CASE NO.:
Appeal (crl.) 853 of 2006

PETITIONER:
CHANDRAPPA & ORS

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 15/02/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Hon. C.K. Thakker, J.

The present appeal is filed against the judgment and order of conviction dated November 24, 2005 passed by the High Court of Karnataka in Criminal Appeal No. 1008 of 1999 whereby it set aside the order dated July 14, 1999 passed by the Additional Sessions Judge, Tumkur in Sessions Case No. 16 of 1991 acquitting the accused (appellants herein) of offences punishable under Sections 143, 147, 148, 302 and 324 read with Section 149 of the Indian Penal Code ('IPC' for short).

Brief facts of the case are that Accused No. 2, Somashekhara, Accused No. 8, Thammaiah and PW 8 Krishnaiah were running a Chit Transaction in which successful members were given articles like vessels, watches, sarees, cloth-pieces, etc. The said transaction was conducted once a week in the shop of PW 8 Krishnaiah and also at Kollapuradamma Temple at Hanumanthapura. It is the case of the prosecution that on October 30, 1989, one such transaction was held at about 5.30 p.m. in which one Nagaraj, the successful bidder was given a copper vessel (Kolaga). Nagaraj returned the vessel with his maternal uncle as it was old and demanded a new vessel. But the request was refused by the proprietors of the Chit Transaction. It is further the prosecution case that at about 9.30 p.m. on the same day, i.e. October 30, 1989, near Hanumanthapura Bypass, when PW1 Veerabhadraiah along with PWs 2, 3 and 4 (Chikkanna, Rudramurthy and Puttiah) was proceeding, the Accused Nos. 1 to 8 who had formed themselves into an unlawful assembly and were armed with weapons like, knife, reapers and stones attacked PWs 2 to 4. The accused caused injuries to all the three persons. It is alleged that when the quarrel was going on and PWs 2 to 4 were injured, deceased Anjinappa came forward and intervened and went ahead to stop the quarrel. Accused No. 8 Thammaiah took out a button knife from his pocket and stabbed Anjinappa on the left side of his chest, due to which Anjinappa slumped and fell on the ground. Complainant Veerabhadraiah along with one Krishnaiah, s/o Oblaiah carried Anjinappa in an autorickshaw to the hospital. On the way to hospital, Anjinappa breathed his last. The dead body of Anjinappa was then taken to the General Hospital, Tumkur. The accused persons after committing assault, threw the clubs and rippers at the spot and ran away. At about 11.30 p.m., PW 13 Madhukar Musale, Circle Inspector of Police, Tumkur received an information about the incident of rioting that took place at

Hanumanthapura. On being intimated by PSI, PW 7 A.R. Shariff about the rioting and the injured being admitted to General Hospital at Tumkur, PW 13 went to the hospital and learnt that Anjinappa had died and the other three injured persons were taking treatment. It is alleged that PW 1, Veerabhadraiah, who was present in the hospital, was questioned by PW 13. The information given by him was recorded in writing as per Ex. P-1 as complaint and was registered as Crime No. 86 of 1989 for offences punishable Sections 143, 147, 148, 324 and 302 read with Section 149 IPC. Accused No. 7 Tukaraiah died during the pendency of the case and the trial abated against him.

Inquest over the dead body of deceased Anjinappa was done and the dead body was sent for post-mortem examination. PW 11 Dr. Hanumakka who conducted the postmortem opined that the injuries were ante mortem in nature. She found a punctured wound over the left 3rd inter costal space extending from medial edge of the areola of left nipple obliquely downwards and medially 2" x 2" size with clean cut margin and fat protruding through the wound the depth of which was 3= inches. Likewise, injuries to PWs 2 to 4 were also proved by PW 12, Dr. Chandrasekhara Prasad.

After completion of investigation, all the accused were charged for offences punishable under Sections 143, 147, 148, 324, 302 read with Section 149 of IPC.

In order to substantiate its case, the prosecution examined 13 witnesses. PWs 1 to 4 were portrayed as eye witnesses and amongst them, PWs 2 to 4 were shown to be injured persons. They supported the case of the prosecution as to Chit Transaction, the incident which took place at about 5.30 p.m. on October 30, 1989 as also the assault at 9.30 p.m. on the same day.

The learned Additional Sessions Judge, however, considering contradictions and discrepancies in the deposition of eye witnesses, non-examination of Nagraj who was the root cause of quarrel and Krishniah, son of Obalaiah, who accompanied deceased Anjanianappa to hospital, conflicting version as to injury sustained by accused No. 1 Chandrappa, presence of the deceased and injured witnesses at the Hanumanthapura Bypass at 9.30 p.m., mudamal knife not being the same with which the deceased was assaulted, medical evidence as to injuries sustained by prosecution witnesses and other circumstances, held that in the facts and circumstances of the case, it could not be conclusively established that the prosecution had proved the case against the accused beyond reasonable doubt. He, therefore, held that the accused were entitled to benefit of doubt and accordingly acquitted them.

In an appeal against an order of acquittal by the State, the High Court reversed the order of the trial court. It observed that on careful examination of evidence of PWs 1 to 4, it was clearly established that deceased Anjaniappa was done to death by Accused No. 8 and PWs 2 to 4 sustained injuries in the course of incident. It was also held by the High Court that contradictions and variations were of minor nature which did not affect substratum of the prosecution case and evidence of PWs 1 to 4 had remained totally unshaken and there was a ring of truth running through their testimony which inspired confidence notwithstanding trivial omissions and discrepancies, which did not go to the root of the matter. The High Court, accordingly, set aside acquittal recorded by the trial court and convicted the appellants for various offences as ordered

in the final paragraph 55 of the judgment.

Being aggrieved by the order of conviction and sentence, the appellants have approached this Court. Notice was issued by the Court on August 07, 2006 on appeal as also on application for bail. On November 17, 2006, bail was refused but the Registry was directed to post the matter for final hearing on January 16, 2007.

We have heard the learned advocates for the parties.

Mr. Sushil Kumar, Senior Advocate for the appellant-accused contended that the accused having been acquitted by the Trial Court ought not to have been convicted by the High Court in an appeal against an order of acquittal. He submitted that it is settled law that an order of acquittal can be set aside by the High Court only if the appellate Court is satisfied that the reasons in support of acquittal recorded by the Trial Court are non-existent, extraneous, perverse, acquittal palpably wrong, totally ill-founded or wholly misconceived; the Court had 'obstinately blundered' or reached the conclusion, 'wholly wrong', 'manifestly erroneous' or 'demonstrably unsustainable', which resulted in miscarriage of justice. According to him, the view taken by the Trial Court was legal, proper and in consonance with law and the High Court, in an appeal against acquittal, ought not to have disturbed the order even if two views were possible. He, therefore, submitted that the appeal deserves to be allowed and the appellants are entitled to acquittal.

Mr. Hegde, learned counsel for the respondent-State supported the order passed by the High Court. He submitted that once an order of acquittal is challenged by the State, the appellate course has all the powers which were exercised by the Trial Court and it is open to the appellate Court to reappreciate and review such evidence and to come to its own conclusion. On facts, the counsel submitted that the High Court, considering the ground reality as to possibility of contradictions and omissions held that they did not affect the genesis or substratum of prosecution case and convicted the accused. The order does not suffer from legal infirmity calling for interference under Article 136 of the Constitution and the appeal deserves to be dismissed.

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 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). 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.\027(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), 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 acquittal passed by any Court other than a High Court, 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, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the high Court from the order of acquittal.

(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).

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

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.

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 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.

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 available to him under the fundamental principle of criminal

jurisprudence that every person should be presumed to be innocent unless he is proved 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.

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.

The first decision was rendered by Judicial Committee of the Privy Council in Sheo Swarup & Ors. v. King Emperor, (1934) 61 IA 398 : AIR 1934 PC 227(2). 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, (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 perversity 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 High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

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 itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result".

His Lordship, then proceeded to observe:

"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 should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

The Committee, however, cautioned appellate courts and stated;

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 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 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 recognized in the administration of justice".

(emphasis supplied)

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

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 March 14, 1950, it was reported only in 1954). In that case, the accused was acquitted by the 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 eye-witnesses.

Upholding the decision of the High Court and following the proposition of law in Sheo Swarup, a six-Judge Bench speaking through Fazl Ali, J. unanimously stated:

"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 P. C, 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)

In Surajpal Singh v. State, 1952 SCR 193 : AIR 1952 SC 52, 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.

In Ajmer Singh v. State of Punjab, 1953 SCR 418 : AIR 1953 SC 76, 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 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."

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 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)

In Atley v. State of Uttar Pradesh, 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 S. 417, Criminal P.C. came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and 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)

In Aher Raja Khima v. State of Saurashtra, (1955) 2 SCR 1285 : AIR 1956 SC 217, 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; "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). Venkatarama Ayyar, J. (minority), in his dissenting judgment stated:

"Do the words "compelling reasons" in the above passage import a limitation on the powers of a court hearing an appeal under Section 417 not applicable to a court hearing appeals against conviction? If they do, then it is merely the old doctrine that appeals against acquittal are in a less favoured position, dressed in a new garb, and the reasons for rejecting it as unsound are as powerful as those which found favour with the Privy Council in Sheo Swarup v. King-Emperor, AIR 1934 PC 227 and Nur Mohammad v. Emperor, A.I.R. 1945 P.C. 151. But it is probable that these words were intended to express, as were the similar words of Lord Russell in Sheo Swarup that the court, hearing an appeal under section 417 should observe the rules which all appellate courts should, before coming to a conclusion different from that of the trial court. If so understood, the expression "compelling reasons" would be open to no comment. Neither would it be of any special significance in its application to appeals against acquittals any more than appeals against conviction".
(emphasis supplied)

In Sanwat Singh v. State of Rajasthan, (1961) 3 SCR 120 : AIR 1961 SC 715, 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. Subba Rao, J., (as His Lordship then was) stated:

"This Court obviously did not and could not add a condition to s. 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".

The Court concluded:

"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's case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in

an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified".

Again, in M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 : AIR 1963 SC 200, the point was raised before a Constitution Bench of this Court. Taking note of earlier decisions, Gajendragadkar, J. (as His Lordship then was) laid down the principle in the following words:
"In some of the earlier decisions of this Court, however, 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 witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons' : vide Surajpal Singh v. The State [(1952) S.C.R. 193, 201]. Similarly in Ajmer Singh v. State of Punjab [(1953) S.C.R. 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 '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 emphasise 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 the case of Sheo Swarup, the presumption of innocence in favour or 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 S.C.R. 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)

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

Putting emphasis on balance between importance of individual liberty and evil of acquitting guilty persons, Krishna Iyer, J. said;

"Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers 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 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 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 break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author (Glanville Williams : '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 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 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 innocent\005..' 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)

In K. Gopal Reddy v. State of Andhra Pradesh, (1979) 2 SCR 363 : (1979) 1 SCC 355 : AIR 1979 SC 387, the Court was considering the power of the High Court against an order of acquittal under Section 378 of the present Code. Chinnappa Reddy, J. after considering the relevant decisions on the point stated:

"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 & Ors. v. State of Rajasthan. In Sanwat Singh's case, this Court harked back to the principles enunciated by the Privy Council in Sheo Swamp v. Emperor and re-affirmed 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's 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 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 (Ramabhupala Reddy & Ors. v. State of A.P. AIR 1971 SC 460, Bhim Singh Rup Singh v. State of Maharashtra, AIR 1974 SC 286), it has been said that to the principles laid down in Sanwat Singh's 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 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 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". (emphasis supplied)

In Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225, this Court said; "While setting 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 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". In Alarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57, referring to earlier decisions, the Court stated; "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 re-appreciate 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".

In Bhagwan Singh & Ors. 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;

"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 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 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 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. 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 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".

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

"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 inn decree in favour of the 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 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 Ramanand Yadav v. Prabhunath Jha, (2003) 12 SCC 606, this Court observed; "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 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 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 re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

Recently, in Kallu v. State of M.P., (2006) 10 SCC 313 : AIR 2006 SC 831, this Court stated; "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. 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 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 the trial court". (emphasis supplied)

From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(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 emphasize 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 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.

Applying the above principles to the case on hand, we are of the considered view that the learned counsel for the accused is right in submitting that the High Court ought not to have disturbed an order of acquittal recorded by the trial Court. For acquitting the accused and extending them the benefit of doubt, the trial Court observed that the prosecution had failed to examine certain persons who could have unfolded the genesis of the prosecution case. The trial Court indicated that the root cause of the quarrel was refusal to exchange copper vessel (Kolaga) to Nagraj, winner of the draw, but he was not examined. Likewise, Krishnaiah, son of Oblaiah, who accompanied injured (deceased) Anjaniappa to the hospital, was not brought before the Court. Though it is in evidence that Accused No. 1 Chandrappa was injured and was also taken to the hospital alongwith Anjaninappa, some witnesses had denied the fact as to injuries sustained by the Accused No. 1. The High Court did not give much weight to the said circumstance observing that Accused No. 1 was neither examined by a doctor nor a cross-complaint was filed by him against the prosecuting party. In our view, the submission of the learned counsel for the appellants is well founded that it is not material whether Accused No. 1 had or had not filed a complaint or he was or was not examined by a doctor, but the fact that even though it was the case of prosecution that Accused No. 1 was injured during the course of incident, prosecution witnesses tried to suppress that fact which would throw doubt as to the correctness of the case or the manner in which the incident had happened. The trial Court had also stated that it was unnatural that the prosecution witnesses and deceased Anjaninappa could have gone to Hanumanthapura Bypass at about 9.30 p.m. when a shorter route was available for going to their destination. The trial Court observed that there was inconsistency in prosecution evidence as to availability of electric light at the time of incident. The Court also noted that the knife produced before the Court as mudamal article was not the same which was used by Accused No. 8 for inflicting injury on the deceased. There was also no consistency in evidence as to injuries sustained by prosecution witnesses.

In our view, if in the light of above circumstances, the trial Court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of appellate Court are as wide as that of the trial Court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case,

the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court. In this case, a possible view on the evidence of prosecution had been taken by the trial Court which ought not to have been disturbed by the appellate Court. The decision of the appellate Court (High Court), therefore, is liable to be set aside.

For the aforesaid reasons, the appeal deserves to be allowed and is, accordingly, allowed. The order of conviction and sentence recorded by the High Court is set aside and the order of acquittal passed by the Additional Sessions Judge, Tumkur is restored. The appellants are hereby acquitted of the offences with which they were charged. They are ordered to be set at liberty forthwith unless their presence is required in any other case.