused is not required to be set aside. In support of above submissions, learned counsel appearing on behalf of the respondent – State has heavily relied upon the following decisions of this Court, *Atley v. State of Uttar Pradesh AIR 1955 SC 807; Aher Raja Khima v. The State of Saurashtra 1955 (2) SCR 1285;*

Umedbhai Jadavbhai v. State of Gujarat (1978) 1 SCC 228; K.Gopal Reddy v. State of Andhra Pradesh (1979) 1 SCC 355; Sambasivan v. State of Kerala (1998) 5 SCC 412; K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309.

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

7. We have heard the learned counsel for the respective parties at length.

7.1 We have considered and gone through 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 reversing the acquittal and convicting the original accused for the offence punishable under Section 302 of the IPC.

7.2 We have also re-appreciated the entire evidence on record to satisfy ourselves on the guilt of the appellant – original accused no.1. We have also considered the reasonings and the findings recorded by the learned trial Court while acquitting the accused. We have also considered the reasonings and findings

recorded by the High Court while convicting the appellant – original accused no.1.

8. Having considered the entire evidence on record afresh and on re-appreciation of the entire evidence on record, we are of the firm opinion that the High Court has not committed any error in holding the appellant – original accused no.1 guilty for the offence punishable under Section 302 of the IPC. In the present case, there is a dying declaration given by the deceased which has been proved and supported by the independent witnesses, metropolitan magistrate (PW28), it has been established and proved by examining the medical officer and even the medical officer certified that the patient was conscious and coherent and fit state of mind to give the statement. The metropolitan magistrate who recorded the dying declaration and who was examined by the prosecution as PW28 deposed as under:

> "that he was working as Prl. Jr. Civil Judge, Bhongir; during the relevant period, he was working as XI Metropolitan Magistrate, Secunderabad. He has further deposed that in pursuance of the requisition received from the I.O., P.S. Afzal Gunj, he proceeded to Osmania General Hospital on 14.2.2005 and reached the said place around 6:25 a.m.; with the assistance of the police and duty doctor, he went to Acute Burns Ward and contacted the victim by name Abhilash Kaur, wife of Vijay Mohan Singh; one Dr. Rajesh was the duty doctor; he

interacted with the said doctor and satisfied himself as to the mental fitness of the victim to Abilash Kaur the statement before him and also obtained an endorsement in that regard on the relevant document Ex. P-2 which is already marked. Further he has deposed that he asked preliminary questions to the victim and thereafter having been satisfied as to the nature of her statement being voluntary and not being under coercion or any kind of duress, he recorded her statement in his own handwriting in Ex. P-2 and Ex. P-2(d) is his signature; the handwriting portion in Ex. P-2 is in his handwriting and they are true and correct; they are in question and answer form. Further, he has deposed that he read over the contents therein to the victim Abhilash Kaur in Hindi language which was known to her and to him also; having admitted to the correctness of that document, victim signed in his presence as per Ex. P-2(a); that he obtained the signature of the duty doctor as per Ex. P-2(c). Further he has deposed that as a matter of abundant caution, he obtained the R.T.I. of the victim Abhilash Kaur below Ex. P-2(a); that victim Abhilash Kaur made statement against her husband with regard to assault and also acting under the influence of his mother and sister that he demanded money; she complained against the accused as being responsible for the death of his first wife also on account being burnt by him. He has further deposed that at the time of recording Ex. P-2, other than himself, the doctor and the victim, none else were present nearby; the victim was there in the general ward; having so recorded such statement of the victim as per Ex. P-2, he returned to his place of work along with the document and along with covering letter, he sent Ex. P-2 to IV Metropolitan Magistrate, Hyderabad, within whose jurisdiction that Osmania Hospital and Afzal Gunj police station are situated; and that the covering letter is marked as Ex.P-2(e) and Ex.P-2(f) is his signature. Further he has deposed that he was duty bound to record such statements in all the hospitals of Hyderabad for 15 days and for the next 15 days, some other Magistrate will be there; likewise the duty keeps changing every 15 days and since the date pertaining to the recording of this

statement fell during his duty days he recorded the same."

8.1 On Ex. P-2, the medical officer had certified that at the relevant time the patient was conscious and coherent and fit state of mind to give the statement. In the dying declaration, the deceased specifically stated before the Magistrate while answering question nos. 7 & 8, as under:

"Q.No.7 What happened to you and how the same happened?

Yesterday at 5:00 p.m. in my house near the Gurudwara my husband Vijaya Mohan Singh took kerosene from the kerosene batti stove and put it on my body. I was wearing green color shirt and shalwar and he lit a match stick and put the burning match stick on my body and locked the door of the room and went away as such I was burnt on my face, hands and other parts of body.

QNo.8 Is there any foul Act/Omission of anyone or do you blame anyone for this to you?

My husband did this to me. He beats me and acts under the influence of his mother and sisters. He demanded money from me and would torture to me. His first wife was also burnt by him."

While answering question nos. 10, 11 & 12, the victim stated as under:

Q.No.10 What was the behaviour of your husband Vijay Mohan Singh?

My husband would say that I am mad and frequently ask money. He had earlier wife by name Kamaljeet Kaur. She too was burnt by my husband and she died. My husband managed the case and came out. (Patient is in pain). He would ask me to get money from my parents.

Q.No.11 How you come out of the room and where was your daughter?

I opened the door and came out and my daughter was in other room and then I fell lot of pain and burning.

Q.No.12 What more do you want to say?

In Bidar to the Police I did not say the above as my husband and my brother in law Madan Mohan Singh threatened me and asked me not to tell the truth and hence I gave a wrong statement. Now I am telling the truth. Sir please help me and save me. My child be taken care of."

9. Thus, the dying declaration involving the appellant came to be established and proved by the prosecution, by examining the doctor as well as the metropolitan magistrate who record the dying declaration. Despite the above overwhelming evidence in the form of medical evidence as well as the dying declaration and the deposition of the metropolitan magistrate, the learned trial Court discarded the same on some minor contradictions/omissions. It also appears from the judgment and order passed by the learned trial Court that the learned trial Court gave undue importance to the initial statement of the victim while giving the history to the doctor when she was

admitted and when she gave the history of accidental burns while cooking in kitchen. However, the trial Court did not consider her explanation on the above gave in the dying declaration. Even considering the surrounding circumstances and the medical evidence and the other evidence, the defence has miserably failed and proved that it was an accidental burns/death. The appellant – original accused no.1 was last seen in the house and immediately on the occurrence of the incident he ran away. Thus, we are of the opinion that the approach of the trial Court was patently erroneous and the conclusions arrived at by it were wholly untenable.

10. In the light of the above findings recorded by us, it is required to be considered, whether solely on the ground that the High Court has not examined the reasons on which the order of acquittal was passed and convicted the accused by interfering with the order of acquittal passed by the learned trial Court, the same is further required to be interfered with by this Court?

11. An identical question came to be considered before this Court in the case of *Umedbhai Jadavbhai (supra).* 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:

> "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to re-appreciate 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."

11.1 In the case of *Sambasivan (supra),* 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 satisfy that the order of acquittal passed by the learned trial Court was perverse and suffer 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 paragraph 8 as under:

> "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 Doshi case (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."

11.2 In the case of *K.Ramakrishnan Unnjithan (supra)*, 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 re-appreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eye-witnesses and opined that reasons adduced by the trial Court for discarding the testimony of the

eye-witnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court as 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.

11.3 In the case of *Atley (supra)*, in paragraph 5, this Court observed and held as under:

> "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, Criminal P. C. 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.
>
> 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.
>
> 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. The State 1952 CriLJ331; Wilayat Khan v. State of Uttar Pradesh, 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."

11.4 In the case of *K.Gopal Reddy(supra)*, 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 redicule.

12. Considering the aforesaid decisions, it emerges that even in the case where the High Court in an appeal against the order of acquittal interfered with the order of acquittal without specifically considering the reasons arrived at by the learned

trial court and without specifically observing that the reasons are perverse, this Court can still maintain the order of conviction passed by the High Court, if this Court is satisfied itself that the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it are demonstrably unsustainable and the judgment of the appellate court is free from those infirmities. It also emerges that the High Court is entitled to re-appreciate the entire evidence independently and come to its own conclusion, however, the High Court would not be justified in interfering with the order of acquittal solely on the ground on re-appreciation of the entire evidence that two views are possible.

13. On re-appreciation of the entire evidence on record and the findings recorded by the learned trial court while acquitting the accused, we are of the opinion that the approach of the trial court was patently erroneous and the conclusions arrived at by it were wholly untenable. We find that it is not a case where two reasonable views on examination of the evidence are possible and so the one which supports the accused should be adopted. The view taken by the trial court can hardly be said

to be a view on proper consideration of evidence, much less a reasonable view. The learned trial court, as observed hereinabove, committed a patent error in discarding the dying declaration and the other material evidence, discussed hereinabove. Therefore, the interference by the High Court in the appeal against the acquittal of the appellant and recording the finding of his conviction for the offence under Section 302 of the IPC, on consideration of the evidence, is justified. The judgment under appeal does not warrant any interference.

14. Now so far as the decisions relied upon by the learned counsel appearing on behalf of the appellant-accused, referred to hereinabove, more particularly a recent decision of this Court in the case of *Mohd. Akhtar @ Kari (supra)* is concerned, first of all, there cannot be any dispute with reference to the proposition of the law laid down by this Court in the aforesaid decisions. However, we are of the opinion that none of the aforesaid decisions relied upon by the learned counsel appearing on behalf of the appellant shall be applicable to the facts of the case on hand. Even in the case of *Mohd. Akhtar @ Kari (supra),* on appreciation of the evidence, this Court found that the acquittal

was justified on a probable view taken by the trial court. On appreciation of evidence, this Court observed that the High Court could not have reversed the judgment of the acquittal merely because another view was possible. In the present case, as observed hereinabove, and on re-appreciation of the entire evidence on record, this is not a case where two reasonable views are possible and so the one which supports the accused should be adopted. As observed hereinabove, the findings recorded by the learned trial court while acquitting the accused are perverse and the approach of the trial court was patently erroneous and the conclusions arrived at by it were wholly untenable. Therefore, considering the aforesaid decisions of this court in the cases of *Sambasivan (supra); Umedbhai Jadavbhai (supra) and Atley (supra),* we are of the opinion that the impugned judgment and order of conviction passed by the High Court is not required to be interfered with by this Court. The judgment and order under appeal does not warrant any interference. Hence, we find no merit in the appeal and the same deserves to be dismissed, and is accordingly dismissed.

.....J.

[L. NAGESWARA RAO]

NEW DELHI;
APRIL 10, 2019.

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