Supreme Court of India
State Of U.P vs Banne @ Baijnath & Ors on 10 February, 2009
Author: J.
Bench: Dalveer Bhandari, Harjit Singh Bedi

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                      IN THE SUPREME COURT OF INDIA

          CRIMINAL APPELLATE JURISDICTION

          CRIMINAL APPEAL NO.1100 OF 2001

     State of U.P.                          ... Appellant

                         VERSUS

     Banne @ Baijnath & Ors.              ... Respondents


                         JUDGMENT
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This appeal is directed against the judgment of the High Court of Judicature at Allahabad delivered in Criminal Appeal No.1358 of 1980 dated 1st February, 2000 by which the High Court had acquitted all the five accused who were convicted and sentenced to undergo six months R.I. under Section 147 I.P.C., three years R.I. under Section 307/149 I.P.C. three months R.I. under Section 323/149 and to imprisonment for life under Section 302 read with Section 149 I.P.C. by the trial court.

Brief facts which are necessary to dispose of this appeal are recapitulated as under:-

Members of the accused and complainant party are close relatives. In order to properly appreciate the relationship, the pedigree of the family is reproduced: On 13.11.1977 a violent incident is alleged to have taken place between the accused and members of the complainant party, namely, Moti, Gharroo and his sons over share in plot No.165/2 measuring 1.88 decimals situated in Village Shivpurwa, P.S. Manduadih, District Varanasi. It is admitted case of the parties that Chhakkoo and his brother Panchu were original tenure holders of the said plot along with some other plots.

In a suit under Section 49 of the U.P. Tenancy Act, Moti, Gharroo and Lalloo obtained one half share in the joint Khata while the other half share went to descendants of Panchu, namely, Vinayak and others. Lalloo, Moti and Gharroo have since been recorded as co-tenure holders of the aforesaid plot along with other plots.

The dispute about the share between Lalloo on the one hand and Gharroo and Moti on the other started in the year 1965. Lalloo claimed one half share while according to Moti and Gharroo all the three daughters' sons Lalloo, Moti and Gharroo had equal share. Lalloo took the lead in asserting his claim by executing a sale deed in respect of 5 decimals of plot No.251/2 area 10 decimals in favour of Shivlal on 21.1.1965. He executed second sale deed in respect of 6 decimals of plot No.205/2 measuring 12 decimals in favour of Nand Lal and Lalloo sons of Dhanesh on 20.12.65. Moti deposited ten times land revenue of his one-third share in the disputed joint Khata comprising of

plots Nos.109, 165/2, 182/2, 205/2 and 251/2 and filed a suit for division of holdings under Section 138 of the Zamindari Abolition and Land Reforms Act for 1/3rd share on 6.1.66. The suit was decreed ex parte on 10.1.1970 and mutation of this order was made in Khatauni 1376 F to 1378F. The ex-parte decree was, however, set aside on the application of Lalloo, father of the accused persons, after setting aside the ex parte decree on 19.2.1973. Thereafter the suit was proceeded in the revenue court. It was dismissed in default on 27.7.1977. The suit was ultimately restored on 21.2.1979 on the application of Moti and decided in his favour on 25.2.80 against which the appeal has been filed by the accused persons which is still pending.

After the death of Lalloo, his five sons succeeded to the property. According to the prosecution, the disputed plot No.165/2 is divided into two portions. One-third portion towards north has been in possession of the accused persons since the time of their father Lalloo while the two- third portion towards south is in the joint cultivation of Moti and Gharroo. There is a Merh between the portion in the occupation of the accused and that in the possession of Moti and Gharroo.

On 13.11.1977 at about 7.00 a.m. Tilakdhari PW.1 and his father Gharroo went to their portion of the plot in dispute along with the bullocks to plough the land. Immediately after they had started ploughing, all the accused persons arrived there. Accused Banne alias Baijnath and Binne alias Viswanath were armed with iron rods while the other accused Nanhe alias Narain, Bhola and Ramji were armed with sticks. The accused persons asked Tilakdhari, PW1 and his father to get out of the field. They refused to do so saying that the said portion of the field has been in their possession for a long time and that they would continue to plough it. Thereupon the accused Banne alias Baijnath instigated other accused persons to assault Tilakdhari and his father and drive them away, whereupon Gharroo ran towards the house of Khatkhat in the neighbourhood. Hearing the hue and cry raised on the spot, Amardhari, Shangoo and Jagga arrived at the spot.

The accused Ramji gave a lathi blow to Amardhari who consequently fell down because of the impact of blow. Banne alias Baijnath gave a thrust with the iron rod in the abdomen which punctured the abdomen of Amardhari. The intestine of Amardhari protruded out through the wound and he also fell down. Sahangoo was attacked by Ramji, Bhole and Nanhe with lathis. He received lacerated wounds on his head. He ran towards the house of Sahdeo and fell down at his doorstep. Tilakdhari PW1 was also given blows by the accused persons.

The case of the accused persons is that the members of the complainant party tried to forcibly dispossess them and in their right of private defence some injuries were caused to the members of the complainant party.

Tilakdhari PW1 dictated a written report Ex. Ka. 1 to Sitaram on the spot. He took Sahangoo, Amardhari to P.S. Manduadih where he submitted the written report Ex. Ka.1, in terms of which chick FIR Ex. Ka. 13 was prepared and a case was registered in the general diary.

Sahangoo, Amardhari and Tilakdhari were escorted to S.S.P.G. Hospital, Varanasi, where they were examined for their injuries by Dr. A.K. Dwivedi at 8.45 A.M., 9.00 A.M. and 12.00 noon respectively. Sahangoo succumbed to the injuries at 5.45 P.M. on the same day in S.S.P.G. Hospital, Varanasi and

died. Inquest of the dead body was performed by Ram Chandra Pandey S.I. on 14.11.1977 at 8.00 A.M. Dr. Narsingh Sharma, Medical Officer Incharge S.V.M.V. Government Hospital, Varanasi conducted post-mortem examination on the dead body of Sahangoo at the mortuary on 14.11.1977 at 2.30 P.M. He found the following ante- mortem injuries on his dead body.

1. Lacerated wound 6= cm x = bone deep on the right side crown of head, 7 cm above right eyebrow.

2. Contusion 10 cm x 4 cm on the back of right forearm, 2 cm above wrist joint, right Ulna bone fractured.

3. Abrasion 4 cm x = cm on the outer aspect of upper part of right thigh.

4. Abrasion 2-= cm x 2 cm on the right shoulder top.

5. Lacerated wound 2 cm x < cm muscle deep on the inner aspect left dorsum of foot, 2 cm above the root of left big toe.

On internal examination, he found the right frontal and temporal bones fractured and the right fronto-parietal suture separated, brain was congested. Middle cranial fossa was also fractured.

Amardhari received injuries and was hospitalised for two and a half months. The prosecution examined 10 witnesses in support of its case.

The trial court though noted the injuries which were received by the accused persons, but the prosecution has not explained those injuries on the body of the accused.

It is pertinent to mention that Dr. A.K. Dwivedi PW.8 examined accused Vishwanath alias Binney and found the following injuries on him:

1. Abrasion 1 cm x 1 cm right parietal, 12 cm from right ear.

2. Abrasion 2 cm x 2 cm back of left knee.

Dr. A.K. Dwivedi PW.8 also examined the injuries of accused Narain alias Nanhey and found the following injuries

1. Lacerated wound 4 cm x = cm x bone deep on right parietal, 6 cm above right ear.

2. Lacerated wound 2 cm x = x bone right ring finger back.

The same Doctor also examined accused Ramji alias Raman on the same day and found the following injury.:

1. Lacerated wound 4 cm x 1/2 cm x bone on left side parietal 14 cm from left ear.

Dr. R.K. Singh, DW.1 medically examined accused Bhola and found the following injuries:-

1. Contusion 5 cm x 4 cm on the dorsum of left palm with tenderness at the base of II metacarpal bone, skin over it bluish pink. Restricted movement of left index finger. X-ray of palm was advised.

2. Contusion 3 cm x 2 cm on the left side of neck 6 cm below the left ear, skin bluish pink.

3. Contusion 6 cm x 1- = cm on the back towards right side 6 cm below the right scapula.

4. Contusion 1 cm x 1 cm right side chest over 7th rib below the right nipple.

5. Abrasion 1 cm x 1 cm on the back towards right side 8 cm. below the right scapula.

The trial court, on appraisal of evidence, came to the findings that at the time of incident the prosecution party was in peaceful possession of the land in question and with the dismissal of suit the accused persons came there forming an unlawful assembly to extend their possession over half share and interfered in the peaceful possession of Gharroo and Moti in the southern portion of the plot. They first assaulted and caused injuries to the deceased and other victims on prosecution side and injuries on the defence side were caused during the course of incident and according to the learned Sessions Judge, the defence version of the incident was false and accordingly, the learned Sessions Judge convicted and sentenced the appellants under various counts as stated in the earlier part of the judgment.

The accused-appellants, aggrieved by the judgment of the Sessions Judge, filed an appeal before the High Court. The High Court re-examined the entire evidence and came to a different conclusion. The main grievance which has been articulated by the High Court is that though the injuries received by the accused persons were noted by the trial court, there was no explanation by the prosecution about those injuries. On careful examination of the injuries caused to the accused the High Court observed that injuries on them (accused persons) were not superficial or minor or self-inflicted. Therefore, the absence of any explanation by the prosecution about the injuries received by the accused persons creates serious doubt about the credibility of the entire prosecution version. According to the High Court, it was the bounden duty and obligation of the prosecution to have given explanation about the injuries of the accused persons.

The High Court, on examination of the evidence on record, came to the conclusion that it is difficult to hold that the complainant party was in settled and peaceful possession of 2/3 share of the plot in question on the date of incident and there seems to be weight in the defence argument that the accused party was in possession to the extent of 1/2 share and in any view of the matter there was a bona fide dispute between the parties regarding their shares and extent of possession. This finding gives twist to the entire prosecution version and it is not clear as to who were in fact the aggressors and whether the injuries caused by the accused persons to the complainant party were in fact caused

in their right of their private defence or not.

The High Court also came to the conclusion that PW.3 Sahadeo and PW.4 Narayan cannot be said to be totally independent witnesses as the defence had filed documentary evidence to show that Lalloo, the father of the accused persons had lodged an FIR against these witnesses for an offence under Section 308 IPC. These witnesses were, therefore, also somewhat inimical to the accused persons and their evidence cannot be given due weight especially with regard to the use of Lathi and Danda by the prosecution witnesses, particularly when such an important fact had not been stated by them in their statements recorded under Section 161 Cr.P.C. and the statements being contradictory to each other with regard to the use of Danda by the prosecution witness. The High Court arrived at the conclusion that the injuries of the accused persons have not been satisfactorily explained.

The High Court in the impugned judgment arrived at a definite finding that it is highly doubtful that the complainant party was in exclusive possession of the disputed land at the relevant time and witnesses Sahadeo PW3 and Narayan PW4 cannot be considered to be independent witnesses. A serious doubt has been cast on the credibility of the prosecution version. The High Court allowed the appeal and set aside the conviction and sentence of the appellants and they were acquitted of the offences charged for.

The State of U.P., aggrieved by the impugned judgment of the High Court, has filed the present appeal by way of special leave petition under Article 136 of the Constitution. The scope of interference under Article 136 is rather limited. It is settled legal position which has been crystallized in a number of judgments that if the view taken by the High Court is plausible or possible, then it would not be proper for this court to interfere with an order of acquittal.

This court, in a recent judgment in Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450 considered earlier cases and laid down that the appellate court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons". In Tulsiram Kanu v. The State, AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

In Lekha Yadav v. State of Bihar (1973) 2 SCC 424, the Court following the case of Sheo Swarup (supra) again reiterated the legal position as under:

> "The different phraseology used in the judgments of this Court such as-
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> (a) substantial and compelling reasons:
>
> (b) good and sufficiently cogent reasons;

(c) strong reasons.

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified." In Bishan Singh & Others v. The State of Punjab (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

> "22. It is well settled that the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."

In Umedbhai Jadavbhai v. The State of Gujarat (1978) 1 SCC 228, the Court observed thus:

> "In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court's conclusion unless there are compelling reasons to do so inter alia on account of manifest errors of law or of fact resulting in miscarriage of justice."

In B.N. Mutto & Another v. Dr. T.K. Nandi (1979) 1 SCC 361, the Court observed thus:

> "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 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 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 which an accused person may claim, must be reasonable.

"A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not

mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in R.V. Fantle reported in 1959 Criminal Law Review 584.]"

{emphasis supplied} In Tota Singh & Another v. State of Punjab (1987) 2 SCC 529, the Court reiterated the same principle in the following words:

> "This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."
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> (emphasis supplied) This Court time and again has provided direction as to when the High Courts should interfere with an acquittal. In Madan Lal v. State of J&K, (1997) 7 SCC 677, the Court observed as under:
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> "8. .... that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction........"
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> In Sambasivan & Others v. State of Kerala (1998) 5 SCC 412, while relying on the case of Ramesh Babulal Doshi (Supra), the Court observed thus:
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> 7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

In Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85, the Court repeated one of the fundamental principles of criminal jurisprudence 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 Court observed as under:-

"7. 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 to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

In Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad (2002) 6 SCC 470, this Court again had an occasion to deal with the settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus:

"10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.

11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal 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 accused gets reinforced and strengthened. The High Court would not be justified to interfere with the 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 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." In C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 had to reiterate the legal position in cases where there has been acquittal by the trial courts. This Court observed thus:

> "6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court."

In State of Karnataka v. K. Gopalkrishna, (2005) 9 SCC 291, while dealing with an appeal against acquittal, the Court observed:

> "In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."

In The State of Goa v. Sanjay Thakran, (2007) 3 SCC 755, this Court relied on the judgment in State of Rajasthan v. Raja Ram (2003) 8 SCC 180 and observed as under:

> "15. 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 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 principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

The Court further held as follows:

"16. it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below."

In Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415, this Court held:

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

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The following principles emerge from the aforementioned cases.

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The High court's acquittal bolsters the presumption that he is innocent.

3. There must also be substantial and compelling reasons for reversing an order of acquittal.

This court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court decision.

Following are some of the circumstances in which perhaps this court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive.

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

ii) The High court's conclusions are contrary to evidence and documents on record.

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

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

v] This Court must always give proper weight and consideration to the findings of the High Court.

vi) This court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal. When we apply the above mentioned parameters laid down by a number of cases decided by this court to the facts of this case, then conclusions become irresistible and no interference is warranted by this court. Consequently, the appeal filed by the State of UP being devoid of any merits, is accordingly dismissed.

..................................J.

(Dalveer Bhandari) ....

J.

(Harjit Singh Bedi) New Delhi;

February 10, 2009