
(2003) 06 BOM CK 0120
In the Bombay High Court
Case No : Criminal Appeal No. 511 of 1987

The State of Maharashtra

APPELLANT

Vs

Haribhau Krishnaji Deshmukh and Others

RESPONDENT

Date of Decision : 13-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 379, 390, 417, 418
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 304

Citation : (2003) 2 ALD(Cri) 111 : (2003) BomCR(Cri) 1233 : (2003) CriLJ 3639 : (2003) 4 MhLj 1060

Hon'ble Judges : V.G. Palshikar, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : F.R. Shaikh, app, for the Appellant; R.R. Bhosale, for Respondents 1, 2, 4 and 11, for the Respondent

Final Decision : Dismissed

Judgement

Palshikar, J.—By this appeal the State of Maharashtra has challenged the order passed on 25-2-1987 by the 2nd Additional Sessions Judge, Raigad, Alibag in Sessions Case No. 106 of 1983 acquitting the accused of all the charges levelled against them. The facts giving rise to this appeal stated briefly are that one Hari was employed as a cow boy by one of the accused. There was some dereliction of duty on the part of Hari and therefore he was slapped by two of the accused. Accused No. 1 twisted his ear and slapped him on his face. This Hari is of very young age and felt insulted by the assault and therefore did not go on duty on the next day. This gave rise to heated verbal exchange of words between the family of the deceased and the family of the accused. Altercations took place. It is alleged that one Baban, member of the family of the complainant received severe beating and thrashing as a consequence of which he died. Some other members of the complainant's family were also injured. The accused belong to one family and the complainant belong to one tribal known as Katkari, residing in the tribal area of Raigad district. The complainant thereafter was rushed to the police station. Investigation was carried out and 11 accused were prosecuted for

offences under Sections 147, 148, 149, 323, 324, 336, 426, 452, 504 and Section 304 and 201 of the I.P.C. The learned Trial Judge on appreciation of the entire evidence on record which consists of 15 witnesses, examined by the prosecution and various documents executed by the police during the course of investigation, came to the conclusion that the prosecution has failed to prove all the charges levelled by them against the accused and therefore proceeded to acquit the accused by the judgment dated 25-2-1987 which is impugned in this appeal by the State.

2. We have noticed that when this Bench was assigned the work of taking old criminal appeals in which the accused persons were on bail, in most of the cases the appeal is by the State, challenging the acquittal because the accused are on bail and these matters were given the backseat, which resulted that the matter right from the year 1987-88 are still pending. For all these years i.e. about 15 years these accused persons are on bail, by and large there is no complaint of anyone has committed some other serious cognizable offences and the question which therefore perplexes, this court almost in every appeal against the acquittal, is whether the powers of the appellate court u/s 378 of Cr.P.C. 1973 are liable to be exercised to upset the acquittal made 15 years ago when the accused who were acquitted are on bail of all these years. What will be the consequence of they are being put in jail after a period of 15 years on the ground that the order by which they were acquitted was so bad and therefore not sustainable in law. Related questions as to what should be the sentences to be imposed in such cases, what purpose would be served by sending the accused persons to jail, what purpose would be served by convicting them after so many years? Why the acquittal requires such reversal? Infact, we have given our serious thought to all these questions and in our opinion basically the matter would centre around as to whether after 15 years the order of acquittal should be set aside or not and if so, what should be the circumstances in which the powers be exercised by this court irrespective of the passage of time.

3. With this object in mind, we will look into the entire case law on the point as settled by the Supreme Court of India beginning with the first available decision of the Privy Council, which is reported in *Sheo Swarup and Others vs. King Emperor*. That judgment is obviously under the Cr.P.c. 1898. At that time the relevant section of appeal against acquittal was Section 417. The Bench of five Honourable Judges of the Privy Council heard the question of scope and extend of powers of the High Court u/s 417 of 1898 Code in relation to reversal of the order of acquittal. Five Judges of the Privy Council took a very serious view and observed as under.

"It cannot be said that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered", or has "though incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted or misconducted

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

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness."

4. Therefore, it will be seen that the Privy Council was firmly of the opinion that the order of acquittal should not be interfered with unless the court has (1) "obstinately blundered" or has (2) "through incompetence stupidity or perversity" has reached such "distorted conclusions as to produce a positive miscarriage of justice", (3) or has "in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice." From the observations of the Privy Council quoted above it will be seen that so many cautions were therefore suggested by the Privy Council, before the High Court should embark on setting aside the order of acquittal. In our opinion, therefore, an order of acquittal can be set aside according to the Privy Council if the view taken by the trial Judge is unsustainable in law and perverse for any of the reasons quoted above.

5. In our opinion, this was a very strict view of the provisions of Section 417 taken by the Privy Council of India.

6. The question was thereafter taken up by the Privy Council again in AIR 1945 151 (Privy Council) . Here the Privy Council then observed as under:

"The High Court has full power to review at large all the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. Where the High Court judgment shows that they have been at pains to deal in detail with the reasons given by the Sessions judge for disbelieving the group of witnesses, and they have dealt in detail with them, showing on the face of their judgment and there is no necessity to presume in this case that they have not done their duty, there is no ground for invoking the assistance of the Board on account of any miscarriage of justice or the like matter. The Board will always assume that a Court has followed the proper practice unless something appears which proves the contrary."

7. It will thus be seen that the Privy Council also in AIR 1945 did re-iterate the

strong words used by it earlier in AIR 1934, maintained that the High Court has full power to review the judgment of acquittal and on proper reappraisal of evidence by viewing the reasons given by the Sessions Judge, can always interfere with the order or acquittal.

8. A two Judges Bench of the Supreme Court of India took up this question in *Surajpal Singh and Others Vs. The State*, . The Supreme Court observed thus:

"It is well established that in an appeal u/s 417 the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled, that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court, and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

9. So the initial opinion of the Supreme Court also supported the opinion that was expressed by the Privy Council. According to the Supreme Court, the order or acquittal can be interfered with only for very substantial and compelling reason though the High Court has full power to review the evidence in that case.

10. A three Judges Bench of the Supreme Court of India in *Sanwat Singh and Others Vs. State of Rajasthan*, again considered the provisions of Section 417 and 423 of the Cr.P.C. 1898. The Supreme Court reiterated the earlier position by observing thus:

"In an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal is founded. The principles laid down in *Sheo Swarup and Others vs. King Emperor* afford a correct guide for the appellate court's approach, to a case in disposing of such an appeal and the different phraseology used in the judgments of the Supreme Court, such as (i) substantial and compelling reasons, (ii) good and sufficiently cogent reasons, and (iii) strong reasons, are not intend to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those, reasons in its judgment, which lead it to hold that the acquittal was not justified. *Sheo Swarup and Others vs. King Emperor* AIR 1945 151 (Privy Council) and *Surajpal Singh and Others Vs. The State*, , Explained, Case law referred."

11. The Supreme Court specifically observed that the principles laid down in *Sheo Swarup*'s case by the Privy Council afford a correct guide for the appellate court's approach in disposing of such an appeal against acquittal. In our opinion the very strict phraseology used by the Privy Council is tuned down by the Supreme Court of India as is observed by it with the phraseology used in the judgment of the Supreme Court such as (i) substantial and compelling reasons, (ii) good and sufficiently cogent reasons and (iii) strong reasons are not intended

to curtail the power of an appellate court in an appeal against acquittal. It thus took out a harshness of the words used by the Privy Council in saying that the trial court has obstinately blundered or has through incompetence, stupidity or perversity reached such distorted conclusion and said reasons should be positively substantial.

12. It will thus be seen that the power of interfering with the order of acquittal is equal to that of interfering with the order of conviction and it can be done for substantial and compelling reasons or it may be said that sufficient and cogent reasons or for strong reasons. In effect what has been laid down is that unless appeal has strong reasons to interfere with the order of acquittal it need not be done.

13. This question of extend of powers of the High Court to deal with the order of acquittal was then taken up by a five Judges Bench of the Supreme Court of India. The five Judges Bench, by reviewing the old case law existing till then observed that:

"There is no doubt that the power conferred by Clause (a) of Section 423 (1) which deals with an appeal against an order of acquittal is as wide as the power conferred by Clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with and appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeal, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that, however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. *Sheo Swarup and Others vs. King Emperor* (2) and AIR 1945 151 (Privy Council) , Ref."

It took notice of the earlier judgment of the Supreme Court and observed as under:

"The test suggested by the expression "substantial and compelling reasons" for reversing a judgment of acquittal, should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings recorded therein as perverse, *Surajpal Singh and Others Vs. The State*, and *Ajmer Singh Vs. The State of Punjab*, and *Sanwat Singh and Others Vs. State of Rajasthan*, and *Harbans Singh and Another Vs. State of Punjab*, , Ref.

The Supreme Court then laid down what the Supreme Court should do in dealing with the orders passed by the High Court reversing the order of acquittal passed by the trial court. It observes thus:

The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case, is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous. In answering this question, the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 the Supreme Court would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence."

12-A. In our opinion, we in the High Court also should consider those very questions and apply them to the order of acquittal and only when the answers are not satisfactory, that we should interfere with the order of acquittal.

13-A. We have seen how the questions was considered by various Benches of the Supreme Court, First it was two Judges Bench and then it was three Judges Bench and now it is five Judges Bench. The law as laid down by the Supreme Court in its judgment in *M.G. Agarwal Vs. State of Maharashtra*, , in our opinion, is final statement of law and it is permissible in the High Court to exercise its power to interfere in the order of acquittal only in cases where substantial and strong reasons exists.

14. Again in *Durgacharan Naik and Others Vs. State of Orissa*, this position of law was re-iterated as under:

"The power conferred by Clause (a) of Section 423 which deals with an appeal against an acquittal is as wide as the power conferred by Clause (b) which deals with an appeal against conviction. Thus, the High Court's power in dealing with criminal appeals are equally wide, whether the appeal in question is one against acquittal or against conviction. The test suggested by the expression "substantial and compelling reasons" for reversing a judgment of acquittal is not to be

construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings as perverse. Sanwat Singh and Others Vs. State of Rajasthan, and Sheo Swarup and Others vs. King Emperor and M.G. Agarwal Vs. State of Maharashtra, . Rel.on."

15. It will thus be seen that through out it has been maintained by the Supreme Court that in order to justifiably interfere with the order of acquittal there must exist substantial and compelling reasons.

16. In Caetano Piedade Fernandes and Another Vs. Union Territory of Goa, Daman and Diu Panaji, Goa, again three Judges Bench of Supreme court of India tackled this question. The Bench laid down that High Court in exercise of its appellate power should not disturb an acquittal merely because it thinks that another view is better or more preferable. The observations of the Supreme Court read thus:

"It is now well settled that though the Appellate Court has the same powers as the trial court of appreciating evidence and coming to its own conclusion on questions of fact, it should not interfere with an acquittal, unless it finds that the view taken by the trial Court is unreasonable or perverse. If the view taken by the trial court is a reasonably possible view, the appellate court should not disturb an acquittal merely because it thinks that another view is better or more preferable."

17. The three Judges Bench of the Supreme court has laid down that though the High Court has the power on reappreciation of evidence in a trial, it cannot interfere with the order of acquittal merely because it take a different view of the evidence on reappreciation. In our opinion it means that where two views are possible on appreciation of evidence and the court ordering acquittal, has taken one view, it is reasonably possible and the appellate court enquiring into the correctness of the acquittal on reappreciation takes another view, but according to the criminal jurisprudence, benefit must go to the accused and the High Court should refrain from interfering with such acquittal.

18. This position mentioned by us in the foregoing paragraphs was reiterated by the Supreme Court in Tota Singh and Another Vs. State of Punjab, . It observes thus:

"The mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived

at by any Court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one the Appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

19. Then in *Awadhesh and Anr Vs. State of Madhya Pradesh*, , two Judges Bench of the Supreme Court again stated that there are circumstances in which the High Court would be justified in interfering with the acquittal. The observations of the Supreme Court read as follows:

"Although the powers of the High Court to reassess the evidence and reach its own conclusion are as extensive as in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always given proper weight and consideration to matters e.g. (i) the view of the trial judge as to the credibility of the witnesses, (ii) 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; (iii) the right of the accused to the benefit of any doubt, and (iv) 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. If no appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial Court for acquitting the accused, and the other for convicting the accused in such a situation the rule of the prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. Unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. In the instant case, the High Court did not hold that the view taken by the trial Court was not a possible view but reappraised the evidence and took a different view and it explained the infirmities of the prosecution pointed out by the Sessions Judge. The High Court could be said to have disregarded the rule of judicial prudence in converting the order of acquittal to conviction. (Cri.Appeal No. 936 of 1983 of 3-9-1986 (MP) Reversed)."

20. Then in *Ashok Kumar Vs. State of Rajasthan*, the Supreme Court observed the question by a different angle and pointed out, when interference by High Court in an order of acquittal is a must and observed thus:

"Law is well settled. While caution is the watchword, in appeal against acquittal as the trial Judge has occasion of watch demeanour of witnesses and interference should be made merely because a different conclusion could have been arrived, the provision does not inhibit any restriction of limitation. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless."

"Where the trial Judge apart from deciding the case on irrelevant considerations, criticizing the doctors without any basis, the must serious error of which he has guilty and which rendered the order infirm was that he misread the evidence and indulged in conjectural inferences and surmises. The High Court could not be said to have exceeded its power in setting aside order of acquittal."

21. In , the Supreme Court again reiterated the fact that the presumption of innocence of a person is only strengthened by the order of acquittal and the High Court should be very conscious in interfering. It may be so if there is absolute assurance of the guilt of the accused upon appreciation of evidence on record. The observations of the Supreme Court read thus:

"Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by judges while dealing with appeals against acquittal. No doubt, the High Court has full power review the evidence and to arrive at its own independent conclusions whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate court has to bear in mind, first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him he would retain that benefit in the appellate court also. Thus appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interferes with or disturbed."

22. In our opinion, the scope and extend of powers of the High Court u/s 379 of the 1978 Code is well defined and has been disclosed by the above referred judgment of the Supreme Court of India. In our opinion, the consistent and well settled law on the point is that the High Court can interfere with the order of acquittal only when:

- 1) The appreciation of evidence by the trial court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence.
- 2) Where the application of law is improperly done.
- 3) Where there is substantial omission to consider the evidence existing on record.
- 4) The view taken by the acquitting court is impermissible on the evidence on record.
- 5) If the order of acquittal is allowed to stand it will result the miscarriage of justice.

23. We will have therefore to apply this test of strong and compelling reasons to

interfere with the order of acquittal every time. We will be applying these principles in the present case to determine whether the interference with the order of acquittal impugned in this case is must.

24. In the instant case, we have already narrated the facts in the beginning. The prosecution examined in this case as many as 15 witnesses to prove that the accused were jointly responsible for the death of Baban. On appreciation of the evidence the learned trial Judge came to the conclusion that the prosecution has miserably failed to bring home the guilt and therefore proceeded to acquit all the accused persons. This acquittal is impugned in this appeal on several grounds mentioned in the memo of appeal. We have with the assistance of the learned Prosecutor and the learned counsel for the respondent/accused reappraised the evidence on record. P.W. 1 is the Circle Inspector who drew the map of the spot where the incident occurred. P.W. 2 is the person who lodged and proved FIR. He is not an eye witness. He went to report the matter to the police at the instance of his brother who was the father of the deceased Baban. P.W. 3 was an independent witness who has turned hostile. P.Ws. 4 to 10 are the close relations of the deceased Baban. All of them stated that it was the accused who murdered Baban. P.W. 12 is the Doctor who carried out the post mortem. P.W. 13 is the Head Constable and P.W. 14 is the Investigating Officer who proved various statements recorded by him which were contradicting P.Ws. 4 to 10.

25. On reappraisal of the evidence of P.W. 4 father of the deceased, we found several infirmities. Initially this witness implicated only accused Nos. 1 to 4, 6 and 11. He does not state anything about what accused No. 11 did. There are various omission in his deposition and there are several improvements in his deposition i.e. improvement upon his earlier statement. For instances he did not state in his statement that accused No. 6 was carrying stick and stone. He did not state before the police that he fell unconscious while witnessing the assault. There is definite improvement by this witness in his deposition when he says that accused No. 2 was holding the neck of the deceased and dragged him, is the improvement because such statement is not made before the police when his statement was recorded. Yet another serious improvement is attributing axe blow to accused No. 1 when no such allegation was made in the statement made to the police. The learned counsel appearing for the defence pointed out several other omissions and improvements by contending that this witness could not be relied upon at all. Similar is the case of deposition of P.W. 5 who in his examination-in-chief contradicts the statement of P.W. 4 of the point of assault and the weapon used. In his evidence also there are serious improvements and omissions. We have, as aforesaid, reappraised the evidence of all other witnesses and the evidence of almost all of them are suffers from similar infirmities. We agree with the learned trial Judge that there is no doubt that death of Baban was homicidal.

26. We have scrutinised the order passed by the learned trial Judge who had the opportunity of watching the demeanour of the witnesses and who made first, in

appreciation of the evidence on record. He has given adequate reason for holding that the evidence of all these persons is not enough to hold that the prosecution has proved beyond reasonable doubt the involvement of any of the accused in the commission of the alleged crime. The reasoning given by the learned trial Judge is liable to be completely accepted. We have observed in para 25 of his judgment thus:

"I have shown above that there are number of contradictions and material omissions in the evidence of all the eye witnesses which create a rather hazy picture of the incident. In the instant case, admittedly all the eye witnesses are close relatives, they being the members of the same family and therefore, their evidence on face of it is certainly that of partisan witnesses who are interested in hooking the accused somehow in the alleged offences. Shri D.N. Patil the learned Advocate for the accused urged that the evidence of these witnesses bristles with not only discrepancies in material particulars like the manner of assault, the identify of the assailants and the weapons used by them but also it attempts at impossible and in addition there is a tendency to implicate innocent persons viz. accused Nos. 5, 7, 8, 9 and 10. None of the eye witnesses have implicated these five accused persons at all. There is not even whisper about their presence at the time of the alleged incident. It is true that evidence of partisan or interested witnesses cannot be rejected in a mechanical manner simply because it is so partisan or interested. What is required to be appreciated in case of such evidence is to ascertain whether it strikes as genuine. This principle will have to be borne in mind while judging evidence of eye witnesses in this case. I have pointed out more than once that these witnesses have given versions of the incident before the court which runs counter to their version before the Investigating Officer. The Supreme Court has observed in the case of *Namdeo Daulata Dhayagude and Others Vs. State of Maharashtra*, that where a story narrated by the witnesses in his evidence before the court differs substantially from that set out in his statement before the police and there are number of contradictions in his evidence not on mere matters of details but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of the accused. By applying the ratio of this Supreme court ruling to the case on hand it can safely be said that prosecution case as disclosed through the evidence of eye witnesses is highly suspicious."

27. We then proceed to point out that the independent persons were available, not related to the complainant family, but was not forthcoming from the prosecution. He therefore proceeded to acquit all the accused persons.

28. In such state of affairs we confirm the finding recorded by the trial Judge. In our opinion, these findings are not perverse. In our opinion, there is no strong and compelling reason to interfere with such well balanced order of acquittal made on proper appreciation of the evidence on record. We therefore dismiss the appeal against the acquittal. We hereby confirm the acquittal, and bail bond if any executed u/s 390 Cr. P.C. stands cancelled.