

State of Kerala Vs. Suseelan Pillai and ors.

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Court : Kerala

Decided On : Oct-23-2001

Reported in : 2002CriLJ808

Judge : J.B. Koshhy and; K. Padmanabhan Nair, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 120B, 143, 147, 148, 149, 302, 307, 324 and 447

Appeal No. : Crl. Appeal No. 139 of 1997

Appellant : State of Kerala

Respondent : Suseelan Pillai and ors.

Advocate for Def. : P.K. Ashokan, Adv.

Advocate for Pet/Ap. : P.V. Madhavan Nambiar, Director General of Public Prosecutions

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. This appeal is filed by the State against the acquittal of the accused. Respondents herein were accused Nos. 1 to 9 and 11 to 13 in Sessions Case No.

32 /93 on the file of the Additional Sessions Court, Patanamthitta. The Circle Inspector of Police, Thiruvalla filed a charge sheet against 13 accused alleging offences punishable under Sections 143, 147, 148, 149, 447, 324, 109, 307, 302 and 120-B of the Indian Penal Code. Since tenth accused was absconding the case against others were committed and tried by the Sessions Court.

2. According to the prosecution, all 13 accused persons were RSS workers. The 13th accused was the Chengannur District Organiser of RSS. On 1-4-1991, at about 8.30 pm. while A 13 was riding a scooter, one hand cart, owned by PW 1 dashed against his scooter at Aykarapadi Junction, Kallooppara, which resulted in an altercation with PWs 2, 11,21 and 22. During the altercation, PW 2 gave a slap on the face of A13. So, in order to take revenge on PW 2 at the instigation of A13, the other accused unlawfully assembled in the office of Sasthankal temple, Kallooppara at 9.30 p.m. on 7-4-1991 and decided to kill PW 2 when he comes to his Cocoa Plantation situated on the eastern side of the temple. In prosecution of the common object of the unlawful assembly, on 8-4-1991 at 9.00 a.m. A1 to A7, armed with deadly weapons, trespassed into the Cocoa Plantation in order to guard A1 to A7. On seeing PW 2, A6 shouted to kill him. Then A1 to A7 confined PW 2, A2 cut his right hand with a dagger, A3 stabbed his chin, A4 caused a contusion on his forehead by hitting with a stone. Hearing the hue and cry of PW 2, PW 1 and his father George came to the scene of occurrence. On seeing them A6 ordered others to kill them. A6 pelted a stone at PW1. It hit on his back and he sustained injuries. A1 stabbed on the chest of George and he sustained a penetrating injury and died. There by they committed the offence punishable under Section 143, 147, 148, 149, 447, 324, 109, 307, 302 and 120-B of the Indian Penal Code. All accused denied their involvement in the crime. Contention taken up by the defence was that there was no evidence to prove criminal conspiracy. It is not even proved that A1 to A12 are RSS workers or A13 abetted A1 to A12 to commit any offence. They never formed any unlawful assembly and case was charged against them on mistaken identity. PWs 1 and 2 were the only occurrence witnesses. PW 1 is the son of the deceased. PW 2 is the brother of the deceased. They were injured also. PW 1 gave Ext. P1 first information statement before PW25 Sub Inspector of Police on the same day. Ext. P1(a) is his body note. Ext. P22 FIR was sent to the Magistrate on the same day. Ext. P1 F1 statement and

Ext. P22, FIR on 8-4-1991 did not mention names of the accused. Ext. P25 report was filed stating the names of the accused. PW 26 Circle Inspector of Police investigated the case.

3. PW 1 who gave Ext. P1 first information and who is the son of the deceased deposed that there was a Cocoa Plantation on the southern side of their property which belonged to PW 2. On 8-4-1991 at about 9.30 am. while he was digging pits for planting plantains in their property, he heard a cry from the southern Cocoa, Plantation. Hearing the cry, he and his father went to the plantation. Then, they saw some six or seven persons standing around PW 2. One among them shouted to kill PW 2. He identified A4 as the person who shouted to kill PW 2. Then, one among them cut PW 2 with a long knife. He warded off the cut with his right hand. So, his index finger of right hand sustained injury. He identified A2 as the person who cut PW 2. Then, another person among the seven, stabbed on the chin of PW 2 and he sustained injury on chin. He identified A3 as the person who stabbed PW 2. Another person threw a stone at PW 2. He was standing in the northern road of the Cocoa Plantation. Seeing him, four persons went towards him. One among them threw a stone at him. It hit on his back. At that time another person among them stabbed his father. His father fell down. He cried loudly, People in the locality gathered. They took PW 2 and his father to Government Hospital, Mallappally. At 11 .00 a.m. one Babykutty came and told him that his father died. At 11. 30 am. he went to Keezhuvaipur Police Station and gave Ext. P1 F1 statement before the Sub Inspector of Police. He identified his signature in Ext.P1 FI statement. He identified the person who stabbed George, his father, as A1. During cross examination, he deposed that when he went to the Cocoa Plantation, PW 2 was surrounded by a group of six or seven persons. Cocoa Plantation in the property were having thick growth as they were 22 years old plants. He never knew the accused earlier. He also stated that his father also came to the plantation and four persons came near his father. He did not notice whether they had any weapon with them. He did not look at them. Out of fear, he went back to his compound as soon as he was hit by a stone. '(Vernacular text is omitted).' While he was running, he saw his father was surrounded by three persons. But, he affirmed that he saw his father was being stabbed while he stood on the road even though this factor was omitted to be mentioned in Ext. P1 F1 statement. He also

stated that he did not enter into the Cocoa Plantations and did not go near PW 2. '(Vernacular text is omitted)'. He also stated that he did not remember the dress worn by the accused. He knew the names of persons from the people of the locality after the incident. He also deposed that he had only hearsay information that the accused were RSS workers.

4. PW 2, brother of the deceased who was injured very seriously in the incident was examined by PW 22 Civil Surgeon and Ext. P19 wound certificate was issued which is as follows :

1. Transverse lacerated wound 5 cm. and another wound 2 cm. Skin long perpendicular to the first wound on the anterior part and scalp on the left side wounds full skin deep.

2. Incised wound 2 cm. long on the chin on the left side.

3. Lacerated wound tip of (R) index finger with bone exposed.

PW 2 deposed regarding the incident on 1-4-1991 when he slapped A13 whose scooter hit on a hand cart owned by PW 11. PW 11 was examined to prove the same. According to PW 2, A13 threatened, that he would show him who he was. At that time, PW 2 was not aware that A13 was an office bearer of RSS. PW 11 also stated that after the incident, a group of eight RSS workers came to the shop and threatened to kill PW 2. According to us, the incident on 1-4-1991 is sufficiently proved by prosecution and that PW 2 slapped A13 and workers of RSS became inimical towards PW 2. But, merely because likelihood of motive for RSS workers to attack PW 2 was proved, we cannot convict the accused. Admittedly, in this case A13 was not involved in the actual crime. Whether A13 abetted the accused to commit the offence, whether the crime was committed at the instance of A13, whether accused No. 1 to 13 are RSS workers, whether they have committed the crime as alleged, whether there was mistaken identity etc. have to be considered from the evidence available. There is no dispute in this case that the deceased was killed by a group of assailants when he came to the place of incident hearing the cry of PW 2 . In fact, deceased came to save his brother PW 2 who was surrounded by a group of persons at the time of his arrival. In fact, when

he came to the place hearing the cry of PW 2 to save him, he saw PW 2 was surrounded by a group of persons and he sustained fatal injuries on the vital part of his body and succumbed to the injuries. PW 23 Police Surgeon who conducted the postmortem examination and issued Ext. P20 postmortem certificate noted the following injuries on the body :

1. Incised penetrating wound 6x2 cm. Vertically placed on the front of chest 3 cm. to the left of midline and 1 cm. below the inner end of collar bone. Both ends of the wound sharply cut. The wound entered the chest cavity through the first and second intercostals spaces and by cutting the second rib and making a superficial cut each on the lower end of first rib and upper end of third rib. Upper lobe of left lung was transfixated at its inner aspect (4.5 x 1 cm.) and the wound terminated by cutting the pulmonary trunk (3 cm. long) after transfixing the pericardium. 1500 ml. of fluid blood was found in the left chest cavity. The wound was directed downwards, backwards slightly to the right for a total minimum depth of 5 cm.

2. Abrasion 1x1 cm. on the top of left foot.

It is clear from the evidence of PWs 1 and 2 that seven persons trespassed into the Cocoa Plantation of PW 2 and attacked PW 2 and his brother with deadly weapons and PW 2 sustained grievous hurt and brother of PW 2 was murdered.

5. Now, we may consider the question of identification of the accused. PW 2 who was actually injured in the incident had seen the incident. He is the eye witness and nobody can deny his presence at the place and at the time of occurrence. He narrated the incident in terms of the prosecution case. He identified MOs 1 to 3 weapons. He also identified A13 who was slapped by him on 1-4-1991. He tried to identify A1 to A3 as the persons who inflicted injuries. But, during trial, he failed. He identified A1 as Chandran Pillai. He identified A4 Ravi as A2. He was also not definite in identification of the accused as he only said. '(Vernacular text is omitted)'. In cross-examination , he stated that on the date of the incident, he was able to identify only two persons and now he knew many. The accused were shown to him in the office of the Circle Inspector of Police. He deposed as follows :'(Vernacular text is omitted).

He also deposed that PW 1 did not enter into the Cocoa Plantation when they came to the place of incident hearing the cry. A stone was thrown on PW 1 and immediately he went back. He also deposed that he went to the police station on 17-4-1991 at 12 noon hearing that accused were there. All the accused were standing in the verandah. There was nobody else in the verandah. Before or after that he had not seen them. He deposed as follows : '(Vernacular text is omitted)'. A close reading of the deposition of PW 2 would show that he was not able to identify the accused clearly and he was shown the accused at the verandah of the office of the Circle Inspector of Police. Admittedly, there was no test identification. It may be true that as held by the Supreme Court at paragraph 15 of the decision reported in *Binay Kumar Singh v. State of Bihar*, (1997 SCC (Cri) 333 : (1997 Cri LJ 362), it is quite probable that the vision of the injured might get blurred as their focus of attention would instinctively get diverted to the injuries sustained by them. They would then be in a less advantageous position to watch or observe the events than the non-injured witnesses. In any event, here PW 2 was not able to identify the accused clearly and we cannot convict the accused unless they are properly identified. Infuriated by hearing that their leader was slapped on his face in public some RSS workers might have come and committed the crime. But, we have to find out whether the accused committed the crime. As regards PW 1, he did not see the incident. Hearing the cry, he came upto the road along with PW 2 and was hit by a stone pelted on him and he immediately went back strangely. He did not even accompany the deceased or PW 2 to the hospital. In Ext. P1 F1 statement, name of the accused has not stated and eye witnesses failed to identify the accused clearly in court also despite the fact that all the accused were shown to them at the police station. The Supreme Court has reiterated the necessity of test identification when accused was neither a person already known to the prosecution witnesses nor was specifically named in the FIR. (Paragraphs 3 and 4 of the decision in *State of H.P. v. Lekh Raj* 2000 SCC (Cri) 147 : (2000 Cri LJ 44).

6. Now, we may consider the evidence of PW 26 regarding how the investigating officer made these persons as accused in the case. He deposed that none of the prosecution witnesses disclosed the names of the accused and on the basis of the information that the accused are RSS workers, he made enquiries and identified them. To a specific question by the Court how the names of the accused were

found out, he answered that he got them through secret source. He did not disclose the source of information even to the Court. Relevant portion is as follows :

(Vernacular text is omitted).

He also admitted in cross-examination that there was a Hartal sponsored by the Congress party as police was not able to identify the accused. But, he denied the suggestion that persons were made accused from the list of RSS workers given by the Congress Party. From the evidence of PWs 1, 2 and 26, we are not able to state firmly whether the accused have committed the crime or somebody else and case was framed against the accused because of the public resentment that police was not able to book the accused. In this connection, we refer to the recent decision of the Supreme Court in Subhash Chand v. State of Rajasthan (2001) JT SC 505 : (2001 AIR SCW 4209). In the above judgment dated 16-10-2001 at paragraph 26, the Supreme Court observed as follows :

26. ... A vigilant investigating officer well versed with the techniques of the job is, in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to the hilt in a Court of law. The evidence of investigating officer given in the Court should have a rhythm explaining step by step how the investigation proceeds leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of 'beyond doubt' evidentiary value.

The above observations are apt on the facts of this case. The Supreme Court in Budhsen v. State of U.P. (1970) 2 SCC 128 : (1970 Cri LJ 1149) held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. No evidence was also adduced to show

that accused 1 to 12 were RSS workers. Therefore, we may look into other evidence adduced in the case and consider whether the identity of the accused is established to show that they, and they only, had committed heinous crime.

7. PWs 3 and 5 were examined to identify the accused. But, they turned hostile. PW 4 came after the death. He also did not say anything about the identity of the accused. PW 6 deposed that on the date of the incident she saw A8, 11 and A12 standing on the road near the Cocoa Plantation of PW 2 when she along with her husband was walking through the road, that she also saw six or seven persons (who were not identified) armed with weapons coming out of the Plantation and they joined the persons stood in the road and that they together ran off. Contradictions between the statement given to the Police and the deposition were marked as Ext. D2. Admittedly , she did not identify the persons who entered into the Cocoa Plantation to commit the crime. PWs 7 to 9 also did not see the incident. They were examined to prove the criminal conspiracy and for identification. PW 7 deposed that he saw 12 persons standing at Sasthankal temple premises on 7-4-1991 at 9.30 pm. previous to the date of incident and he identified A8 to A12 were among them. But, he saw them in the night. He also deposed that they were shown to him by the police at the office of the Circle Inspector of Police. PW 8 also saw 12 persons at the premises of Sasthankal temple at 9.00 am. But, later at 9.30 am. he saw a group of 12 persons rushing towards the temple. He is a chance witness. He is residing one and a half mile away from the temple. According to him, he came to the Sasthankal Junction for taking tea by taking a circuitous route. He also stated that the accused were shown to him at the office of the Circle Inspector of Police. But for that he would not have been able to identify them. P.W. 9 who was a poojari of the temple was examined to prove mainly the criminal conspiracy as well as identification. He turned hostile. According to the prosecution, there was prior meeting of the accused in the temple premises. P.W. 9 denied it in his deposition and his deposition is not helpful to the prosecution. From the evidence of the witnesses examined in support of the prosecution case, it cannot be stated definitely that the accused are the persons who committed the crime or that they are RSS workers.

8. Now, we may find out whether we can rope in the accused at least A1 to A3 on the basis of recovery of MOs 1 to 3 on the information furnished by them by taking recourse to Section 27 of the Evidence Act. It is the prosecution case that on the basis of Ext. P12(a) information furnished by A1, MO3 knife was recovered. On the basis of Ext. P13(a) information given by A2, MO1 knife was recovered. On the basis of Ext. P14(a) information furnished by A3, MO2 was recovered. Exts. P12, P13 and P14 mahazars were prepared respectively. The learned Sessions Judge did not admit the evidence as admissible as there was no authorship of concealment or actual concealment. According to us, the above view is hyper-technical. Exts. P12(a), P13(a) and P14(a) show that the accused had admitted the authorship of placement of the knives and the mahazars show that they were recovered from the places shown by the accused. Sentence should be read as a whole in a meaningful manner. Material objects were not visible to the public even though they were found from the public place. According to Ext. P13(a), MO 1 knife was placed by A2 at the bottom of a plantain. Ext. P.14(a) shows that MO2 was placed by accused No. 3 behind the bushes. Even though MO1 was recovered from the temple premises, it was also placed at the bottom of a coconut tree and the coconut tree was standing on a much higher level than the temple road. There was no case for the defence that they were found out from a place where they were visible for all. In *State of Himachal Pradesh v. Jeet Singh*, 1999 SCC (Cri) 539 : (1999 Cri LJ 2025), the Supreme Court held that concealment is not necessary. What is necessary for admissibility of evidence under Section 27 of the Evidence Act is the fact discovered which embraces the place of recovery and knowledge of the accused as to it and not the object recovered. In paragraph 26, the Supreme Court observed as follows :

26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused admissible if recovery of the articles was made from any place which is 'open or accessible to others.' It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public

office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hides it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. It is not, then it is immaterial that the concealed place is accessible to others.

Here, Exts. P12, P13 and P14 mahazars make it clear that the objects were recovered from places not ordinarily visible to the public. But, the question here is whether the objects were recovered as stated by the prosecution on the basis of the information furnished by the accused. P.Ws. 16, 17 and 18 were examined to prove the mahazars as they were attestors to the mahazars as witnesses. But, all of them deposed before Court that the material objects were shown to them at the office of the Circle Inspector of Police and mahazars were prepared at that office and they were asked to sign in the mahazars and they had signed them. P.Ws. 16 and 18 have deposed that they have not seen the accused pointing out or taking out the objects from the respective places. According to them, these items were shown to them at the office of the Circle Inspector of Police and they were asked to sign the mahazars and they had signed them. Even though they were declared hostile, nothing came out from them in support, of the prosecution. P.W. 17 also stated that he signed the mahazar at the office of the Circle Inspector of Police and he was not even declared hostile. In this connection, we may also state that the confession statement recorded originally was not produced. According to P.W. 26 Investigating Officer, originals of Exts. P12(a), P13(a) and P14(a) may be in the office of the Dy. S.P. He also deposed that Exts. P12(a), P13(a) and P14(a) confession statements were recorded by the Police Constable as dictated by him. In re-examination, he clarified that they were dictated by him as per the statements given by the accused. In these circumstances, we are unable to accept the contention of the prosecution that Nos 1 to 3 were recovered on the basis of the information furnished by A1 to A3 and it can be used as an evidence against them under Section 27 of the Evidence Act. Since all the three mahazar witnesses examined deposed that the material objects were shown to them only at the office of the Circle Inspector of Police, that the mahazars were prepared at that office only, that they were asked to sign them and that they had signed them, recoveries

were not proved. Therefore, with the sole evidence of recovery of MOs 1 to 3, we cannot rope in the accused 1 to 3 also.

9. We have seen that there was no satisfactory evidence to identify the accused A1 to A12. Criminal conspiracy was not proved. Even though A13 is identified properly, there is no evidence to prove that he abetted the crime. Some RSS workers, infuriated by hearing that their leader, A13, was slapped in public by P.W. 2, might have committed the offence. But, there is no evidence even to point out that A1 to A12 are RSS workers and at the behest of A13, there was a criminal conspiracy wherein A12 to A2 were also parties.

10. Without positively identifying the accused, we cannot pass an order of conviction. Here, there is no clear proof that the accused were not charge-sheeted for having committed a heinous crime. In *Shivaji Sahebrao Bobade v. State of Maharashtra*, AIR 1973 SC 2622 : (1973 Cri LJ 1783) it was held as follows (para 19) :

Certainly it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations.

In *Kali Ram v. State of Himachal Pradesh*, AIR 1973 SC 2773 : (1974 Cri LJ 1), the Apex Court observed as follows (para 27) :

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is harmed, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another Instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the

verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person.

So long as identification of the accused is not clearly proved, accused cannot be convicted. If two views are possible on the evidence adduced in the case, one points out the guilt of the accused and the other his innocence, the view which is favourable to the accused should be adopted. We are not saying that merely because a view in favour of the accused is remotely possible as a figment of imagination like a fairy tale, they should be acquitted. In *Ambika Prasad v. State (Delhi Administration)* (2000) 2 SCC 646 : (2000 Cri LJ 810), it was held by the Apex Court that (para 10) :the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that guilty man does not escape. It was held that both are public duties which the judge has to perform.

Therefore, accused are entitled to acquittal only if, on the basis of evidence, a favourable view can be formed in their favour which is reasonably possible and probable one. On an independent analysis of the evidence, we came to the conclusion that the prosecution was not able to prove the case against the accused conclusively.

11. In this case, the Sessions Court has acquitted the accused. In such cases, the question to be considered in an appeal is whether the view taken by the Court below is a possible one. It is true that the Court has got full powers to review the evidence and the Apex Court in *Narinder Singh v. State of Punjab*, 2000 AIR SCW 2313 : (2000 Cri LJ 3462) held that High Court will interfere if the finding if the judgment is manifestly erroneous or the trial Court has acted with material irregularity. The Court observed as follows :

12. The High Court while considering the appeal against acquittal is not exercising any extraordinary jurisdiction. Its power to consider and decide the appeal against the judgment of acquittal is same as against the judgment of conviction. However, there are certain guidelines. One is that if there are two views on evidence which

are reasonably possible one supporting acquittal and the other indicating conviction. High Court in an appeal against judgment of acquittal should not interfere merely because it feels that it would as a trial Court have taken a different view. High Court will certainly interfere if it finds that the judgment of acquittal is manifestly erroneous and that the trial Court has acted with material irregularity or its appreciation of evidence lacks coherence or it has made assumptions which are unwarranted or this evaluation of evidence is such as to shock the sense of justice and which has led to miscarriage of justice or its reasoning is unintelligible or defies logic or its conclusions are against the weight of the evidence.

In *Hari Ram v. State of Rajasthan*, 2000 AIR SCW 1630 : (2000 Cri LJ 2312) it was held that High Court can reappraise the evidence and reverse the judgment of the Court of appeal if the findings are absolutely perverse which is the result in gross miscarriage of justice. The Court observed as follows (para 4) :. It is too well settled that the power of the High Court while hearing an appeal against an acquittal is as wide and comprehensive as in an appeal against a conviction and it had full power to reappraise the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would be sitting as a trial Court, taken the other law. While reappraising the evidence, the rule of prudence requires, that the High Court should give proper weight and consideration to the views of the learned trial Judge. But, if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.

In what circumstances the Court can interfere in an order of acquittal is made clear by the Supreme Court in the decision reported in *Antar Singh v. State of Madhya Pradesh*, AIR 1979 SC 1188 : (1979 Cri LJ 715) wherein it was held that (para 11):

This Court has repeatedly held that although in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as that of the

trial Court, but before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal at the trial, and further, the opinion of the trial Court which had the advantage of observing the demeanor of the witnesses, as to the value of their evidence should not be lightly discarded. Where two views of the evidence are reasonably possible, and the trial Court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial Court, it would have taken the alternative view and convicted the accused accordingly.

In *Harijan Megha Jesha v. State of Gujarat*, AIR 1979 SC 1566 : (1979 Cri LJ 1137), the Court observed as follows (para 2) :

Even assuming that the view taken by the High Court is correct, the circumstances clearly disclose that the view taken by the learned Sessions Judge was also reasonably possible. Once this is so, there can be no question of reversing the order of acquittal.

In this connection, we also refer to the decision reported in *Tara Singh v. State of Madhya Pradesh*, AIR 1981 SC 950 : (1981 Cri LJ 483) and *Kora Ghasi v. State of Orissa*, AIR 1983 SC 360 : (1983 Cri LJ 692 (2)). In *Kalyan v. State of U.P.* (2001) 8 JT (SC) 200 : (2001 Cri LJ 4677), after analysing the entire decisions of the Court, the Supreme Court held as follows : (at pp. 4679-80 of Cri LJ) :

The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial Court. Normally, the views of the trial Court, as to the credibility of the witnesses, must be given proper weightage and consideration because the trial Court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial Court.

Here, the view taken by the Sessions Court in acquitting the accused is a possible one. Findings are not certainly perverse. After analysing the evidence independently, we also came to the conclusion that identity of the accused A1 to A12 was not established and the prosecution was not able to prove the case against all the accused beyond reasonable doubt conclusively. In any event, we are of the opinion that the view taken by the lower Court is certainly not perverse and is a reasonably possible view which requires no interference by this Court.

In the above circumstances, we dismiss the appeal.

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