
(2015) 03 RAJ CK 0170

In the Rajasthan High Court

Case No : Criminal Appeal Nos. 683/2004 and 56/2005 and Cr. Revision Petition No. 624/2004

Phaili Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 437A
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2015) 03 RAJ CK 0170

Hon'ble Judges : Nisha Gupta, J.; Kanwaljit Singh Ahluwalia, J.

Bench : Division Bench

Advocate : R.P. Vijay and Anil Sharma, for the Appellant; Narendra Dhakad, Public Prosecutor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nisha Gupta, J.—As all the three cases assail the same judgment passed by the trial court, they are being decided by this Court by this common judgment.

2. D.B. Criminal Appeal No. 683/2004 has been preferred against the judgment dated 28/05/2004 passed by the court of Additional Sessions Judge (Fast Track) No. 1, Jaipur in Sessions Case No. 102/2001 (State Vs. Shankar and Ors.) whereby, the accused-appellants have been convicted and sentenced, as under:-

(1) Appellant No. 1-Phaili Ram:-

for offence u/S.302 IPC:- Life Imprisonment with a fine of Rs. 500/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

for offence u/S.323/34 IPC:- Rigorous Imprisonment for six months with a fine of Rs. 100/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

(2) Appellant No. 2-Ram Lal:-

for offence u/S.302/34 IPC:- Life Imprisonment with a fine of Rs. 500/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

for offence u/S.323/34 IPC:- Rigorous Imprisonment for one month with a fine of Rs. 100/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

(3) Appellant No. 3-Suresh:-

for offence u/S.302/34 IPC:- Life Imprisonment with a fine of Rs. 500/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

for offence u/S.323/34 IPC:- Rigorous Imprisonment for one month with a fine of Rs. 100/- and in default of payment thereof, to further undergo one month rigorous imprisonment.

3. The complainant-Shiv Lal Meena has filed revision petition being D.B. Criminal Revision Petition No. 624/2004 against the judgment dated 28/05/2004 passed by the court of Additional Sessions Judge (Fast Track) No. 1, Jaipur in Sessions Case No. 102/2001 (State Vs. Shankar and Ors.) whereby, accused-respondents No. 2 to 6 Shankar, Smt. Babudi, Shravan Lal, Smt. Kailashi and Smt. Birdi have been acquitted from the charge for offence u/Ss.148, 323, 323/34, 302 and 302/34 IPC.

4. The State also filed leave to appeal, which was partly granted and resultantly, State filed appeal against acquittal being D.B. Criminal Appeal No. 56/2005 against the judgment dated 28/05/2004 passed by the court of Additional Sessions Judge (Fast Track) No. 1, Jaipur in Sessions Case No. 102/2001 (State Vs. Shankar and Ors.) whereby, accused-respondents No. 1 to 5 i.e. Shankar, Smt. Babudi, Shravan Lal, Smt. Kailashi and Smt. Birdi have been acquitted from the charges leveled against them for offence u/Ss.148, 323, 323/34, 302 and 302/34 IPC but vide order dated 18/01/2004 passed by the coordinate bench, leave to appeal was only granted qua accused-respondent No. 1-Shankar.

5. The case of the prosecution is that Shivram Meena (PW8) had lodged a written report (Ex.P14) with the contention that on 22/03/2001 at 11.30 a.m., Rinku came to his Well to have the water for his buffalo; at that time, buffalo eased and passed dung, which fell on their field. Kailashi wife of Shankar Lal came there and tried to lift the buffalo-dung. The present informant forbade her to do so on which, Kailashi abused him; at that time, Jagdish father of informant also came there and altercation had taken place between them. Grandfather Bhagwan Sahay was not at home at that time but after some time, he came and grandmother Nathi Devi was also at home then, Shankar Lal, Kailashi, Suresh, Phaili Ram, Ram Lal, Shravan, Babudi and Birdi Devi came to their house. Shankar was having "gandasa" in his hands and all others were having sticks in their hands and they started beating Jagdish and Bhagwan Sahay. Bhagwan Sahay died on the spot and Jagdish suffered injuries. Roopnath, Jagannath, Ramprasad and Lalaram have witnessed the occurrence. On the written report, case FIR No.

128/2001 has been registered at Police Station Bassi for offence u/Ss.147, 148, 149, 452, 302 and 323 IPC. After investigation, charge-sheet has been filed against seven persons for offence u/Ss.147, 148, 149, 451, 323 and 302 IPC, which was committed to the court of sessions and entrusted for trial to Additional Sessions Judge (Fast Track) No. 1, Jaipur.

6. After committal of the case, the trial court framed the charges against accused Shankarlal, Phaili Ram and Kailashi for offence u/Ss.148, 323, 323/149 and 302 IPC and against rest of the accused for offence u/Ss.148, 323, 323/149 and 302/149 IPC and charges were read over to the accused but all the accused denied the charges and claimed to be tried.

7. To support the case, the prosecution produced 17 witnesses from PW1 to PW17, respectively Nathi, Roopnath, Jagannath, Ramprasad, Lala Ram, Badri Narayan, Jagdish, Shivram, Nathulal, Meghraj, Dr. Dharmendra Sharma, Kunjbihari Lal Jat, Ratanlal, Dr. O.P. Meena, Yadram Yadav, Ashok Kumar Sharma and Hari Singh Jat and exhibited 43 documents from Ex.P1 to Ex.P43, respectively the statements of witnesses Jagannath, Ramprasad, Lala Ram, site map, seizure memo of blood stained sand and pieces of bangles, panchnama corpse, seizure memo of corpse, arrest memo of accused respectively, Shankarlal, Phaili Ram, Babudi, Ram Lal, Sureshchand, written report, FIR, seizure memo of stick of Babool, seizure memo of Gandasa, site map of the place of incident, statements of witness Meghraj, injury report of Jagdish, x-ray report of Jagdish, copy of Malkhana Register, receipt of FSL, post-mortem report, negatives and photos, information derived at the instance of accused Babudi, Shankarlal, Ram Lal, Phaili Ram, Suresh and Shankar. The accused-appellants were examined u/S.313 Cr.P.C. They denied the allegation and in defence, the accused examined defence-witness Anil Sharma as DW1 and in documentary evidence, exhibited 13 documents from Ex.D1 to Ex.D13, respectively the statements of witnesses Nathidevi, Roopnath, Shivram, Jagdish, injury report of Suresh, x-ray report of Suresh, injury report of Phaili Ram, x-ray report of Phaili Ram, injury report of Ram Lal, x-ray report of Ram Lal, statement of witness Shankarlal, certified copy of attendance register and prescription slip of Shankar of Primary Health Center, Banskho.

8. After conclusion of the trial, the present appellants have been convicted and sentenced in the manner as stated hereinabove. Hence, accused-appellants Phaili Ram, Ram Lal and Suresh have filed D.B. Criminal Appeal No. 683/2004, complainant-Shiv Lal Meena has filed D.B. Criminal Revision Petition No. 624/2004 against acquittal of accused-respondents No. 1 to 5-Shankar, Smt. Babudi, Shravan Lal, Smt. Kailashi and Smt. Birdi and State has also filed leave to appeal viz. D.B. Criminal Appeal No. 56/2005 against the acquittal of accused-respondents No. 2 to 6 Shankar, Smt. Babudi, Shravan Lal, Smt. Kailashi and Smt. Birdi.

9. Shiv Ram Meena (PW8) is the informant, who has lodged the written report (Ex.P14) and his contention before the trial court was that incident is of

22/03/2001 at about 10.30-11.00 in the morning. Rinku came to his Well to have the water for his buffalo. Buffalo had put dung at their field. Kailashi came there to lift it and she was forbidden; at that time, Jagdish Prasad, Shankar, Phaili Ram also came there. Phaili Ram inflicted stone blow on the left eye of his father Jagdish but Raghunath, Lala Ram, grand-mother Nathi intervened and all went to their houses. After some time, Bhagwan Sahay came to his house and enquired about the injury on the eye and matter flared up. Bhagwan Sahay and his wife made complaint to the appellants and raised protest over the injury caused to Jagdish. At that time, Shankar, Phaili Ram, Suresh, Ram Lal, Shravan, Birdi, Babudi and Kailashi came there and started beating. Shankar was having "barchi" and all others were having sticks. He inflicted injury on the head of Bhagwan Sahay, Phaili Ram and Suresh also inflicted lathi blows on the head of Bhagwan Sahay and Kailashi inflicted lathi blow on the back of Bhagwan Sahay and Shravan and Ram Lal inflicted lathi blows on the head of Jagdish. Suresh had also inflicted lathi blow on the head of his father Jagdish. Roopnath and Lalaram saved them. The incident was reported to the police.

10. Jagdish (PW7) is the star witness of the prosecution. He is also injured-witness and has suffered injuries in the incident hence, his presence could not be doubted. He has stated that he was present at the scene of occurrence and his contention is that at 10.00 a.m., Kailashi attempted to lift the buffalo-dung. Shivram restrained her, and due to this, an altercation had taken place between Kailashi and Shivram. After hearing noise when he came out of the house, he tried to persuade Kailashi; at that time, Phaili Ram came there. He inflicted stone blow on his left eye. On hearing the noise, Roopnath, Jagannath, Lala Ram and Ramprasad came there and they have unriddle them. At that time, his father was not at home and when he returned back and saw the injury on his eye, he enquired about the fact. Shankar, Phaili Ram, Suresh, Ram Lal, Shravan, Kailashi, Birdi and Babudi came there. Shankar inflicted "barchi" blow on the head of his father. Phaili Ram inflicted lathi blow to him. Suresh inflicted lathi blow to Bhagwan Sahay and Ram Lal and others have also inflicted injuries. His father died on the spot.

11. Nathi (PW1) is wife of the deceased Bhagwan Sahay. She has also stated on the same lines that altercation took place between Shivram and Kailashi. Phaili inflicted stone blow on the left eye of Jagdish and, thereafter, all gave beating to her husband. She has leveled specific allegation against Shankar, Phaili Ram and Suresh and her further contention is that all the accused persons gave beating to Jagdish and Bhagwan Sahay and witnesses Jagannath, Roopnath, Lala and Ramprasad came there. In cross-examination also, she has stated that sharp edged weapon injury has been inflicted to Bhagwan Sahay and he immediately fell down.

12. Raghunath (PW2) has also corroborated the statements of Jagdish (PW7) and Shivram Meena (PW8) and has stated that Shankar and Phaili Ram were having sharp edged weapons, whereas Suresh was having stick in his hands and others

were also having sticks. All gave beating to Bhagwan Sahay and Jagdish.

13. Jagannath (PW3) is named eye-witness in the first information report. He has been declared hostile but he has corroborated the prosecution on the fact that incident took place at 11-11.30 in the morning and he has seen that Bhagwan Sahay received injuries on his head and Phaili Ram was also there. Jagdish has also suffered injuries on his head.

14. Ramprasad (PW4) is other named eyewitness in the written report. He has also been declared hostile but still he has testified the fact that when he reached at the spot, Suresh and Ram Lal were inflicting lathi blows on the head of Jagdish and Bhagwan Sahay and Phaili Ram were lying there injured.

15. Lala Ram (PW5) is another eye-witness, who has also been declared hostile but he has also testified the fact that Bhagwan Sahay suffered injuries on his head and so also Jagdish.

16. Meghraj (PW10) has been examined as eye-witness but he has not supported the prosecution story and has been declared hostile.

17. Hence, Nathi (PW1), Jagdish (PW7) and Shivram (PW8) have categorically stated that on the day of incident, some hot talks took place between Kailashi and Shivram and at that time, Jagdish intervened and then, appellant-Phaili Ram inflicted stone blow on the left eye of Jagdish and on seeing this injury when Bhagwan Sahay made complaint and raised protest, the matter flared up and incident occurred and Phaili Ram inflicted blow at Bhagwan Sahay on his head and so also Suresh. Other witnesses, who have been named in the first information report inspite of the fact that they have been cross-examined by the prosecution, have also corroborated the fact that injuries have been inflicted to Jagdish and Bhagwan Sahay.

18. Dr. O.P. Meena (PW14) had conducted the post-mortem on the dead-body of Bhagwan Sahay and as per the post-mortem report (Ex.P.29), Bhagwan Sahay had suffered the following injuries:-

1- Incised wound : 6.5 cm x 1 cm x deep bone at the left parietal region.

2- Soiled Injury : 4.5 cm x 0.75 x deep bone at the right parietal region.

3- Swelling (blueness) : 8 cm x 1.5 cm at the right infra scapular region.

4- Swelling (blueness) : 6.5 cm x 1.5 cm at the right scapular region.

5- Swelling (blueness) : 5.5 cm x 2 cm at right supra scapular region.

6- Soiled Injury : 2.5 cm x 0.5 x 1.25 cm on the upper side of the right little finger.

Further opinion of the doctor is that Injury No. 1 has been caused by a sharp edged weapon, whereas Injury No. 2 has been caused by a blunt weapon and doctor has further opined that cause of death is shock due to injuries caused on

the vital organ brain and all the injuries are ante mortem and opined that Injuries No. 1 and 2 were sufficient in the ordinary course of nature to cause death. In view of the medical opinion, it could be concluded that death of Bhagwan Sahay occurred due to Injury No. 1 and 2. Injury No. 1 has been attributed to Phaili Ram, whereas Injury No. 2 has been attributed to Suresh as per prosecution witnesses Jagdish (PW7) and Shivram (PW8). Nothing has been brought on record, which could shake evidence of Jagdish and Shivram. They are credit worthy witnesses. Jagdish (PW7) has also suffered injuries in the incident and Shivram's presence has been proved sufficiently as initially, hot talks took place between Shivram and Kailashi only and, thereafter, the incident ensued on the trivial issue of lifting buffalo-dung and resulted into the death of a person.

19. Dr. Dharmendra Kumar Sharma (PW11) has examined Jagdish. He suffered 12 injuries on his person but all the injuries were found to be simple in nature.

20. Counsel for the accused-appellants has rightly submitted that occurrence has taken place suddenly when hot talks took place between Kailashi and Shivram and Phaili Ram inflicted injury to Jagdish without any pre-meditation and when complaint was made by Bhagwan Sahay, he was also given beating. In the light of the above, it can be concluded that intention of the accused-appellants was only to teach a lesson to Bhagwan Sahay and Jagdish and there was no pre-meditation of mind, the occurrence had occurred on the spur of a moment when complainant-party raised a protest and none of the appellants took any undue advantage of the situation. Fatal injuries suffered by deceased have been attributed to Phaili Ram and Suresh. It has also been brought to the notice of this Court that cross F.I.R. has also been registered and appellant-party has also suffered injuries in the same incident. Hence, in view of above, we can safely conclude that in the occurrence; both, the complainant and accused suffered injuries. Both the parties caused blows. There was no previous enmity. Occurrence started all-off a sudden. There was no pre-meditation, and occurrence had ensued spontaneously. It is a case of sudden fight and there was no common intention or object, therefore, the accused-appellants can be held liable only for their individual act.

21. The other relevant fact, which could not be ignored in the matter is that initially the F.I.R. was lodged against eight persons but after discerning the evidence, the trial court has convicted only three persons and apart from it, this Court had not granted leave to appeal to State against the acquittal of Babudi, Shravan, Kailashi and Birdi and facts of the case clearly reveal that all-off a sudden, when Bhagwan Sahay made the complaint as regards to infliction of injury to his son, the incident occurred and on the spur of a moment and in a heat of passion, Phaili Ram and Suresh inflicted injuries to Bhagwan Sahay, which have proved to be fatal hence, it is a case of individual liability and only two appellants alone namely; Phaili Ram and Suresh are responsible and in the facts and circumstances of the case, when sudden fight had ensued between the parties, therefore, case does not travel beyond the scope of Section 304 Part-I

IPC.

22. Our above view is fortified by observations made by Hon"ble Apex Court in the case of Jumman and Others Vs. The State of Punjab, , wherein Their Lordships held as under:-

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under S.300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no premeditation and therefore when the contending faction is met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to S.300, I.P.C., applies with the result that the offence is under S.304 (Part I), I.P.C."

The Division Bench of this Court in Buddhi and Others Vs. State of Rajasthan, relying upon Dharman Vs. State of Punjab, has held, as under:-

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In Dharman Vs. State of Punjab, the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code." 23. Therefore, we convert the conviction of accused-appellants Phaili Ram and Suresh from offence u/s.302 and 302/34 IPC to Section 304 PartI IPC and modify the sentence of life imprisonment awarded to them by awarding sentence of ten years rigorous imprisonment.

24. As we have already observed that it was a case of sudden fight without any pre-meditation, the injury, which has been caused to Bhagwan Sahay could not be attributed to accused-appellant Ram Lal and he can be held liable only for the act, which he has committed. Jagdish (PW7) has contended that Ram Lal inflicted lathi blow on his head. Shivram (PW8) also stated that Ram Lal inflicted lathi blow to Jagdish and the injuries suffered by Jagdish were declared simple in nature. Dr.Dharmendra Kumar Sharma (PW11) has testified the fact that the

injuries suffered by Jagdish were simple in nature and proved the injury report (Ex.P.25) hence, accused-appellant-Ram Lal can be held guilty for offence u/ S.323 IPC only and taking note of the fact that incident is of March, 2001 and 14 years have elapsed and appellant-Ram Lal had suffered pain and agony of protracted trial, we set-aside his conviction for offence u/Ss.302 IPC and his conviction u/S.323/34 IPC is altered to Section 323 IPC and reduce his sentence to the period already undergone by him. Accused-appellant Ram Lal is already on bail and hence, he need not surrender. His bail bonds are discharged. The appeal thus stands disposed of in above terms.

Keeping in view, however, the provisions of Section 437A of the Code of Criminal Procedure, 1973, accused-appellant Ram Lal S/o Shri Shrawan is directed to forthwith furnish a personal bond in the sum of Rs. 20,000/- and a surety bond in the like amount, before the trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the said appellant, on receipt of notice thereof, shall appear before the Supreme Court.

25. As observed earlier, leave to appeal was granted against acquittal of respondent-Shankar alone. Contention of the learned counsel for the accused-respondents is that no specific injury has been attributed to him. He is a Class-IV servant in Dausa Court and on the day of incident, he was on duty. His plea of alibi has rightly been accepted by the court below and no interference is needed. Public Prosecutor has submitted that specific injury suffered by Bhagwan Sahay has been attributed to Shankar hence, he be also convicted accordingly.

It is true that Nathi (PW1) has attributed the sharp edged weapon injury to Shankar and in the first information report (Ex.P.14) also, sharp edged weapon injury has been attributed to him. Jagdish (PW7) has also attributed the sharp edged weapon injury to Shankar but admittedly, deceased-Bhagwan Sahay suffered only one sharp edged weapon injury, which was attributed to Phaili Ram by the prosecution witnesses. All the witnesses have accepted the fact that Shankar was working in Dausa Court and from the inception of the trial, defence of the respondent-Shankar was that he was not at the spot and he had been implicated only because of the fact that he is the only person in the family, who is in government service and to cause the greater injury to the family, he was falsely implicated and to strengthen his plea of alibi, Anil Sharma (DW1) Assistant Nazir of the District Court Dausa was examined, who had stated that on the day of incident i.e. on 22/03/2001, Shankar was in the office and to support his contention, attendance register (Ex.D12) was submitted and court below rightly held that Shankar was on duty on that day and it was not possible for him to be in the village at 11.30 a.m. Much stress has been put on the fact that Shankar had suffered injury. Anil Sharma (DW1) has also stated that when on 22/03/2001, Shankar came to the court, he was having bandage on his head for which a specific plea was taken by the defence that due to accident and slip from motorcycle, he suffered this injury and to strengthen his contention, prescription

slip (Ex.D13) of the Primary Health Center, Banskho has been submitted. The court below has rightly relied upon these facts and acquitted accused-respondent-Shankar rightly. There is no reason to disbelieve Ex.D12 and Ex.D13, which clearly speak out that on the day of incident, Shankar was on duty at Dausa Court and previous to the incident, he suffered injuries due to slip of motorcycle. Public Prosecutor has submitted that Ex.D13 is a false document and has been prepared just to put defence but there is nothing on record to accept the plea of Public Prosecutor. Apart from it, Ex.D12 lend corroboration to the evidence of Anil Sharma (DW1). He has clearly said that Shankar was on duty on that day and court below has rightly acquitted respondent-Shankar.

26. Public Prosecutor has impressed that the appellate court should re-appreciate the evidence and when witnesses have attributed injury to respondent-Shankar, his plea of alibi should not have been accepted. The law in this regard has been explained by the Apex Court in *Main Pal and Another Vs. State of Haryana and Others*, wherein the Supreme Court has held in para 12, as under:-

"12. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. 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 reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh and Others Vs. State of Madhya Pradesh*, . The principle to be followed by the 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 and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference." The division bench of this Court has held in para 22 of *State of Rajasthan Vs. Vaman Narain Ghiya and Anr.* : 2012(2) CJ (Cri.) (Raj.) 628, as under:-

"22. The principles applicable to the power of the High Court in hearing an appeal from acquittal are well crystallized by now. The principles can be summarized as under:-

1. In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.
2. The High Court has the power to reconsider the whole issue, reappraise the evidence, and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.
3. Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.
4. In reversing the finding of acquittal, the High Court had to keep in view the fact that the presumption of innocence is still available in favor of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favor by the trial Court.
5. If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.
6. The High Court has also to keep in mind that the trial court had advantage of looking at the demeanor of witnesses and observing their conduct in the Court especially in the witness-box.
7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.
8. Unless the High Court arrives at definite conclusion that the findings recorded by trial Court are perverse, it would not substitute its own view on a totally different perspective.
9. The appellate Court in considering the appeal against judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for the interference.

(Ref. to Inspector of Police, Tamil Nadu Vs. John David, , State of U.P. Vs. Ram Sajivan and Others, , Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), ."

27. In the light of above, there is no doubt about the competence of this Court to re-appreciate the evidence but when the trial court, which was having opportunity to see the demeanor of the witnesses and after appreciating the evidence came to the conclusion that Shankar was not present at the spot. We

find no reason to alter the view formulated by the trial court. To disturb that finding, some weighty reasons should have been given. The law on this point is very straight that appellate court should not disturb the finding of acquittal recorded by the trial court unless there is compelling reasons for doing so but here in the present case, the trial court has rightly appreciated the evidence and came to the conclusion that Shankar was not present at the spot and his plea of alibi was found to be probable and we find no reason to disturb the finding of the court below as regards to the plea of alibi of accused-respondent Shankar and resultantly, the appeal filed by the State deserves to be dismissed and it is hereby dismissed.

28. Earlier, after scanning the evidence, leave to appeal was granted only as regards to Shankar and apart from it, the court below has also not found any incriminating evidence against Babudi, Shravan Lal, Kailashi and Birdi. We do not find any reason to interfere in the findings of the court below as regards to acquittal of these respondents and in the light of above, the revision petition is also disposed of.

The record be sent back to the court below forthwith.