A MURUGAN AND ANR.

v.

STATE REP. BY PUBLIC PROSECUTOR, MADRAS, TAMIL NADU ANR.

(Criminal Appeal No. 1278 of 2001)

B SEPTEMBER 30, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ]

C *Code of Criminal Procedure, 1973:*

s. 378 – Appeal against acquittal – Power of appellate Court – HELD: s. 378 imposes no restriction on powers of appellate Court in dealing with appeals against order of acquittal – While protection given to the accused by criminal D *process is not to be eroded, at the same time, uninformed legitimization of trivialities would hamper administration of criminal justice -- In the instant case, grounds of acquittal relied upon by trial court were rightly held by High Court untenable – Analysis made by High Court to set aside order of ac-*E *quittal passed by trial court does not suffer from any infirmity – Penal Code, 1860 – s. 307.*

The appellants-accused, namely, A-1 to A-3, were prosecuted for commission of offences punishable u/ss 307 and 307/109 IPC. The prosecution case was that a F **quarrel took place between the mother of PWs 1 and 2 and the wife of A-3 and PW-2 pacified them. The accused came to know of the quarrel and got an impression that PW-2, in support of his mother, abused the wife of A-3. The following morning at about 7.30 A.M., A-1 to A-3 way-**G **laid PWs 1 and 2 near the well when they were going to take bath. A-3 caught hold of PW-2 from behind his back and A-1 and A-2 attacked him indiscriminately with 'Aruval'. When PW-1 and PW-5 tried to intervene, the accused threatened to kill them. On account of the multiple inju-**

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ries received, PW-2 fell down and became unconscious. The accused fled away. PW-1 and PW-5 took the victim to the hospital. The trial court acquitted the accused, but the High Court convicted them u/s 307 IPC and sentenced them to rigorous imprisonment for four yeas and to pay a fine of Rs.5,000/- each.

In the instant appeal filed by the accused, it was contended for the appellants that an order of acquittal cannot be interfered by the appellate court except for compelling reasons and, in the instant case, the High Court did not keep in view the parameters of appeal against acquittal. It was submitted that even if two views were possible, the view supporting the accused had to be accepted and since the trial court had precisely done it, there was no reason for interference.

Dismissing the appeal, the Court

HELD: .1 Section 378 of the Code of Criminal Procedure, 1973 imposes no restrictions on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal. In *Chandrappa's** case, this Court has culled out the general principles regarding powers of appellate court while dealing an appeal against order of acquittal. [para 22 and 46] [1174,A-B; 1188,C]

Chandrappa and Ors. v. State of Karnataka 2007(2) SCR 630=2007 (4) SCC 415; *Sanwat Singh* v. *State of Rajasthan* (1961) 3 SCR 120; *Bhagwan Singh* v. *State of M.P.* (2002) 4 SCC 85; *Harijana Thirupala* v. *Public Prosecutor, High Court of A.P.* 2002 (1) Suppl. SCR 379 = (2002) 6 SCC 470; *Ramanand Yadav* v. *Prabhu Nath Jha* (2003) 12 SCC

606; *Kallu v. State of M.P.* (2006) 10 SCC 313; *Prandas* v. *State* AIR 1954 SC 36; *Surajpal Singh* v. *State* 1952 SCR 193; *Atley* v. *State of U.P.* AIR 1955 SC 807; *Shivaji Sahabrao Bobade* v. *State of Maharashtra* 1974 (1) SCR 489 = 1973 (2) SCC 793 – relied on.

Sheo Swarup v. *R. Emperor* (1934) 61 IA 398; *Nur Mohd.* v. *Emperor* AIR 1945 PC 151 – referred to.

Ajmer Singh v. *State of Punjab* (1953) SCR 418; *Aher Raja Khima* v. *State of Saurashtra* (1955) 2 SCR 1285; *M.G. Agarwal* v. *State of Maharashtra* (1963) 2 SCR 405; *K. Gopal Reddy* v. *State of A.P* 1979 (2) SCR 265 = (1979) 1 SCC 355; *Ramesh Babulal Doshi* v. *State of Gujarat* 1996 (2) Suppl, SCR 265 = (1996) 9 SCC 225; and *Allarakha K. Mansuri* v. *State of Gujarat* 2002 (1) SCR 1011= (2002) 3 SCC 57– referred to.

1.2 A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Doubts would be called reasonable if they are free from a zest for abstract speculation. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. While the protection given by the criminal process to the accused is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. [para 47-49] [1189,C-D; 1189,H; 1190, A-B, 1190,D]

"*The Mathematics of Proof II*" by Glanville Williams, *Criminal Law Review*, 1979, by Sweet and Maxwell, p.340 – referred to A

State of U.P. v. *Krishna Gopal* 1988 (4) SCC 302; *Krishnan and Anr. v. State represented by Inspector of Police* 2003 (7) SCC 56 – relied on. B

2.1 In the instant case, the ground of acquittal as recorded by trial Court that there was no reason for PW-7 to obtain complaint from PW-1 when the victim (PW-2) was conscious, is not at all a proper ground. Merely because P.W.2 was conscious at that time, it cannot be said that the statement should not have been recorded from P.W.1 and the same is doubtful. No law prohibits the police officer from recording complaint relating to the occurrence, and that too, from an eye-witness. Even assuming that P.W.2 was conscious, nine serious injuries found on various parts of body of the victim would clearly show that he could not have been able to give full details to P.W.7. In the circumstances, obtaining of the complaint (Ext. P-1) from P.W. 1 is quite proper. From the evidence of PWs 1,2 and 5, it is clear that PW-2 was indiscriminately attacked by A-1 and A-2 with 'Aruval;', as a result of which he fell on the ground. [para 7,11 and 12] [1170,F-H; 1170,A] C D E

2.2 The reasoning given by the trial court that PW-1 could not have seen the occurrence, is not based on evidence. According to both P.Ws. 1 and 2, they went one after another to the well to take bath . P.W.5 stated that after hearing the cry of P.W.2, P.W.1 and others came to the scene. This would not mean that P.W.1 did not accompany P.W.2. As a matter of fact, even according to P.W.5, P.Ws. 1 and 5 took the victim in a taxi to the Hospital. The occurrence took place in a day light at 7.30 A.M. The house of the accused and P.Ws. 1 and 2 is situated nearby and the well also is just two furlongs away from the village. In the circumstances, it cannot be said that P.W. 1 could not F G H

A have accompanied P.W.2 to take bath. Therefore, this ground of acquittal was rightly held by the High Court to be untenable. [para 13-15] [1171,A-D]

2.3 When the factual position is analysed in the background of the conclusions arrived at by the High Court, B the inevitable conclusion is that the High Court's judgment is correct. The analysis made by the High Court to set aside the order does not suffer from any infirmity. [para 16 and 51] [1190,G; 1171,D]

C Case Law Reference

AIR 1945 PC 151	referred to	para 28
AIR 1954 SC 36	relied on	para 29
1952 SCR 193	relied on	para 31
D (1953) SCR 418	referred to	para 32
AIR 1955 SC 807	relied on	para 33
(1955) 2 SCR 1285	referred to	para 34
(1961) 3 SCR 120	relied on	para 35
E (1963) 2 SCR 405	referred to	para 36
1974 (1) SCR 489	relied on	para 37
1979 (2) SCR 265	referred to	Para 39
1996 (2) Suppl. SCR 265	referred to	para 40
F 2002 (1) SCR 1011	referred to	para 41
(2002) 4 SCC 85	relied on	para 42
2002 (1) Suppl. SCR 379	relied on	para 43
(2003) 12 SCC 606	relied on	para 44
G (2006) 10 SCC 313	relied on	para 45
2007(2) SCR 630	relied on	para 46
1988 (4) SCC 302	relied on	para 49
H 2003 (7) SCC 56	relied on	para 50

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1278 of 2001 A

From the final Judgment and Order dated 20.7.2001/ 17.8.2001 of the High Court of Judicature at Madras in Criminal Appeal No. 223 of 1993 B

K.K. Mani and C.K.R. Lenin Sekar for the Appellant.

R. Nedumaran for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the learned Single Judge of the Madras High Court setting aside the judgment of acquittal recorded by learned Principal, Assistant Sessions Judge, Tirunelveli. The appellant faced trial along with one Velliah for alleged commission of offences punishable under Section 307 and 307 read with Section 109 of the Indian Penal Code, 1860 (in short 'IPC'). Though the trial Court found that the prosecution has not established the case, in appeal filed by the State it was held by the High Court that the prosecution established the accusations against the appellants. But the acquittal so far as the Velliah A3 is concerned, the High Court confirmed the acquittal. C D E

2. Background facts in a nutshell are as follows:

Sankaralingam (PW1), Ramaiah (PW2) and Paramasivam (PW6) are brothers. They reside at Marugal Kurichi village. Accused 1 to 3 are also residing in the same village. Their house is situated very near to the house of PWs. 1, 2 and 6. Accused 1 and 2 are brothers. F

On 2.10.1989 at about 5.00 p.m. Kannammal, the mother of PWs. 1 and 2 went to the corner of the street to collect water from the common water pipe. The third accused's wife Manickam also came to take water. While collecting water from the common pipe, there was a quarrel between Kannammal and Manickam, the wife of third accused. Ramaiah (PW 2) who noticed this, went there and separated them and took his mother to his house. G H

A Next day i.e. 3.10.1989 at about 7.30 a.m. Ramaiah (PW.2), Sankaralingam (PW.1) and one Manickam, wife of another brother, went to the well, which is situated in Nallakannau Thevar's garden, in order to take bath. When the first accused came to know about the occurrence which took place on the B earlier day, he had grievance against PW.2 thinking that PW.2 abused the wife of the third respondent in support of his mother.

At about 7.30 a.m. when PWs. 1 and 2 and another went near the well, A1 to A3 waylaid them. A1 and A2 were having 'Aruval' with them. A3 caught hold of PW.2 from behind his back. C At that time, A1 and A2 with 'Aruval' attacked PW.2 indiscriminately on the back, left shoulder, right shoulder, hands, etc. PW.2 received number of bleeding injuries all over the body and began to cry. Sankaralingam (PW.1) and Poolu Thevar (PW.5) and two others went near the injured. The accused persons D threatened them that they would kill them also. PW.2 swooned and fell on the ground. Thereafter, the accused took to their heels.

PWs. 1 and 5 took the victim in a car to Naguneri Government Hospital at about 8.30 a.m. Dr. Andiappan (PW.3) examined the victim and found nine injuries. He also sent Ex.P-2 inti- E mation to the Nanguneri Police Station. Head Constable (PW.7) came and recorded statement from PW.1. Ex.P-1 is the complaint and the same was registered against the accused for the offences under Sections 341, 342 and 307 IPC. Ex.P-7 is the printed FIR. Doctor (PW.3) sent the victim to the Tirunelveli Hos- F pital for further treatment. He issued Ex.P-3 wound certificate. Doctor (PW.4) took X-Ray and issued Ex.P-4 X-Ray report and the X-Rays were marked as M.Os. 3 to 9.

Gnana Diraviyam (PW.8), the Inspector of Police, took up further investigation and went to the scene and examined the G witnesses. He prepared Ex.P-5 observation mahazar and Ex.P-8 rough sketch. He also recovered sample earth and blood stained earth. Thereafter, he went to the hospital and recorded the statement from PW.2. Since the PW.8 was subsequently transferred, Periasamy (PW.9) another Inspector of Police, took H up further investigation.

3. After completion of investigation charge sheet was filed and the accused persons faced trial as they denied the accusations. Nine witnesses were examined to further the prosecution version. Trial court found the evidence of prosecution witnesses to be not cogent and credible and accordingly directed acquittal. State preferred appeal against acquittal. High Court found that the reasoning indicated by the Trial Court to direct the acquittal cannot be maintained. It is to be noted that the acquittal was directed by the Trial Court, inter alia, on the following grounds:

(i) Recording of Ex.P-1 statement given by PW.1 by PW.7 is doubtful. According to PW.3 Doctor, the injured was conscious, when he was admitted in the hospital. PWs. 1 and 7 would state that the complaint was given by PW.1 which was recorded by PW.7, since PW.2 was unconscious. There is no reason as to why PW.7 had to obtain Ex.P-1 complaint from PW.1, when PW.2 was conscious.

(ii) PW.1 could not have seen the occurrence. PW.5, an independent eye witness, would state that PW.1 came to the scene only after the occurrence. Therefore, the evidence of PW.1 is unreliable.

(iii) PW.6 stated in the court that he had also seen the occurrence. According to PW.8, the investigating officer, PW.6 was not the eye-witness and he did not give any statement that he saw the occurrence. Therefore, the evidence of PW.6 is unreliable.

(iv) PW.7 head constable recorded Ex.P-1 and the same was written by him. But, in evidence, he would state that he dictated to a constable and the said constable had written the same. There is no evidence to show that any constable accompanied PW.7. Therefore PW.7 had not recorded Ex.P-1 at the hospital.

(v) PW.5 an independent witness, would state that A1

A and A2 alone were present and attacked PW.2. He did not refer about A3. Therefore, A3 could not have been present. Furthermore, A3 produced a certificate alongwith his statement under Section 313 Cr.P.C. to show that during the relevant time, he was working in the mill in which he was employed.

(vi) Both in Ex.P-1 and in the evidence of PWs.1 and 2, there is a reference about one Thangapandi stating that he was also one of the eye-witnesses. The said eye-witness was not examined. There is no reason for his non-examination.

(vii) According to PWs.1 and 2, both A1 and A2 attacked PW.2 indiscriminately. But according to PW.5, after first cut, PW.2 ran to a distance of about 50 feet and thereafter, the further cuts given by the accused with 'Aruval" fell on PW.2 victim. So, there is a contradiction between the evidence of PWs.1 and 2 on the one side and the evidence of PW.5 on the other side.

4. High Court found that the conclusions arrived at by the Trial Court were not sustainable. After analyzing the evidence of PWs. 1, 2 and 5 it was held that the accusations have been established. Accordingly, the appellants were convicted for the offence punishable under Section 307 IPC and each was sentenced to undergo RI for four years and to pay a fine of Rs.5,000/- with default stipulation.

5. In support of the appeal, learned counsel for the appellant submitted that the Trial Court had rightly rejected the prosecution version taking note of the fact that evidence of PWs 1, 2 and 5 are irreconcilable. It was also submitted that the evidence of PWs. 1, 2 and 5 is contradictory to each other. In any event, it was submitted that the injuries were on non-vital parts and, therefore, Section 307 IPC has no application. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

6. PW3- the doctor attached to the Naguneri Government Hospital, Tenkasi examined PW 2 at about 8.15 a.m. on 3.10.1989. He issued the wound certificate ExP3. He found the following injuries on him:

"i. A bleeding lacerated wound 10cm x 5 cm. x 4cm on medical aspect of right forearm muscles and (NC) exposed.

ii. A bleeding lacerated wound 3 cm x 1 cm x 1 cm in middle right forearm.

iii. A lacerated bleeding wound in the palman aspect of 2 cm x 1 cm x 1 cm of right middle and index finger seen and lacerated wound on the tip of right ring and little finger measuring 1 cm x 1 cm x 1 cm.

iv. An incised wound 3 cm x 2 cm x 1 cm in upper aspect of right arm.

v. A bleeding lacerated wound in the left shoulder outer to the lateral end of left collar bone 4 cm x 2 cm x 1 cm seen.

vi. A bleeding incised wound in the upper part of left arm 3 cm x 1cm x ½ cm.

vii. A bleeding incised wound 15 cm x 6 cm x 4 cm left side of back of chest just below left infrascapular angle.

viii. A bleeding incised wound in the palman aspect of left index middle and ring finger and thumb each measured 6 cm x 2 cm x 1 cm fracture of middle finger MCP joint.

ix. A bleeding lacerated wound in the lateral aspect of left forearm 3 cm x 2 cm x 1 cm.

As per the wound certificate Ex.P3, injury No.3 and 9 is grievous in nature and the other injuries are simple injuries.

7. So far as the evidence of PWs. 1, 2 and 5 is concerned,

A it is clear that P.W.2 was indiscriminately attacked by A1 and A2 with 'Aruval'. As a result of those injuries, the victim (P.W.2) fell on the ground.

8. According to P.W.5, as soon as P.W.2 fell on the ground, he became unconscious and thereafter, the accused persons B ran away from the scene. This occurrence took place at about 7.30 A.M. and the victim was taken to the hospital at about 8.15 A.M. P.W.3 Doctor stated that the victim was conscious and the victim stated to him that the he was attacked by three persons with 'Aruval'.

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9. P.W. 3 Doctor further stated that he gave Ex.P-2 intimation to the police, when P.W. 2 was admitted in the hospital. On receipt of Ex.P-2, P.W.7 Head constable rushed to Nanguneri Government hospital. At that time, P.W.1 was present in the D hospital and gave Ex. P-1 statement to P.W.7.

10. It is true that P.W.7 stated that he obtained Ex.P-1 complaint from P.W.1, when P.W.2 was unconscious. P.W.1 stated that when P.W.2 victim was taken to the hospital, he was in unconscious state and after admitting the victim in the hospital, E P.W. 3 Doctor gave treatment to him. So, when treatment was being given by P.W.3 Doctor, P.W.7 came and at that time, he was informed by P.W. 1 that P.W. 2 was not in a position to give statement, since he was unconscious.

11. Even assuming that P.W.2 was conscious at that time, F the nine serious injuries found on various parts of the body of the victim would clearly show that he could not have been able to give full details to P.W.7. Under those circumstances, obtaining of Ex. P-1 complaint from P.W. 1 is quite proper.

G 12. Merely because P.W.2 was conscious at that time, it cannot be said that the statement should not have been recorded from P.W.1 and the same is doubtful. No law prohibits the police officer from recording complaint relating to the occurrence, that too, from an eye witness. The ground of acquittal as recorded by trial Court is not at all a proper ground.

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13. Secondly, accordingly to the trial court, P.W. 1 could not have been seen the occurrence. A

14. This again is not the reasoning based on evidence. According to both P.Ws. 1 and 2, they went to take bath in the well one after another. P.W.5 stated that after hearing the cry of P.W.2, P.W.1 and others came to the scene. This would not mean that P.W.1 did not accompany P.W.2. As a matter of fact, even according to P.W.5, P.Ws. 1 and 5 took the victim in a taxi to Naguneri Hospital. B

15. The occurrence took place in a day light at 7.30 A.M. The house of accused and P.Ws. 1 & 2 are situated nearby and the well also is situated just two furlongs away from the village. Under those circumstances, it cannot be said that P.W. 1 could not have accompanied P.W.2 to take bath. Therefore, this ground of acquittal was rightly held by the High Court to be untenable. C D

16. We find that the analysis made by the High Court to set aside the order does not suffer from any infirmity. Learned counsel for the appellant submitted that an appeal against the acquittal cannot be interfered by the Appellate Court except for the compelling reasons. E

17. The appellants have questioned the correctness of the High Court's judgment. According to them, the High Court had not kept in view the parameters of appeal against acquittal. It is submitted that even if two views are possible, the view supporting the accused had to be accepted and since the trial Court had precisely done it and there was no reason to interfere with the judgment of the trial Court. F

18. In view of rival submissions of the parties, we think it proper to consider and clarify the legal position first. Chapter XXIX (Sections 372-394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in G H

A force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376).

19. Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

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

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

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

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

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

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

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

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

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

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

20. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

21. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

A 22. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full B power to reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

C 23. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved D to be guilty by a competent court of law. *Secondly*, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

E 24. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

25. The first important decision was rendered by the Judi- F cial Committee of the Privy Council in *Sheo Swarup v. R. Emperor (1934) 61 IA 398).* In *Sheo Swarup* the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code G (similar to Section 378 of the present Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some per- H

versity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

26. Lord Russel summed up the legal position thus:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."

A His Lordship, then proceeded to observe: (IA p.404)

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal B should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

27. The Committee, however, cautioned appellate courts and stated: (IA p.404)

C "But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the D 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 E a judge who had the advantage of seeing the witnesses. *To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.*"

F (emphasis supplied)

28. In *Nur Mohd.* v. *Emperor (AIR 1945 PC 151),* the Committee reiterated the above view in *Sheo Swarup (Supra)* and held that in an appeal against acquittal, the High Court has full G powers to review and to reverse acquittal.

29. So far as this Court is concerned, probably the first decision on the point was *Prandas* v. *State* (AIR 1954 SC 36) (though the case was decided on 14-3-1950, it was reported only in 1954). In that case, the accused was acquitted by the H trial court. The Provincial Government preferred an appeal which

was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eyewitnesses.

30. Upholding the decision of the High Court and following the proposition of law in *Sheo Swarup (supra)*, a six-Judge Bench held as follows:

> "*6.* It must be observed at the very outset that *we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice.*"
>
> (emphasis supplied)

31. In *Surajpal Singh* v. *State (1952 SCR 193),* a two-Judge Bench observed that it was well established that in an appeal under Section 417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for *very substantial and compelling reasons*.

32. In *Ajmer Singh v. State of Punjab* (1953 SCR 418) the accused was acquitted by the trial court but was convicted by the High Court in an appeal against acquittal filed by the State. The aggrieved accused approached this Court. It was contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an

A error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed".

B Upholding the contention, this Court said:

"We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial C court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but *only for very substantial and compelling reasons*."

(emphasis supplied)

D 33. In *Atley* v. *State of U.P.* (AIR 1955 SC 807) this Court said:

"In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal E Procedure Code 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 F 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 G 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 H

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."

(emphasis supplied)

34. In *Aher Raja Khima* v. *State of Saurashtra* (1955) 2 SCR 1285) the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; *there must also be substantial and compelling reasons for holding that the trial court was wrong.*"

(emphasis supplied)

35. In *Sanwat Singh v. State of Rajasthan (1961) 3 SCR 120,* a three-Judge Bench considered almost all leading decisions on the point and observed that there was no difficulty in applying the principles laid down by the Privy Council and accepted by the Supreme Court. The Court, however, noted that appellate courts found considerable difficulty in understanding the scope of the words "substantial and compelling reasons" used in certain decisions. It was observed inter-alia as follows:

"This Court obviously did not and could not add a condition to Section 417 of the Criminal Procedure Code. The words were intended to convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear reasons for coming to the conclusion that the order of acquittal was wrong."

A The Court concluded as follows:

"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* afford a correct B 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 C 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 D 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."

36. Again, in *M.G. Agarwal* v. *State of Maharashtra (1963) E 2 SCR 405,* the point was raised before a Constitution Bench of this Court. Taking note of earlier decisions, it was observed as follows:

"17. In some of the earlier decisions of this Court, however, F in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, 'the findings of the trial court which had the advantage of seeing the G witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons': vide *Surajpal Singh* v. *State (1952 SCR 193).* Similarly in *Ajmer Singh* v. *State of Punjab (1953 SCR 418),* it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are H

'very substantial and compelling reasons to do so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (*a*) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in *Sheo Swarup* the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh* v. *State of Rajasthan* and *Harbans Singh* v. *State of Punjab* (1962 Supp 1 SCR 104) and so, *it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse*."

(emphasis supplied)

37. Yet in another leading decision in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal

A the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

38. Putting emphasis on balance between importance of individual liberty and evil of acquitting guilty persons, this Court B observed as follows:

"6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers C of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime D and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty E men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then breakdown and lose credibility with the community. The evil of acquitting a guilty person light-heartedly, as a F learned author (Glanville Williams in *Proof of Guilt*) has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public G demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true H to say, with Viscount Simon, that 'a miscarriage of justice

may arise from the acquittal of the guilty no less than from the conviction of the innocent....' *In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.*"

(emphasis supplied)

39. In *K. Gopal Reddy* v. *State of A.P (1979) 1 SCC 355,* the Court was considering the power of the High Court against an order of acquittal under Section 378 of the present Code. After considering the relevant decisions on the point it was stated as follows:

"9. The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and compelling reasons' only and courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in *Sanwat Singh* v. *State of Rajasthan (1961) 3 SCR 120.* In *Sanwat Singh case* this Court harked back to the principles enunciated by the Privy Council in *Sheo Swarup* v. *R. Emperor* and reaffirmed those principles. After *Sanwat Singh* v. *State of Rajasthan* this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in *Sheo Swarup case*. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of

A the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In some cases (*Ramaphupala Reddy* v. *State of A.P.*, (AIR 1971 SC 460) *Bhim Singh Rup Singh* v. *State of* B *Maharashtra (AIR 1974 SC 286)*, it has been said that to the principles laid down in *Sanwat Singh case* may be added the further principle that 'if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding C of the trial court'. This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly-balanced views of the evidence are possible, one D must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the E preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. *It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of* F *which an accused person may claim, must be reasonable.*"

(emphasis supplied)

40. In *Ramesh Babulal Doshi* v. *State of Gujarat (1996) 9* G *SCC 225*, this Court said:

"While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the H

appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions." A B

41. In *Allarakha K. Mansuri* v. *State of Gujarat (2002) 3 SCC 57*, referring to earlier decisions, the Court stated:

"7. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding." C D E

42. In *Bhagwan Singh* v. *State of M.P.* (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negativing the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed: F

"7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in G H

A an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the B accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable C to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an D innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

E

43. In *Harijana Thirupala* v. *Public Prosecutor, High Court of A.P. (2002) 6 SCC 470,* this Court said:

"*12.* Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal F has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the G accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to H examine and discuss the reasons given by the trial court

to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity." A

44. In *Ramanand Yadav* v. *Prabhu Nath Jha* (2003) 12 SCC 606, this Court observed: B

"*21*. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which C runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount D consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the E accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

45. Again in *Kallu* v. *State of M.P. (2006) 10 SCC 313*, F this Court stated:

"*8*. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. G However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a H

A different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. *Further if it decides to interfere, it should assign reasons for differing with the decision of* B *the trial court.*"

(emphasis supplied)

46. From the above decisions, in *Chandrappa and Ors. v. State of Karnataka (2007 (4) SCC 415)*, the following general principles regarding powers of the appellate court while C dealing with an appeal against an order of acquittal were culled out:

(*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon D 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 E fact and of law.

(*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", F "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 G 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 H 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.

47. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see "The Mathematics of Proof II": Glanville Williams, *Criminal Law Review*,, 1979, by Sweet and Maxwell, p.340 (342)]:

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A junior may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

48. Doubts would be called reasonable if they are free

A from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opB posed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

49. The concepts of probability, and the degrees of it, cannC not obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analyD sis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. This position E was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P.* v. *Krishna Gopal (1988 (4) SCC 302).*

50. The above position was highlighted in *Krishnan and Anr. v. State represented by Inspector of Police (2003 (7) SCC* F *56)* and in Criminal Appeal No. 572 of 2001 entitled Valson & Anr. v. State of Kerala (decided on 01st August, 2008).

51. When the factual position is analysed in the background of the conclusions arrived at by the High Court, the inevitable G conclusion is that the High Court's judgment is correct. The appeal is dismissed. The appellants who are directed to be released on bail by order dated 10.12.2001, shall surrender to custody forthwith to serve the remainder of sentence.

R.P. Appeal dismissed.

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