

(2014) 04 AHC CK 0173

In the Allahabad High Court

Case No : Government Appeal No. 1641 of 1983 and Cr. Revision No. 789 of 1983

State of U.P.

APPELLANT

Vs

Chiraunji Lal

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162(1), 313, 378, 397
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2014) 2 ACR 2285 : (2014) 86 ALLCC 66

Hon'ble Judges : Rakesh Tiwari, J; Kalimullah Khan, J

Bench : Division Bench

Advocate : Wazahat Husain and G.H. Khan, Advocate for the Appellant; K.K. Arora and Kamal Krishna, Advocate for the Respondent

Judgement

Kalimullah Khan, J.—This Government Appeal No. 1641 of 1983, u/s 378 Cr.P.C. and Criminal Revision No. 789 of 1983, under sections 397 and 401 Cr.P.C. have been filed against the impugned judgment and order of acquittal dated 25.3.1983 passed by the then IInd Addl. Sessions Judge, Allahabad in S.T. No. 92 of 1981 (State v. Chiraunji Lal and two others) acquitting the accused-opposite parties of the charge framed against them u/s 302/34 I.P.C. Since both the aforesaid Government Appeal and Criminal Revision emanate from the common judgment and are entwined by same facts and law, therefore, they have been heard together and are being decided by this judgment. The aforesaid impugned judgment dated 25.3.1983 has been challenged on the ground that it is based on conjectures and surmises. The impugned judgment is perverse and against the weight of evidence on record. It is against the law and facts of the case. The learned Trial Court has not followed the settled principles of appraisal of evidence while appreciating the evidence of witnesses on record, therefore, a grave injustice has been caused in acquitting the accused-respondents.

The first informant Tara Chand son of Ram Dulare resident of village Ganpa, P.S. Saini, District Allahabad lodged a written report with Police Station Saini,

Allahabad with an accusation that he had a bicycle repairing shop in Gulamipur Bazar which is looked after by his brothers Prem Chand and Madan Chand. Village Nanwai P.S. Kokhraj is situated at a short distance from his village. In the same Gulamipur Bazar, there is a "Parchoon" shop of Chiraunji Lal and Makhan Lal sons of Babu Lal. Babu Lal is a licensee of DBBL gun. A propaganda arose about two years ago that Kusum Devi daughter of aforesaid Babu Lal had illicit relations with Prem Chand the brother of first informant due to which she conceived pregnancy which was got aborted by her brothers Chiraunji Lal and Makhan Lal. Due to aforesaid stigma nobody is prepared to marry Kusum Devi as a result of which, aforesaid Chiraunji Lal and Makhan Lal sons of Babu Lal and Raja Ram son Panna Lal cousin of Babu Lal bore grudge against Prem Chand.

2. The first informant and his family members were invited to participate in a "Tilak" function at the house of Raja Ram son of Panna Lal, brother-in-law of Madan Chand resident of village Kokhraj. In order to attend that function the first informant, his brother Prem Chand and uncle Daya Ram were waiting for a bus opposite the shop of Hira Lal "Halwai" in Gulamipur Bazar, at about 6.30 P.M.

3. Accused Chiraunji Lal armed with his father's DBBL gun, his cousin Jiawan armed with country made pistol along with Makhan Lal appeared all of a sudden there. Makhan Lal made exhortation to Chiraunji Lal and Jiawan to commit the murder of Prem Chand. The first informant and his companions stood up out of fear whereupon Chiraunji Lal fired with the DBBL gun at the person of Prem Chand who sustained injuries and rushed upto enter into the shop of Hira Lal "Halwai". All the three accused chased Prem Chand and they got him fell down in the "Barautha" of Hira Lal "Halwai". Chiraunji Lal and Jiawan fired with their gun and country made pistols upon Prem Chand intermittently. After hearing the sound of fire Sukh Nandan Yadav resident of village Bhairapur, Ram Saran Tiwari resident of village Gulamipur and other people rushed up towards the scene of occurrence. All the three accused fled away towards east. Prem Chand had died in the "Barautha" of Hira Lal "Halwai" which was noticed by the informant and others. He had sustained firearm injuries on the wrist of his both the hands and both sides of chest apart from right buttock.

4. On the basis of aforesaid written report, Chik F.I.R. was drawn and a case was registered in the General Diary at Crime No. 128 of 1980, u/s 302 IPC on 17.4.1980 at 21.15 hours against the aforesaid three accused.

5. The investigation followed. Recovery of blood plain and blood soaked earth, empty cartridges and pellets etc. were made. Inquest was prepared. Body of deceased Prem Chand was subjected to post-mortem on 18.4.1980 at 5.00 P.M. The deceased was about 22 years of age. Duration of death about two days back. Following ante-mortem injuries were noticed at his body:

1. Fire arm wound of entrance on right forearm inner part, 2-1/2" above wrist 1-1/2" x 1" x communicating with injury No. 2, with inverted black scorched and tattooed margin.

2. Fire-arm wound of exit, on right forearm front lower part 2" above wrist 2-1/2" x 1-1/2" x communication with injury No. 1 without blackening scorching and tattooing with inverted margin.

3. Fire-arm wound on left forearm front upper part 1/2" x 1/2" x 3/4" margin inverted, but no blackening, scorching and tattooing present. No pellet found from it.

4. Fire-arm wound of entrance in right side of abdomen upper part 2" x 1-1/2" x abdominal cavity deep with inverted margins and blackening, scorching and tattooing present around it.

5. Fire-arm wound of exit 5 in number, each 3/10" x 3/10" x chest cavity deep on right side of chest lower part front in an area 4-1/2" x 3-1/2". No blackening, scorching and tattooing present around them. Margins are inverted.

6. Firearm wound of exit 2" x 2" x abdominal cavity deep left side of abdomen outer and middle with loops of small bowed lying out of it. Margins are inverted without blackening, scorching and tattooing.

7. Firearm wound of entrance on right of latal region 4-1/2" x 3" x 3" with fracture of underlying bone (hip bone) with inverted margin and presence of blackening, scorching and tattooing.

8. Firearm wounds of exit, 8 in number each, 2/10" x 2/10" x pelvic cavity deep on left thigh upper and inner part in an area of 3-1/2" x 3" with inverted margins, and without blackening, tattooing and scorching underlying left hip bone is fractured.

6. On internal examination, the doctor found 4 ounces of partially digested food. Both the lungs, heart, diaphragms, small and large intestines, urinary bladder were punctured at several places on account of gun shot wound. Large intestines contained faecal matter. From the dead body he recovered 13 pea sized pellets, and 7 small pellets, one round metallic. He also found wading piece from injury Nos. 4, 6, and 7. He also took from the body of the deceased, one "Bandi" (Ex.-I), Kurta, (Ex.-II), under-wear (Ex.-III), Pajama (Ex.-IV), and kept them under sealed-cover. In his opinion, the death of the deceased was caused on account of shock and haemorrhage. He prepared the postmortem examination report, (Ex. Ka-4).

7. After completing the investigation, the I.O. submitted charge-sheet against all the three accused.

8. The case being committed to the Court of Session the charge against accused Chiraunji Lal and Jiawan u/s 302 IPC was separately framed by the then IInd Addl. Sessions Judge, Allahabad whereas charge u/s 302 read with section 34 IPC was framed against accused Makhan Lal. They denied the charge and claimed their trial.

9. In order to prove its case the prosecution examined eight witnesses, out of

whom Tara Chand (PW-1) is the first informant. Ram Saran (PW-2) and Daya Ram (PW-3) are the witnesses of fact. Rest of the witnesses are of formal nature.

10. The first informant has proved his written report (Ex. Ka-1) and proved the contents of the F.I.R. by deposing that all the three accused Chiraunji Lal, Makhan Lal and Jiawan committed the murder of his brother Prem Chand on 17.4.1980 at 6.30 P.M. in the "Barautha" of Hira Lal "Halwai". Accused Chiraunji Lal and Jiawan had fired with a DBBL gun and country made pistol respectively on the exhortation made by co-accused Makhan Lal.

11. All the three accused were examined u/s 313 Cr.P.C. They denied the prosecution allegations and correctness of the evidence adduced against them. They attributed their false implication in this case. They stated that there was a land situated besides their house whereupon informant and his family members were trying to raise construction which was protested by the accused persons and that is why they have been falsely implicated in this case.

12. Accused were called upon to enter into their defence but they did not adduce any evidence in defence.

13. Having heard learned Counsel for the parties, learned Trial Court came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and therefore, recorded a finding of acquittal of all the three accused u/s 302/34 IPC.

14. Feeling aggrieved, the State of U.P.-appellant has filed Government Appeal while the first informant Tara Chand has preferred Criminal Revision challenging the validity, correctness and propriety of the impugned judgment and order dated 25.3.1983.

15. Heard Sri D.I. Faridi, learned A.G.A. for the State of U.P.-appellant, Sri K.K. Arora, learned Counsel for the accused respondents. Perused the record.

16. A perusal of the impugned judgment and order reveals that the learned Trial Court has recorded findings of acquittal on following grounds:

1. That in his statement recorded u/s 161 Cr.P.C. Ram Saran (PW-2) stated to the I.O. that on 17.4.1980 he was present at his house and he came to know from the villagers that Prem Chand has been injured by bullets in village Gulamipur and his dead body is lying in the "Barautha" of Hira Lal "Halwai" He went to the spot and found the dead body of Prem Chand in the "Barautha" of Hira Lal "Halwai". The Investigating Officer has proved the extract of his aforesaid statement as (Ex. Kha-2). According to the learned Trial Court, it cannot be said that this witness was present at the spot and saw the occurrence.

2. That Tara Chand (PW-1), the first informant of the case and Daya Ram (PW-3) are related to the deceased. Tara Chand is the real brother of the deceased while Daya Ram is the uncle of the deceased. Therefore, their evidence do not deserve to be relied upon. That the evidence of Tara Chand (PW-1) and Daya Ram (PW-3)

cannot be accepted without corroboration from the evidence of independent witnesses. Therefore, the charge of murder of Prem Chand made against the accused persons is not proved.

3. That no independent witness except Ram Saran (PW-2) has been produced but the presence of Ram Saran has not been established on the spot. Hira Lal "Halwai" and his wife Kamala Devi have also not been examined in this case. Although a number of persons were allegedly present there at the spot but none of them has been examined. Therefore, non-production of these witnesses before the learned Trial Court will go to show that these witnesses, if produced, would have not supported the case of the prosecution, therefore, an adverse inference can be drawn against the prosecution for non-production of the eye-witnesses.

4. That the prosecution has filed copy of the report (Ex. Ka-1) to show that deceased Prem Chand had enmity with accused Chiraunji Lal. This report was lodged on 21.8.1978 at 12.30 P.M. but the enmity is a double edged weapon and the complainant may also have a cause to falsely implicate accused Chiraunji Lal on account of the fact that he had threatened the deceased once.

5. That the prosecution has alleged motive for commission of this crime that Kusum Devi, sister of accused Chiraunji Lal and Makhan Lal, who was aged about 16-17 years, had illicit pregnancy from Prem Chand, deceased, this was rumored but since there is no independent witness produced by the prosecution to depose the aforesaid fact, motive is not proved.

17. We are of the considered view that none of the aforesaid grounds upon which the impugned judgment and order is based, is tenable under the law. This is all based on imagination, conjectures and surmises. In the entire judgment no appraisal of evidence of witnesses of fact i.e. P.Ws. 1, 2 and 3 has been made. Not a single line of the evidence has been subjected to critical comments as to why after all their deposition has been disbelieved by the Trial Court. The reason assigned to disbelieve the evidence of Tara Chand (PW-1), and Daya Ram (PW-3) is that they are related to the deceased. The learned Trial Court did not keep in mind the settled principles of appraisal of evidence of witnesses while disbelieving their testimonies. It is finally settled in a catena of decisions by the Hon'ble Supreme Court and also by this Court that the testimony of a witness cannot be disbelieved simply because he is related or interested in the prosecution rather the law requires that his evidence should pass through strict judicial scrutiny. No judicial scrutiny has been made by the learned Trial Court and it has disbelieved the testimonies of P.W. 1 and P.W. 3 simply because they are related to the deceased. Therefore, there has been a grave illegality in not making appraisal of evidence of aforesaid witnesses in accordance with law whereby a grave injustice has been caused because had the learned Trial Court appreciated the evidence of these witnesses as per the cannon and principle of law meant for appreciation of evidence, it could not have recorded a finding of acquittal of accused. Like-wise, learned Trial Court appears to have refused to rely upon the evidence of Ram Saran (PW-2) on the ground that the I.O. says

that at the time of incident he was at his house and after being informed about the commission of the incident of murder of Prem Chand he proceeded for the spot and found the dead body lying in the "Barautha" of Hira Lal "Halwai". Be it known that the statement of a witness recorded u/s 161 Cr.P.C. is not a substantive piece of evidence, it has no corroborative value. This is only a previous statement of a witness which may be used for the purpose of contradiction of his evidence given in the Court. In the Court this witness has clearly and categorically deposed that he saw the entire incident from his own naked eye when he reached at the spot. He saw that all the three accused committed the murder of Prem Chand in the "Barautha" of Hira Lal "Halwai". His evidence is corroborated by the deposition of Tara Chand (PW-1) and Daya Ram (PW-3). The evidence of Tara Chand is fully corroborated by the contents of the F.I.R. promptly lodged by him naming all the three accused with their respective role played in the incident. His evidence is supported from the medical evidence, in as much as eight firearm wounds including wound of entry and exit were found on the body of deceased and six empty cartridges were recovered from the spot. The trail of blood was found between the place where the first shot was given to deceased Prem Chand and the exact place i.e. in the "Barautha" of Hira Lal "Halwai" where the deceased was done to death as it has been elicited by the accused-respondents themselves in the cross-examination of the I.O. The recovery of pellets, empty cartridges and blood from the aforesaid spot of incident lend corroborative support to the testimonies of all these three witnesses. No reason or reasoning whatsoever was assigned by the Trial Court to refuse to consider the evidence of P.Ws. 1, 2 and 3. Daya Ram (PW-3), who have supported the prosecution case. There is no material contradictions in the testimonies of these witnessed inter-se. Their testimonies are further corroborated by the post-mortem report. There is no reason to falsely implicate the accused persons for the murder of Prem Chand. No person would like to spare the real assailants and falsely rope in an innocent person. Learned Trial Court has ignored the previous documentary evidence wherein it was alleged that prior to one and half years of this murder an F.I.R. was got registered by deceased Prem Chand against respondent-accused Chiraunji Lal who had given a threatening to him for dire consequences. The learned Trial Court has mentioned the aforesaid fact but on account of imaginary, conjectures and surmises it tilted the scale of enmity in favour of accused and said that the enmity proved by the prosecution may be the cause of false implication of accused persons. The factum of threatening given by the accused persons to the deceased prior to the incident of his murder has not been disbelieved by the learned Trial Court and neither it has disbelieved the lodging of the F.I.R. by the deceased against accused Chiraunji Lal. Still giving clear chit to accused is something unjustified on the part of the learned Trial Court in view of sufficient incriminating reliable, cogent and clinching evidence against them available on record.

18. In Criminal Appeal No. 1247 of 2008, Bipin Kumar Mondal v. State of West Bengal, decided on 26th July, 2010, the Hon"ble Supreme Court observed that

the issue of motive becomes totally irrelevant when there is direct evidence of a trustworthy witness regarding the commission of the crime. In such a case, particularly when a son and other closely related persons depose against the appellant, the proof of motive by direct evidence loses its relevance.

19. In the instant case, the ocular evidence is supported by the medical evidence--

In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. In *Shivaji Genu Mohite Vs. The State of Maharashtra*, this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the Court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.

20. The finding of the learned Trial Court that the prosecution has not been able to prove the motive alleged in this case is a complete wrong finding which is not based on evidence on record. The motive alleged by the prosecution is embedded in the F.I.R. itself which is prompt one. Prompt lodging of the F.I.R. by itself is a guarantee of its truthfulness as held in *Kripal Singh v. State of U.P.* 2010 (69) ACC 322. The Hon'ble Supreme Court held therein that it is well settled that when soon after the occurrence the F.I.R. is lodged at the Police Station, a false story being cooked up and/or false implication of the accused stands ruled out. Clear allegation has been made therein that Kusum Devi sister of accused Chiraunji Lal and Makhan Lal had conceived pregnancy from deceased Prem Chand which was got aborted by the accused persons but since a rumor had floated in the society, therefore, nobody is prepared to marry the aforesaid lady which became the main cause of anguishment and bearing grudge against him and ultimately the accused persons decided to do away with him and, therefore, armed with deadly weapon committed this incident of murder. The presence of Tara Chand (PW-1) and Daya Ram (PW-3) along with deceased Prem Chand to go to participate in the "Tilak" ceremony cannot be said to be unnatural and improbable. Their presence at the spot is natural and their evidence is worthy of credence which could have been acted upon by the learned Trial Court. The law requires quality of evidence and not quantity of evidence.

21. In this case motive is fully proved and the finding recorded otherwise by the learned Trial Court is perverse, which deserves to be set aside.

22. True, it is that the statement of a witness recorded u/s 161 Cr.P.C. by

Investigating Officer may be used for the purpose of contradiction of the statement of that witness made before the Court but the Court is not bound to place implicit reliance on his previous statement recorded by the I.O. for the reasons more than one. The Court is to appreciate such evidence keeping in mind the entire facts and all attending circumstances of the case. Once a witness appears to be wholly reliable on the basis of evidence recorded during trial, his evidence cannot be brushed aside simply on the ground that the deposition made by him in the Court is in contrast of his previous statement recorded by the I.O. The evidence given by him before the I.O. cannot be used as a evidence as held in *Ram Prasad v. State of Maharashtra* 1999 (39) ACC 303 (SC).

23. Learned Counsel for the respondents-accused has placed reliance on case law of *Bhagwan Das v. State (N.C.T.) of Delhi* 2011 (74) ACC 211 (SCC), wherein the Hon''ble Supreme Court observed that prosecution witness Smt. Dhilllo Devi, who had stated to the I.O. during course of her interrogation that her son accused had stated to her that he had killed Seema but the said witness Smt. Dhilllo Devi resiled from her earlier statement made to the I.O. and deposed in the Court that her son accused had not made any such statement to her. The Hon''ble Supreme Court was of the view that the reason for not supporting the case of the prosecution by the mother of accused was obvious. She wanted to save her son from legal punishment. The Hon''ble Supreme Court has observed that no doubt, a statement to the police is ordinarily not admissible in evidence in view of section 162(1) Cr.P.C., but as mentioned in the proviso to section 162(1) Cr.P.C., it can be used to contradict the testimony of a witness.

24. On the aforesaid observation of the Hon''ble Supreme Court the learned Counsel for the respondents-accused has submitted that Ram Saran (PW-2) is unworthy of credence. Be it known that Ram Saran, P.W. 2 is a named prosecution eye witness in the promptly lodged F.I.R. He has fully supported the prosecution case during trial. It does not stand to reason as to why would he have said to I.O. that he reached on the place of occurrence after the incident was over especially when he had denied to have given such statement to I.O. However, even if, we discard his evidence, there are still sufficient ocular reliable testimony of P.W. 1 and P.W. 3 on record to fasten the guilt on the head of accused persons.

25. In *Namdeo Vs. State of Maharashtra*, the Hon''ble Supreme Court held that it is the quality and not the quantity of evidence which is necessary for proving or disproving of a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused inspite of testimony of several witnesses if it is satisfied about the quality of evidence.

26. A close relative cannot be characterized as an interested witness. He is a natural witness. His evidence, however, must be scrutinized carefully. Learned

Trial Court has disbelieved the testimony of Tara Chand (PW-1), the first informant of the case and Daya Ram (PW-3), who are related to the deceased. Undisputedly, Tara Chand is the real brother of the deceased and Daya Ram is the uncle of the deceased but on the ground of there being related or interested, their testimonies cannot be thrown out. The law requires that the testimonies of such witnesses should pass the test of strict judicial scrutiny.

27. In Dinesh Kumar Vs. State of Rajasthan, the Hon''ble Supreme Court has dealt with the mode and manner of evaluation of the evidence of interested or relation witnesses and held that when eye witnesses are stated to be interested and inimically deposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The true or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyze the evidence of related witnesses and those witnesses who are inimically deposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

28. It is true, as contended, that a transformation has indeed taken place within the last three or four decades and from the query "why should an interested witness be believed" to "why should such a witness be disbelieved" as he is not likely to leave out the real culprits, reflects the anxiety and utter helplessness of Criminal Courts as independent witness tend to turn hostile.

29. We have also gone through the medical evidence and find that it fully supports the prosecution story. Accused Chiraunji Lal fired with a DBBL gun and accused-respondent Jiawan fired with country made pistol causing firearm injuries on the person of the deceased. The deceased sustained firearm wound of entry and firearm wound of exit each 4 in number involving his stomach, chest, armhip and thigh. The medical evidence is fully corroborating the testimonies of the aforesaid prosecution witnesses, namely, Tara Chand (PW-1) and Daya Ram (PW-3). Therefore, they are wholly reliable witnesses. The learned Trial Court has committed an error in disbelieving their evidence.

30. The contention of learned Counsel for the respondents-accused that non-examination of independent witnesses Hira Lal "Halwai", his wife Kamla Devi and other persons present on the spot is fatal to the prosecution, bears no substance. The Hon''ble Supreme Court in Hukum Singh and another v. State of Rajasthan 2000 (41) ACC 662, held that the Public Prosecutor is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he did not propose to examine the remaining persons in that category. This will help not only to the prosecution for relieving itself of the strain of adducing respective evidence on the same point but also helps the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those Courts crammed with cases, but without impairing the cause of justice.

31. It is a matter of common experience that now a days people do not come forward to support the prosecution case only with a view to avoid their own skin likely to be put to some troubles at the hands of the accused. Therefore, no adverse inference can be drawn against the prosecution in this case for non-production of Hira Lal "Halwai", his wife Smt. Kamla Devi and other persons present on the spot.

32. This is a pre-planned and cool calculated murder. The motive is strong and well proved by the evidence of these three witnesses. It is a day light incident. Prompt F.I.R. has been lodged. The parties were well known to each other. They were on inimical terms. Accused Chiraunji Lal has already given a threatening to deceased Prem Chand for dire consequences. A documentary evidence to that effect has already been filed which is neither challenged nor disbelieved by the learned Trial Court. The prosecution case fits in the pattern upon which the motive is alleged against the accused who are named in the F.I.R. Specific weapon has been alleged along with the specific role played by the accused in committing the murder of Prem Chand, deceased. There is no flaw or any defect in the investigation capable of holding that naming of accused persons in the crime is false and otherwise they are entitled to any benefit of doubt. Number of firearm injuries were sufficient in the ordinary course of nature to cause death of Prem Chand. Lengthy cross-examinations have been made to the witnesses but nothing material has been fetched out from their mouth to create any doubt in the veracity of their evidence and under these scenario of facts the finding of acquittal recorded by the learned Trial Court is not a possible view, which is perverse and against the weight of evidence on record.

33. The Appellate Court has a right to make fresh appraisal of evidence and, if the Lower Court judgment is found to be perverse or a wrong view or a view which is not possible, has been taken by the learned Trial Court, this Court would be justified to reverse the said finding of acquittal. This is one of such cases in which the impugned judgment and order deserves to be reversed after setting it aside.

34. The learned Counsel for the respondents-accused has relied on the case law of State of Rajasthan v. Naresh alias Ram Naresh LAWS (SC) 2008-8-49, wherein the Hon"ble Supreme Court held that--

"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. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, Ramesh Babulal Doshi v. State of Gujarat, Jaswant Singh v. State of Haryana, Raj Kishore Jha v. State of Bihar, State of Punjab v. Karnail Singh and State of Punjab v. Phola Singh." In Chandrappa and Others Vs. State of Karnataka, at page 432, this Court observed as under:--

42. 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, reappraise 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.

35. In the result, the impugned judgment and order dated 25.3.1983 is reversed and the finding of acquittal recorded by the learned Trial Court is hereby set aside. In consequence, Government Appeal No. 1641 of 1983 and Criminal Revision No. 789 of 1983 stand allowed. Accused Chiraunji Lal, Makhan Lal and Jiawan are found guilty for the offence punishable u/s 302/34 I.P.C. and they are, accordingly, convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-. In case of default in payment of fine, they are to further undergo a sentence of one year.

36. All the aforesaid three accused are directed to surrender themselves before the Court of learned C.J.M., Allahabad within a month to serve out the sentence awarded to them. In case, they do not surrender within the aforesaid stipulated period, learned C.J.M., Allahabad shall commit them to custody in accordance with the procedure established by law and sent them to jail to serve out the sentence awarded to them. Registry is directed to send copy of this judgment to learned C.J.M., Allahabad immediately for compliance.