

(2014) 10 BOM CK 0137
In the Bombay High Court
Case No : Criminal Appeal No. 383 of 2013

The State of Maharashtra

APPELLANT

Vs

Bharat Manaji Kale and Others

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 378
Evidence Act, 1872 — Section 118
Penal Code, 1860 (IPC) — Section 302, 34, 506

Citation : (2015) ALLMR(Cri) 558 : (2015) 3 BomCR(Cri) 158

Hon'ble Judges : V.L. Achliya, J; S.S. Shinde, J

Bench : Division Bench

Advocate : S.R. Palnitkar, A.P.P, Advocates for the Appellant; M.L. Sangeet, Advocates for the Respondent

Judgement

V.L. Achliya, J.—This Appeal is directed against the judgment and order dated 13/7/2012 passed in Sessions Case No. 24/10 decided by Additional Sessions Judge, Kopargaon, Dist. Ahmednagar. By the impugned judgment, the trial Court has acquitted both the accused. Being aggrieved by said judgment and order, the appellant/State has preferred leave to appeal vide Criminal Application No. 5279/12. The application was partly allowed. Leave to appeal was rejected as against the original accused No. 2 Viz. Smt. Vithabai Manaji Kale and leave was granted to file appeal as against accused No. 1 - Bharat Manaji Kale. In view of the leave to appeal filed by the State granted against accused No. 1, present Appeal is entertained against the respondent/original accused No. 1. We have heard learned Additional Public Prosecutor for the State and Mrs. M.L. Sangeet, counsel appointed to represent the respondent original accused No. 1. With their assistance, we have thoroughly perused the record and proceedings.

2. In brief the facts of prosecution case as unfolded during the course of trial are summarised as under:

[a] Prosecution has approached with the case that the respondent accused No. 1

got married with Baijabai (deceased) in the year 1991. Since after the marriage, the deceased started to cohabit with the respondent. Out of their wedlock, they have begotten two sons and one daughter. They were residing together with accused No. 2 i.e. the mother of respondents/accused No. 1. Accused No. 1 is Shepherd by profession. As part of his profession, accused No. 1 used to carry his sheeps and stay in the agricultural field of person with whom he entered into an agreement to keep his sheeps for grazing in his agricultural field. As a part of profession, he used to move from one place to another alongwith his family.

[b] It is the case of the prosecution that the respondent accused No. 1 was addicted to liquor. He used to ill-treat his wife Baijabai. Number of times, he had beaten his wife under the influence of liquor. In the year 2009, as it was unbearable for her to sustain any more harassment and beating at the hands of her husband, she left her matrimonial house and went to her parents house. On the intervention of relatives of deceased and her husband, the settlement was arrived and respondent/accused has executed "Samzota Patra" on 20/2/2010. By executing the "Samzota Patra" which was scribed on the stamp paper and notarized before the Notary of Public, the respondent/accused made commitment that in future, he will not cause harassment to his wife Baijabai. On 19/2/2010, the respondent/accused and his family which includes his wife, mother, two sons and one daughter, were staying in the agricultural field of one Jagannath Shelke at village Shingave, Tq. Rahata, Dist. Ahmednagar with their sheeps to graze them in the agricultural field of said Jagannath Shelke.

[c] On 20/2/2010, Raosaheb Kale (P.W. 1) the brother of accused informed police posted at Puntamba out post of police station Rahata that wife of his brother Bharat Kale (i.e. accused) has left the house on 19/2/2010, while the members of the family were sleeping and her dead body found to be lying in the well. On the basis of report lodged, police registered the case as accidental death vide A.D. No. 10/10. Police head constable Maruti Avahad to whom investigation was given to make enquiry visited the spot. The dead body of the deceased was taken out from the well. After inquest panchanama, the dead body was referred for postmortem. The spot panchanama was also carried out by police head constable Maroti Avhad. The dead body of the deceased was handed over to her relatives.

(d) After performing last rituals her dead body, on 20/2/2010, the complaint came to be lodged on 21/2/2010 by Anjabhau Kandalkar (P.W. 2) the cousin brother of deceased alleging therein that the respondent accused No. 1 and his mother i.e. the original accused No. 2 had assaulted deceased Baijabai on 19/2/2010. Accused No. 1 has pressed her nose and thrown her body in the nearby well. The complainant has disclosed in his complaint that the information to this effect was provided to him by Ganesh Bharat Kale (P.W. 3) son of deceased and accused No. 1. On the basis of the complaint lodged, the police have registered offence u/s. 302, 506 read with 34 of IPC against both the accused. API Murlidhar Kasar (P.W. 12) attached to police station, Rahata

conducted the investigation. Accused Nos. 1 and 2 were arrested. During the course of investigation, the stick used in assaulting the deceased by accused No. 1 was recovered at his instance. Statement of Ganesh Kale a minor son of the deceased and as that of accused No. 1 came to be recorded. Besides Ganesh, statement of Jagannath Shelke (P.W. 4) owner of agricultural field in whose agricultural field, the accused No. 1 was residing with his sheep and body of the deceased is recovered from the well, came to be recorded. The investigation officer has further recorded statement of Rambhaji Dhumse (P.W. 9) the relative of the deceased and Advocate Radhakrishna Shinde (P.W. 11) the notary who scribed the deed of settlement on 7/10/2009 in between respondent accused No. 1 and his deceased wife Baijabai. After conducting post mortem, autopsy surgeon has opined that the deceased died due to Asphyxia as a result of drowning in the well water. On conclusion of the investigation, as prima facie case was made out, to prosecute the accused for committing offence u/s. 302 read with 34 of IPC, the investigating officer has filed charge sheet against both the accused.

3. Charge was framed against accused u/s. 302 read with 34 of IPC. Both the accused pleaded not guilty to the charge and claimed to be tried. In order to bring home guilt of the accused, prosecution has examined 12 witnesses. The accused have not entered into defence. In nut shell, defence of the accused is as that of total denial and false implication at the hands of in-laws and relatives of deceased Baijabai.

4. The learned Sessions Judge after appreciating the evidence on record, reached to the conclusion that the prosecution has failed to prove guilt against the accused beyond reasonable doubt and acquitted both the accused but Appellant/ State has challenged the impugned judgment and order mainly on the ground that trial Court has not properly appreciated the evidence on record.

5. Learned APP for the State has strongly assailed the reasons and findings recorded by the learned Sessions Judge. It is contended that the testimony of Ganesh (P.W. 3) the sole eye witness examined by prosecution inspires full confidence and can be accepted as a sole basis to hold the accused guilty of offence u/s. 302 of IPC. It is contended that testimony of P.W. 3 remained unshattered. It is further contended that the testimony of P.W. 3 finds due corroboration from the other circumstantial evidence on record, the injury marks of beating were noticed on the body of deceased during the inquest as well as post mortem of the deceased. The deed of settlement executed on 7/10/2009 corroborates the testimony of P.W. 3. It is contended that P.W. 3 is son of accused No. 1 and he had no reason to depose falsely against his father and to rope him in a false case.

6. On the other hand, Mrs. Sangeet, the learned counsel appointed to represent the respondent/accused supported the judgment and order of the trial Court. She has contended that the reasons and findings recorded by trial Court are based upon due appreciation of evidence on record and there is absolutely no

perversity in any of the reasons and findings recorded by the learned Additional Sessions Judge. The learned counsel has taken us through the entire evidence and more particularly testimony of child witness Ganesh (P.W. 3) to point out that the testimony of sole eye witness examined by the prosecution inspires no confidence and his testimony cannot form basis to prove guilt of accused beyond reasonable doubt. It is pointed out that the statement of P.W. 3 was recorded after 23 days after the incident. Prosecution has not explained the delay in recording the statement of P.W. 3 though it is a case of the prosecution that on 20/2/2010, P.W. 3 has disclosed the incident to Anjabhau Kandalkar (P.W. 2) and few other persons who were present near the well where the dead body of the deceased was found. It is further pointed out that the testimony of P.W. 3 is of full omissions and contradictions. There is no corroboration to testimony of P.W. 3 as to material facts regarding the incident deposed by him. The post mortem report and the testimony of Dr. Bhise clearly make out a case of death due to Asphyxia due to drowning in water and rules out possibility of homicidal death. Learned counsel has contended that it is well settled position in law that in a case of acquittal, if the view taken by trial Court is possible or a plausible, then the appellate Court or High Court is not expected to interfere with the judgment of the trial Court. She has further contended that the appellate Court is expected to interfere with the judgment and order passed by trial Court only if it comes to the conclusion that the judgment of the trial Court is utterly perverse and on the basis of the evidence on record, no other view is plausible or possible than the one taken by appellate Court. In support of this proposition, the learned counsel has placed reliance upon decisions of Apex Court in the case of Darshan Singh Vs. State of Punjab and Another, and in the case of M.C. Ali and Another Vs. State of Kerala, .

7. In order to appreciate the submission advanced, we have thoroughly perused the evidence as adduced by prosecution to bring home the guilt against accused. In order to prove its case, the prosecution has examined 12 witnesses.

8. If we consider overall evidence as adduced by prosecution, to bring home guilt against accused, the prosecution has mainly relied upon testimony of Anjabhau Kandalkar (P.W. 2) the complainant, Ganesh Kale (P.W. 3) the son of the deceased i.e. the sole eye witness examined by the prosecution. Prosecution has further relied upon the testimony of Rambhaji Dhumse (P.W. 9) relative of the deceased and Advocate Radhakrishna Shinde, notary public in whose presence the alleged settlement deed dated 7/10/2009 was executed.

9. Since the case of the prosecution is mainly based upon the testimony of sole eye witness Ganesh (P.W. 3), it is necessary to examine the same in minute detail. Prosecution has examined Ganesh as P.W. 3. His testimony is at Exh. 28. P.W. 3 is the son of accused No. 1 and deceased Baijabai. He was examined as a child witness. He has deposed that in the year 2010, he was residing with his father i.e. accused No. 1, grand mother i.e. accused No. 2, Baijabai the deceased mother, brother Ashok and younger sister Sangita. He has deposed that he is

uneducated and his father who is shepherd by profession addicted to liquor. He used to beat him and his mother while under the influence of liquor. He used to give threats that he will kill them. About 4 to 5 days prior to incident, they had shifted with their sheeps in village Shingave. On the date of incident i.e. on 19/2/2010 during the night time, his father i.e. accused No. 1 came under the influence of liquor, he beat him and also beat his mother with stick and then pressed her nose and mouth for a period lasting about 45 minutes. Thereafter, the movements of the body of his mother stopped. Then the accused No. 1 picked up his mother and thrown her in the well which was located at a distance of about 50 ft. Since he was frightened due to incident, he went to sleep. He has further deposed that his grand mother i.e. accused No. 2 also beat his mother. In the morning, his father told him not to disclose about incident to anybody else he will kill him. Lateron, his maternal uncle came there and he disclosed the incident to him. Thereafter, police came to spot Police made enquiry with him. The dead body of his mother was taken out from the well and then it was carried by the police. He has further deposed that after 23 days after funeral, police recorded his statement. After about one month thereafter, he was again called at police station Rahata and then taken to place where the Court officer recorded his statement.

10. The witness was cross examined at length. In the cross examination, he has deposed that police has recorded his statement twice. First statement was recorded in the beginning and the second statement was recorded one month thereafter. He has categorically deposed that his statement was recorded after 23 days after the incident. At the time of recording his statement, Suryabhan and Anjabhau i.e. his maternal uncle accompanied him. He has further deposed that when police recorded his statement, his maternal uncle was with him. He has further deposed that when police came on the spot, he told his maternal uncle about the incident.

11. If we consider the cross examination of P.W. 3 then the defense has brought on record that all the material facts deposed by this witness are by way of material improvement. Most of the facts deposed by him were not stated by him while recording his statement by police as well as recording of statement u/s. 164 of Cr.P.C. Relevant admission brought through cross examination of the witness reads as under:

"I told the police while recording my statement that my grandmother had also consumed liquor. I cannot assign any reason as to why it is not mentioned in my statement. I told the police while recording my statement that due to fear of my father we already had our meal. I told the police while recording my statement regarding beating to me and my brother and sister. I also told the police while recording my statement that my father beat my mother with slaps. I told the police while recording my statement that the distance of well from our place of residence was near about 50 ft. approximately. I told the police while recording my statement that 4 to 5 minutes after chocking her nose and mouth the body

movement of my mother was stopped. I also told the police while recording my statement that I got frightened and therefore, went to sleep. I also told the police while recording my statement that on the next day morning my father gave threat that if I would tell any one about the incident he would kill me. I cannot assign any reason as to why these facts are not mentioned in my statement. I also told the police while recording my statement that my grandmother used to beat and give abuses to my mother frequently. I told the police while recording my statement that my father used to throw the prepared food and he was not allowing us to have food. I cannot assign any reason as to why it is not mentioned in my statement. I told the police while recording my first statement that my father had also brought liquor with him and my grandmother had also consumed liquor. I told the police while recording my first statement that I was awoken and was watching the same in the said condition. I told the police while recording my first statement that I had followed my father by suppressing myself upto the well and I had seen it personally and then again came back and went to sleep. I told the police while recording my first statement that in the morning my father told me that he was not aware about where about of my mother and we should not tell any thing to any one. I cannot assign any reason as to why these facts are not mentioned in my statement."

12. Thus if we consider the testimony of P.W. 3 then it is highly unsafe to rely upon uncorroborated testimony of such child witness. It is well settled position in law that while relying upon the testimony of child witness the Court should be very cautious for the reason that due to tender age of the witness they are susceptible to make exaggeration as well as easily tutored by the person who can influence the mind of such child witness.

13. In the case of K. Venkateshwarlu Vs. The State of Andhra Pradesh, the Apex Court has considered the broad principles to be borne in mind while evaluating and assessing the evidence of child witness. In Para. 9 of the judgment, the Apex Court has observed as under:

"Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the

truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

14. In the case of Dattu Ramrao Sakhare and Others Vs. State of Maharashtra, , Apex Court has held that evidence of child witness can be considered, provided the witness is found to be reliable and there is no likelihood that witness was tutored. The Apex Court has further observed that as a rule of prudence it is desirable to have corroboration to such evidence from other dependable evidence on record. In Para. 5 of the judgment, the Apex Court has observed as under:

"The entire prosecution case rested upon the evidence of Sarubai (P.W. 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the evidence Act provided that such witness is able to understand the question and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record."

15. In the case of Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat, , the Apex Court has observed that the child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily. The court must carefully scrutinize their evidence and only after reaching a conclusion as to the truthfulness in the testimony of such witness, the Court may accept such testimony. In Para. 7, the Apex Court has observed as under:

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it,

there is no obstacle in the way of accepting the evidence of a child witness."

16. In the case of State of M.P. Vs. Ramesh and Another, , the Apex Court after considering the earlier decisions on the point of competence and reliability of testimony of child witness has recorded its conclusion in Para. 14 as under:

"In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

17. Having tested the testimony of P.W. 3 in the light of well settled position in law, we are of the view that it is highly unsafe to rely upon the testimony of P.W. 3. It is pertinent to note that P.W. 3 has categorically stated that accused No. 1 after assaulting deceased by means of stick, pressed her nose and mouth for 4 to 5 minutes and thereafter, the movements of the body of deceased were stopped. Thereafter, the accused No. 1 lifted the body of deceased and then went to well located at a distance of 50 ft. from his house and threw it in the well. If we examine the testimony of P.W. 3 in the light of the testimony of Dr. Bhise, (P.W. 6) an autopsy surgeon coupled with report of post mortem which is at Exh. 41, then it contradicts the oral testimony of P.W. 3. As per Dr. Bhise, the deceased died on account of Asphyxia due to drowning. There is nothing on record to show that the deceased died on account of homicidal death i.e. she was killed and then thrown in the well. On the contrary, the testimony of P.W. 6 and post mortem report clearly make out a case that the deceased died due to drowning in water. P.W. 6 has specifically deposed that after giving pressure on the chest there was copious, profuse, fine white froth at the mouth and nose. He has further deposed that the abrasions which was noticed on the body of the deceased were ante mortem and possible while drowning, when the person tries to save himself from drowning. Thus, the medical evidence as adduced by prosecution rules out possibility that deceased was killed by accused and then her dead body was thrown in the well.

18. It is further important to note that the foot wear of the deceased were seen in the well. It is therefore, difficult to believe that the deceased was allegedly killed by accused and thrown in the well with foot wear in her legs. The injuries which the prosecution has heavily relied provides no corroboration to the testimony of P.W. 3. The defence has brought on record that the injuries are possible otherwise than assault by means of stick. It is pertinent to note that though prosecution has examined Dr. Bhise, but it is nowhere brought on record that the abrasions which were found on the dead body of the deceased i.e. three abrasions which he noticed on the left knee joint were caused by stick article-A

which was allegedly recovered at the instance of accused No. 1. On the contrary, Dr. Bhise (P.W. 6) has categorically deposed that the said injuries are possible while drowning when the person tries to save himself from drowning or same can be possible due to fall on hard and blunt object. No attempt was made by prosecution to correlate the injuries with the alleged stick recovered at the instance of accused No. 2 so as to provide corroboration to oral testimony of sole eye witness i.e. P.W. 3. It is pertinent to note that as per the autopsy surgeon, the injuries were seen on the lateral aspects of left knee joint, whereas, as per the inquest panchanama, the injuries were noticed on the right knee. If we consider the testimony of P.W. 3 that accused assaulted deceased by means of stick and gave 23 blows over her legs then in natural course, the injuries on account of stick would have resulted into contusions and not the abrasions. Therefore, material fact deposed by P.W. 3 as to incident dated 19/2/2010, there is no corroboration as no contusion was noticed on either of the legs of the deceased.

19. It is further pertinent to note that as per the version of P.W. 3, the accused No. 1 has pressed her nose and mouth for 4 to 5 minutes so as to kill her, after she fell down on ground after she was assaulted by stick. If for 4 to 5 minutes accused No. 1 pressed her nose and thereafter, her body movements were found to be stopped, then in natural consequence, the person must have offered resistance to save herself. However, there is no evidence of any physical violence found on the spot nor any injuries on account of resistance offered by deceased to rescue herself by pulling or pushing the accused found on her body. After arrest of accused No. 1 no medical examination was conducted to find out as to whether there was any bodily injury on his person nor any spot panchanama of place where the incident was occurred was carried out by investigating officer. Post mortem report reveals that at the time of conducting post mortem, autopsy surgeon has noted the existence of one bangle in the right wrist and six bangles in left wrist of the deceased. No injuries were noticed on the wrist and hand of the deceased. So also, no pieces of bangles were recovered during the course of investigation. Dr. Bhise has categorically admitted in the cross examination that accused was not brought before him for physical examination. He has further admitted that during the course of resistance by a woman, if she is having bangles in her hand, there is every possibility of causing injuries if she resists. He has further deposed that he had seen bangles in the hands of dead body of the deceased and noticed no injuries on her hands. Therefore, the circumstantial evidence on record nowhere provides any corroboration to the testimony of P.W. 3. On the other hand, the circumstance as brought on record raises serious doubt as to the truthfulness of the ocular version of the incident given by P.W. 3.

20. It is pertinent to note that as per testimony of P.W. 3, he was present near the well from where the dead body of the deceased was taken. He has further deposed that he has disclosed the incident to his maternal uncle Anjabhau (P.W. 2). He has categorically deposed that he has disclosed the incident to police on same day when police visited the place from where dead body of his mother was

taken out from well. However, no F.I.R. was registered on 20/2/2010. The F.I.R. in respect of incident was first time lodged on 21/2/2010 by P.W. 2. He has lodged report on the basis of alleged disclosure made to him by Ganesh (P.W. 3). P.W. 3 has categorically deposed that his statement was recorded by police after 23 days after the incident. If the incident was narrated by P.W. 3 on 20/2/2010, when the body of deceased was found in the well and P.W. 3 disclosed incident to police on that date then offence should have been registered on 20/2/2010. The delay in recording statement of P.W. 3 after 23 days of the incident, itself raises serious doubt as to overall credibility of testimony of P.W. 3. Therefore, the possibility of P.W. 3 being tutored and made to depose against the accused cannot be ruled out in the facts and circumstances of present case.

21. If we accept the version of P.W. 3 that police had made inquiry with him on 20/2/2010, on the spot. If P.W. 3 was fully aware of the incident and narrated the same to police, police ought to have registered offence on same day. The delay in recording the statement of P.W. 3 and lodging of complaint on next day of the incident itself raises doubt as to the truthfulness of ocular version given by P.W. 3. It is pertinent to note that P.W. 3 has admitted in cross examination that after funeral was over, his maternal uncle has taken him and his brother and sister to his house and all the belonging in the house were also taken away by them. He has further deposed that all the sheeps owned by his father were taken by him. It is pertinent to note that P.W. 3 has deposed that whenever he went to police station for recording statement, his maternal uncles were with him.

22. If we consider the testimony of P.W. 3 and his conduct as on 19/2/2010 and on 20/2/2010, then it again raises serious doubt as overall the credibility and truthfulness as to account of ocular incident dated 19/2/2010 narrated by him. P.W. 3 has deposed that after his father pressed nose and mouth of his mother, some time thereafter her body movement was stopped and his father lifted her body and threw it in the well located at 50 ft. away from his house. He has further deposed that he had followed his father upto well by hiding himself, when his father was taking body of his mother for throwing it into well. This conduct of P.W. 3 who is uneducated child witness, appears to be quiet unnatural and sufficient to draw inference that he has tendency to make exaggeration. So also he being tutored to depose against the accused cannot be ruled out.

23. It is further pertinent to note that P.W. 3 has deposed that on 20/2/2010, after he woke up in the morning, he milked the sheep and then went to nearby dairy farm to supply the milk. He has deposed that dairy at which he supplied the milk located at a distance of 2-3 kms., from the place where the sheeps were lying. He has further deposed that he did not went in search of his mother. He was performing his normal pursuits till 8 a.m. This conduct of P.W. 3 to follow his normal pursuits when he had seen his mother being killed by father and thrown in the well itself appears to be abnormal and raises serious doubt as to truthfulness as to facts relating to incident deposed by him.

24. It is further pertinent to note that P.W. 3 has admitted that accused No. 2

was blind by birth and she could not walk without the support from other person. It is difficult to believe that blind lady of 70 years had assaulted deceased alongwith accused No. 1 and involved in causing homicidal death of her daughter in law as well as in disposing of her body i.e. to throw her body in the nearby well. This exposes tendency on the part of P.W. 3 to falsely rope in the person other than his father in the incident. Therefore, possibility of P.W. 3 being tutored and made to depose as per the instructions of his maternal uncle cannot be ruled out in the facts and circumstances of the case.

25. It is further pertinent to note that as per prosecution story on the date of incident, P.W. 3 and his other brother Ashok and sister Sangita were present on the spot and sleeping on the bed with their grand mother i.e. accused No. 2. However, the investigating officer had made no attempt to record their statements to ascertain the truth.

26. In view of the discussion made in foregoing paras, we are of the view that the reasons and findings recorded by the trial court to discard the testimony of P.W. 3 to form the basis to hold the accused guilty of offence cannot be said to be perverse or based upon improper appreciation of evidence. In our view, the judgment of the trial Court is well reasoned and based upon due appreciation of evidence on record. It is settled position in law that while dealing with an Appeal by High Court the High Court has power to reconsider the whole issue, reappraise the evidence and to come to its own conclusion and findings, in place of the findings recorded by the trial Court, if said findings are against the evidence on record, or in other words perverse. While dealing with the appeal against an acquittal, High Court has to keep in mind that the presumption of innocence is still available in favour of the accused and same stands fortified and strengthen by order of acquittal passed in his favour by the trial Court. It is also well settled position of law that if on fresh scrutiny of the evidence and other material on record, if the High court is of opinion that there is another view which can be reasonably taken then the view which favours the accused should be adopted. High Court is expected not to substitute its own finding on a totally different perspective unless it arrives at a different conclusion when the findings recorded by trial court are perverse. The learned counsel for the respondent has rightly placed reliance upon the judgment of Apex Court in the case of Darshan Singh Vs. State of Punjab and Another, cited supra, wherein in paragraph No. 62, the Apex Court has considered the scope of interference in exercise of appellate jurisdiction by appellate Court in a case wherein acquittal of accused has been challenged and falls for consideration of appellate Court. The Apex Court observed in para 62 as under:

"In a case of acquittal, if the trial Courts view is a possible or plausible view, then the Appellate Court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial Court. The Appellate Court or the High Court would not be justified in reversing

the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the Appellate Court or the High Court."

27. The learned counsel for appellant has further relied on decision in the case of M.C. Ali and Another Vs. State of Kerala, , wherein the Apex Court has again considered scope and ambit of exercise of appellate power by appellate Court and observed in para 44 as under:

"This settled proposition of law has been reiterated by this court in the case of Chandrappa and Others Vs. State of Karnataka, . In this case, the provisions of Section 378 of the Code of Criminal Procedure, 1973 were critically examined. After adverting to numerous decisions of this Court, it was observed as follows:

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, 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, every strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language, to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

[4] An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly the presumption of innocence 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.

From the above, it becomes evident that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate court should not disturb the findings of acquittal. The acquittal re enforces and reaffirms the

presumption of innocence of the accused. The High Court in fact, makes a reference to the judgment of this Court in the case of Kali Ram Vs. State of Himachal Pradesh, , wherein this Court has observed:

Another golden thread which runs through the web of the 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."

28. Thus on considering over all evidence on record and guiding principles, to be followed while exercising appellate powers against the judgment and order of acquittal, we are of the view that no case is made out by appellant state to call for the exercise of appellate Court jurisdiction by this Court against the impugned judgment and order. In our view, the reasons and findings recorded by trial Court are just, proper and fully based upon due appreciation of evidence on record as well as settled position in law. We are therefore, of the view that there is no merit in the Appeal preferred by appellant state. Accordingly, we dismiss the Appeal.

29. In consequence of dismissal of Appeal, respondent/accused No. 1 deserves to be release, who is lying in jail as could not furnish bail. We therefore, direct that respondent/accused No. 1 be released forthwith if not required in any other case. We record our deep appreciation for assistance rendered by Mrs. M.L. Sangeet, Advocate appointed to represent respondent/accused No. 1, who could not afford to furnish bail as well as to engage advocate to represent him before this Court. The learned counsel appointed for the accused has meticulously prepared the brief for argument and ably argued the matter. We quantify legal fees to be paid to her by High Court Legal Services Authority, Aurangabad as Rs. 4000/- [Rs. Four thousand only].