

(2022) 10 OHC CK 0008
In the Orissa High Court
Case No : G.A. No.28 Of 1994

State Of Odisha

APPELLANT

Vs

Muna @ Madhusudan Kar And Others

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Constitution of India, 1950 — Article 21
Code of Criminal Procedure, 1973 — Section 378, 384
Indian Penal Code, 1860 — Section 34, 302

Citation : (2022) 10 OHC CK 0008

Hon'ble Judges : Dr. S. Muralidhar, CJ;Chittaranjan Dash, J

Bench : Division Bench

Advocate : Saswata Pattnaik, Kishore Kumar Mishra, Lalit Kumar Maharana

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The present appeal by the State of Odisha is directed against the judgment dated 16th October 1993 of the II Additional Sessions Judge, Puri in Sessions Trial Case No.56/286 of 1991 acquitting the Respondents of the offence under Section 302/34 IPC for committing the murders of Kasinath Panda and Narayan Panda on 11th August 1990, at around 1.40 pm.

2. It must be noted at the outset that initially this Court had by its judgment dated 20th May 2009 allowed the present appeal reversing the judgment of the trial Court and convicting each of the Respondents for the offence under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life.

Remand order of the Supreme Court

3. Against the said judgment, the Respondents preferred Criminal Appeal No.2175 of 2009 in the Supreme Court of India. By the order dated 21st May 2012, the Supreme Court set aside the judgment of this Court and inter alia observed as follows:

"The High Court similarly narrated the facts and evidence of the witnesses upto paragraph No.12 of the judgment. In paragraph 13, in a very cryptic manner and without giving any reason the High Court reversed the findings recorded by the trial Court.

The High Court did not come to the conclusion that any of the findings recorded by the trial court had been perverse being based on noevidence or was contrary to the evidence on record. On the motive part a finding has been recorded without giving any reason whatsoever.

The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: *State of Rajasthan v. Talevar & Anr.*, AIR 2011 SC 2271; *State of U.P. v. Mohd. Iqram & Anr.*, AIR 2011 SC 2296; *Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr.*, (2012) 4 SCC 722; and *State of Haryana v. Shakuntala & Ors.*, (2012) 4 SCALE 526.)

"...the High Court has not dealt with the appeal in accordance with law, as the law mandatorily requires the appellate Court to record reasoned findings that the findings recorded by the Court below were perverse. In the instant case the High Court did not record as where and how the Trial Court's findings were not correct."

4. Accordingly, while setting aside the judgment of this Court, the Supreme Court requested this Court to rehear the appeal afresh and dispose it of preferably within six months thereafter.

5. It so transpired that originally there were four Respondents in the present appeal. Although the appeal filed by Respondent No.1 i.e., Criminal Appeal No.2175 of 2009 stood disposed of by the aforementioned order of the Supreme Court of India, the separate appeal filed there by Respondent No.3 i.e., Accused No.3 (A3) Kalia@ Jameswar Pujapanda i.e. Criminal Appeal No.418 of 2010 was still pending in the Supreme Court of India. The Supreme Court then wrote to this Court asking it to retransmit the entire record, as it was required for hearing of the aforementioned Criminal Appeal No.418 of 2010 filed by A3. This Court therefore adjourned the present appeal awaiting the outcome of Criminal Appeal No.418 of 2010 filed by A3.

6. Ultimately, on 17th September 2019, the said Criminal Appeal No.418 of 2010 was disposed of by the Supreme Court in the same terms as the order disposing of Criminal Appeal No.2175 of 2009. In other words, the matter stood remanded to this Court for a fresh hearing. Thereafter, the present appeal had to be adjourned by this Court awaiting the report from the Inspector-in-Charge (IIC) of

Puri Town Police Station (PS) regarding the present whereabouts of Respondent Nos.1 and 3. Both of them were stated to be in their respective villages.

7. It must be mentioned here that during the pendency of the appeal, Respondent Nos.2 and 4 expired. This was noted by the Court in its order dated 25th January, 2021. Therefore, the appeal as far as the said two Respondents were concerned, stood abated. As a result, only A1 Muna @ Madhusudan Kar and A3 Kalia @ Jameswar Pujapanda remain as Appellants.

Case of the prosecution

8. The case of the prosecution is that Biswanath Panda (PW 1) was working as a Hawker in a Kerosene Depot of one Rampal Saha (not examined) in Puri town since three years prior to the date of occurrence i.e. 11th August, 1990. It is stated that on 8th August 1990, the hawkership of PW 1 was terminated by the depot owner and he was not supplied kerosene oil. However, on 10th August 1990, PW 1 met the supply officials to ensure supply of kerosene oil from the depot. On that date, PW 1 learnt that his younger brother, the deceased Kasinath Panda had been assaulted by Muna (A1) causing bleeding injuries to his left cheek. On hearing about the assault, PW 1 and the deceased Narayan Panda (his father) went to the depot of Rampal Saha (not examined). However, the Supply Inspector Kar Babu was present there. While PW 1 was narrating about the incident, A1 assaulted him. The persons present there intervened and separated them.

9. On the next day, i.e., 11th August 1990, at about 11 am, Simachal Patra (PW 5) told PW 1 that Kalu Saha, the grandson of Rampal Saha had sent for PW 1 to solve the dispute by way of compromise with regard to termination of hawkership. Thereafter, at around 1.30 pm, both the deceased, PW 1, PW 5 and Raghunath Pujapanda went to the depot with money and the issue register. The two deceased persons i.e., the brother and father of PW 1 waited in front of the depot and PW 1 entered inside the office of Kalu Saha. While he was in the office where some other persons were also present, he heard his brother shouting from outside that he was being killed. PW 1 then peeped out from the house standing at the door and saw A1 thrusting a gupti into the abdomen of Kasinath Panda. After receiving the blow, Kasinath ran into the office room and fell down unconscious. Narayan then came running to the door of the office crying for help. A1, who had chased deceased Kasinath to the room, thrust his gupti into the chest of Narayan. The other three accused persons were guarding the gate with their respective weapons in their hands.

10. It is stated that A3 was brandishing a big gupti, whereas accused Kalia was holding a knife and accused Rabi Behera (against whom the appeal has abated) had an iron rod. PW 1's father fell down unconscious and PW 1 bolted the office door from inside to prevent the entry of the accused persons. Kalu Saha was also present in the room. PW 1 took the deceased persons to the District Headquarters Hospital (DHH) Puri where they were declared brought dead. The

Town Inspector, Puri went to the Hospital and received the information. The case was registered against the four Respondents along with Kalu Saha under Section 302 read with 34 IPC. At the time of filing of the charge sheet, the name of Kalu Saha was deleted therefrom.

11. In order to prove its case, the prosecution examined 14 witnesses. No one was examined for the defence. Nevertheless, three documents were exhibited by the defence.

Judgment of the trial Court

12. The trial Court by the judgment dated 16th October 1993, acquitted all the accused because of the infirmities in the evidence of the two eye witnesses, Biswanath Panda (PW 1) and his maternal uncle Shyam Sundar Panda (PW 4). The reasons for the trial Court acquitting the accused by the impugned judgment dated 16th October 1993, were as follows:

(i) There were inconsistencies and contradictions in the testimony of PW 1 which remained uncorroborated. PW 1 had attempted to improve the case. The medical evidence was not in consonance with the earlier statement of PW 1. Importantly, in the version of PW 1 an injury was caused on the face of the deceased Kashinath on 10th August 1990, but no such injury was found by the doctor conducting the postmortem.

(ii) The evidence regarding recovery of the weapons was not believable. The evidence regarding the motive for the crime also remained unclear. In other words, the prosecution had not adduced any evidence to show that there was any dispute between the deceased on the one hand and the accused on the other.

(iii) The kerosene depot owners at whose behest, the alleged assault was supposed to have taken place, were not arraigned as accused.

(iv) As regards the serological report, although it was stated by the Investigating Officer (IO) (PW14), that MO-I and MO-II were stained with blood, the report (Ext-30) did not disclose that the bloodstains were of human blood.

(v) The name of the accused Rabi Behera did not find place in the FIR. Further in the FIR, PW1 did not claim to have seen the assault by any of the accused on deceased Kasinath. However, in his testimony in Court, he states that he saw A1 thrust a gupti into the abdomen of Kasinath.

(vi) In the FIR, PW1 mentioned that A1 was holding a sharp bhujali, but in the Court, he stated it was a gupti. This was not a mere omission. Though, the name of Raghunath Pujapanda was mentioned in the FIR a few times as coming in contact with PW 1, he was failed to be recognized by PW 1 later. PW 1 even failed to explain how his name came to be mentioned in the FIR. Although, PW 1 mentioned about the presence of Raghunath at the time of occurrence, in the Court, he denied such presence as well as the presence of a journalist who was supposed to be present at the time of the occurrence.

(vii) PW 4 was not examined by the IO prior to his examination in the Court. PW 4 failed to disclose the reason why he never went before the police.

(viii) According to PW 4, A1 had assaulted the deceased by bhujali. He has not mentioned about the assault by A4 with a casaurina stick and by A3 with an iron rod. According to PW 4, Budha Panda had thrust the MO-II into the right side chest of the deceased. However, this was not corroborated by the medical report.

(ix) The evidence of PW 4 that A1 had not assaulted the deceased, contradicted PW-1, who stated that it was A1, who alone inflicted the penetrating wounds. Thus, PW 4 did not corroborate PW1.

13. In the first round, this Court, on an analysis of evidence, held in its judgment dated 20th May 2009 that the trial Court was in error in discarding the evidence of PWs 1 and 4 inasmuch as their evidence was corroborated by the doctor who conducted the post-mortem. This Court reversed the acquittal judgment of the trial Court. As already noted, the Supreme Court set aside the said judgment of this Court and remanded the appeal to this Court to be heard afresh.

Submissions on behalf of the prosecution

14. Mrs. Saswata Patnaik, learned Additional Government Advocate for the Appellant-State of Odisha submitted that the evidence of the two eye witnesses PWs 1 and 4 was clear and cogent and free from any major contradictions or inconsistencies. The so-called inconsistencies were not on the material aspects and did not affect the truth and believability of their versions. The trial Court's judgment in discarding their evidence, which was corroborated by the medical evidence, was perverse and could not be sustained in law. It was necessary for this Court, in exercise of its appellate jurisdiction, to interfere with the impugned judgment of the trial court and convict each of the Respondents accused i.e. A1 and A3.

Submissions on behalf of the accused

15. Mr. Kishore Kumar Mishra, learned counsel appearing for Respondent No.1 (A1) and Mr. Lalit Kumar Maharana, learned counsel appearing for Respondent No.3 (A3) submitted as under:

(i) There were contradictions/mis-descriptions in the testimonies of PWs 1 and 4 with regard to the weapon of assault. There was confusion whether A1 was holding a bhujali or a gupti. The postmortem report specifically stated that the penetrating injuries on the deceased were caused by 'gupti' and not by a bhujali. PW 7 maintained that MO-II was never called a gupti and that the wounds were never possible by a bhujali. PW4, who happened to be the uncle of PW 1, and the second eye-witness to the occurrence, did not state before the police that A1 had assaulted both the deceased by means of a gupti. He stated that A1 had assaulted the deceased with a bhujali.

(ii) On behalf of A3, it is pointed out that in the FIR, it is stated that he was

holding a knife. Further PW1 stated that he had seen blood on the weapon of A3 and the other accused.

(iii) Although PW 1 maintained that Budha Panda, Kalia and Rabi Behera were brandishing their respective weapons, PW4, in his evidence, stated that A3 was holding an iron rod and dealt a blow on the face of Kasinath Panda with an iron rod. However, the medical evidence did not corroborate the eye witness testimony in the above regard. Reliance is placed on the decisions in *Ganesh Bhavan Patel v. State of Maharashtra* AIR 1979 SC 135, *Sambasivan v. State of Kerala* AIR 1998 SC 2107, *Ram Kumar v. State of Haryana* AIR 1995 SC 280 and *C. Antony v. K.G. Raghavan Nair* AIR 2003 SC 182.

(iv) On behalf of Respondent No.3, reliance is placed on the decision dated 22nd April 2022 of the Supreme Court of India in Criminal Appeal Nos.430-431 of 2015 (*Jafarudheen v. State of Kerala*); decision dated 13th December 2021 of the Supreme Court of India in Criminal Appeal No.1420 of 2014 (*Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka*) and *State of Orissa v. Udayanath Pradhan* 2013 (II) OLR 228.

(v) The FIR appeared to be ante-timed in order to introduce eye-witnesses to support the prosecution case. In the cross-examination of PW14, it emerged that the FIR was written in the hospital as per the dictation of PW 1 and scribed by PW 14. However, in another portion of his deposition, PW 14 maintains that he did not reduce into writing any FIR. According to him, it was reduced to writing by the SI Akhila Kumar Parida at 2.20 pm and completed at 3.30 pm on 11th August, 1990. The FIR was supposed to have been registered at 2.20 pm and sent to the Court of the S.D.J.M., Puri only the next day at 5.20 pm. This discrepancy in the timing of the registration of the FIR has not been explained by the prosecution. Reliance is placed on the decision in *Dinesh v. State of Madhya Pradesh* AIR 1994 SCW 2210.

(vi) In the inquest held on the dead body of Kashinath on 11th August 1990 in the presence of PW 1, the names of the accused persons and the weapon of offence were not mentioned. This despite PW 14 maintaining that immediately after the registration of the case, he had examined PW 1.

(vii) As regards the recovery of the weapon, PW 14 states that he arrested A3 Kalia on 14th August 1990 at 10 am from Bajragrah AminaJaga at Dolamanda Sahi, Puri. A3 was supposed to have led PW 14 to the Bajragarh Jaga along with two witnesses and supposed to have got recovered one bloodstained bhujali (MO-II) and one small gupti (MO-I). The seizure list showed that four persons had witnessed such recovery. Of these four, only two were examined i.e., PWs.8 and 10. However, both were declared hostile. Therefore, except the evidence of PW 14, i.e., the IO, there was no other evidence to show that A3 while in custody, led to the recovery of weapons and that the exact information provided by him was reduced to writing.

(viii) Kalu Saha whose name appeared in the FIR and who was supposed to be

present during the occurrence according to PW 1, was not named as a witness. His name appeared in the FIR as an accused. In the FIR (Ext-1), PW 1 stated that when he was going to the office of Kalu Saha, he saw one Patanjali coming out of the place. Kalu Saha, Raghu Pujapanda and another journalist were discussing, when the deceased Kasinath Panda soaked in blood entered the office. The said Kalu Saha, Raghu Pujapanda and the journalist were not examined and no reasons have been given by the prosecution.

(ix) PW 1 stated that he saw one Sharangi belonging to the Matimandap Sahi holding an iron rod. PW 1 stated that he could identify Sharangi. While in the FIR, PW 1 claimed not to have seen the assault by any of the accused persons on Kasinath Panda, in evidence, he said that A1 thrust a gupti into the abdomen of Kasinath Panda.

Analysis and reasons

16. At the outset, this Court would like to recapitulate the legal position on the power of an Appellate Court, while dealing with an order of acquittal. In *N. Vijayakumar v. State of Tamil Nadu* (2021) 3 SCC 687, it was held as under:

"20.....Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate 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.”

21. Further in the judgment in *Murugesan v. State*, (2012) 10 SCC 383 relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court not to reverse the acquittal to that of the conviction.

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23. Further, in *Hakeem Khan v. State of M.P.*, (2017) 5 SCC 719 this Court has considered powers of appellate court for interference in cases where acquittal is recorded by trial court. In the said judgment it is held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of trial court cannot be interdicted and the High court cannot supplant over the view of the trial court.”

17. Again, in *Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka* (supra), the above principles were reiterated and it was observed by the Supreme Court as under:

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of

acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark."

18. This Court has carefully perused the evidence of PW 1, who is stated to be the eye-witness. The most glaring contradiction and inconsistency is about PW 1 stating that on the previous day, i.e., 10th August 1990, A1 assaulted the deceased Kasinath Panda, his younger brother on the face, thus giving him a bleeding injury and that later he had also attacked PW 1. However, the evidence of PW 7, the doctor did not reveal any such injury to the face of the deceased Kasinath Panda. PW 7 found the following injuries on the deceased Kasinath Panda:

"(i) One lacerated wound of size length $\frac{1}{4}$ " x $\frac{1}{4}$ " breadth over the left maxillary prominence with swelling around it.

(ii) One lacerated wound of size $\frac{1}{2}$ " x $\frac{1}{4}$ " breadth on the left side of the forehead $\frac{1}{2}$ " above the left eye-brow. There was little swelling and blackening of the left lower eye-lid.

(iii) One elliptical incised wound having sharp angles at the extremities present over the left and medial aspect of the chest $\frac{1}{2}$ " lateral to the mid-sternal line over the second inter costal space.

(iv) Another elliptical incised wound of size $\frac{3}{4}$ " x $\frac{1}{3}$ " breadth over the abdomen just at the junction line of epigastricun and left hypochondriac plane $1\frac{1}{2}$ " above and 1" lateral to the umbilicus."

19. Incidentally, the post-mortem report of Narayan Panda revealed the following

injuries:

"An elliptical wound of size length $\frac{3}{4}$ " x $\frac{1}{4}$ " breadth at the centre having clean cut margins sharp angles at two extremities placed slight obliquely at the 8th intercostal surface on the anterior axillary line of the left chest wall."

20. The cause of death was given as haemorrhage and shock resulting from the penetrating injury to the vital organ like lungs. Thus, an important element of appreciation of the evidence of a related eye-witness, that it should be corroborated by the medical evidence is not fulfilled in the present case.

21. There are also other contradictions in the versions of the two eye witnesses. Although, PW4 stated that A1 had assaulted the deceased persons by means of a bhujali, PW-1 stated that the assault took place with agupti. These two are not similar weapons. Further, PW4 stated that Budha Panda had thrust with MO-II into the right-side chest of the deceased Narayan, but there was no such injury detected by PW 7. The two eye-witnesses, therefore, do not corroborate each other.

22. It also appears that there are improvements made by the two eye witnesses while deposing in the Court. As regards A3, PW 4 states that he dealt a blow on the face of Kasinath with an iron rod, whereas, the only injuries found by PW 7 on Kasinath were one on the abdomen below the ribs on the left side and the second in the second intercostal space between the second and third ribs on the left side of the chest.

23. The trial Court was right in not considering it safe to rely on the inconsistent versions of PWs 1 and 4, whose evidence was in any event not corroborating with each other and further not corroborated by the medical evidence. The failure of PW4 to speak to the police at any time prior to deposing in Court was also not properly explained.

24. The circumstances surrounding the registration of the FIR are also suspicious. PW 14 initially stated that the FIR was scribed by him. However, later he stated that it was reduced to writing by SI Akhil Kumar Parida. The FIR which was supposed to have been registered at 2.20 pm on 11th August 1990 was sent only on the next day at 5.20 pm to the Court of the S.D.J.M. This delay had not been properly explained. The omission to examine Kalu Saha, Raghunath Pujapanda and one 'Sharangi' and a journalist, all of whom found mention in the FIR, has not been explained by the prosecution.

25. The view taken by the trial Court on the above evidence appears to be a plausible one. It need not be upset only because another view is possible to be taken on the evidence on record. Upsetting the judgment of a trial Court acquitting the accused should be only for valid reasons and where the findings are perverse. Learned counsel for the State has been unable to point out in what manner the findings of the trial Court can be said to be perverse.

26. In this context, the following observations in *Ganesh Bhavan Patel v. State of*

Maharashtra (supra) are relevant:

"13.The dictum of the Privy Council in Sheo Swarup v. King Emperor (AIR 1934 PC 227) and a bead-roll of decisions of this Court have firmly established the position that although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should to use the words of Lord Russel of Killowen—"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 the 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." Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal."

27. For all of the aforementioned reasons, the Court finds no ground made out to interfere with the impugned judgment of the trial Court. The appeal is accordingly dismissed but, in the circumstances, with no order as to costs.

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