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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 889/2017

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Ritesh Kumar Bahri, APP with Mr.
Lalit Luthra and Ms. Divya Yadav,
Advs.

versus

MURAIIF QAMAR & ANR

.....Respondents

Through: Mr. M. Sufian Siddiqui, Mr. Rakesh
Bhugra, Mr. Md. Niyazuddin and Mr.
Mohammad Mazhar Ahmed, Advs.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE MADHU JAIN****JUDGMENT****PRATHIBA M. SINGH, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the State of NCT of Delhi under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter, 'CrPC') challenging the acquittal of the Respondents *i.e.*, Respondent No.1- Muraif Qamar and Respondent No. 2- Irshad Ali @ Deepak, *vide* the judgment dated 22nd December, 2016 (hereinafter, '*impugned judgment*') passed by the Id. Additional Sessions Judge-02/FTC, New Delhi District, Patiala House Courts, Delhi in *Sessions Case No. 117/2013*. The present case arises out of



FIR No. 10/2006 registered at PS. Special Cell.

Background

3. The background of the present case is that Respondents *i.e.*, Muraif Qamar and Irshad Ali @Deepak who claimed to be informers for the Special Cell of the Delhi Police and Intelligence Bureau (hereinafter '*IB*') faced trial for offences punishable under Sections 121, 121A, 122, 123 read with Section 120 B of the Indian Penal Code, 1860 (hereinafter, '*IPC*'), Section 25 of the Arms Act, 1959 and Sections 4 and 5 of the Explosive Substance Act, 1908. The present appeal has a long history.

4. The Respondents claimed that they were working as informers for the IB and Special Cell of Delhi Police since the year 2000. The stand of the Respondents is that when they were asked to go undercover into a Terrorist Camp at Jammu and when they refused to do so, they were falsely implicated in an incident which led to the trial in the present case.

5. The incident in the present case took place on 9th February, 2006, when certain information is stated to have been received by the Special Cell of the Delhi Police from a secret informer. The Special Cell was informed that the Respondents would be coming from Jammu to Delhi in a JKSRTC Bus along with a considerable cache of arms, ammunition and explosives. Upon the said information being received, a team of Special Cell of the Delhi Police under the supervision of Inspector Sanjay Dutt, a team comprising various police officers including SI Vinay Tyagi, SI Ravinder Tyagi, SI Rahul Kumar Singh, SI Pawan, SI Dalip Kumar, ASI Anil, ASI Shahjahan, HC Rustam Ahmed, HC Krishna Ram, HC Nagender, Ct. Rajinder and Ct. Rajiv



was formed immediately to act on the said information. The said team went to the Mukarba Chowk, near G.T. Karnal Road in three private cars and two two-wheelers which was recorded *vide* DD No. 15.

6. Upon reaching Mukarba Chowk, the secret informer met two officials of the Special Cell of the Delhi Police. Thereafter, a JKSRTC Bus bearing no. JK-02-0299 arrived at Mukarba Chowk, near G.T. Karnal Road. At 7:35 PM, some passengers are stated to have alighted and Respondents were identified by the informer and accordingly, the Respondents were apprehended.

7. Upon search, the following cache items were recovered from the Respondent No.1- Muraif Qamar:

- i. A Chinese Star make loaded pistol of .30 bore containing 8 live cartridges;
- ii. White envelope with three non-electronic detonators; and
- iii. One ABCD timer of green colour and one ABCD timer of cream colour.

8. In case of Respondent No. 2-Irshad Ali @ Deepak, the following items were recovered:

- i. A Chinese Star make loaded pistol of .30 bore containing 8 live cartridges.
- ii. A black coloured polythene in which a mixture of black and white oil based explosive is allegedly concealed, weighing two kilos.

9. The Respondents were, thereafter, arrested and ***FIR No. 10/2006*** was registered at PS. Special Cell under the provisions mentioned above. Charges were framed *vide* order dated 20th May, 2016 under Sections 121, 121 A,



122, 123 read with Section 120 B of the IPC, Section 25 of the Arms Act, 1959 and Sections 4 and 5 of the Explosive Substance Act, 1908. Both the Respondents pleaded not guilty.

10. During the course of trial, evidence was recorded of various witnesses and finally, the Trial Court *vide* the impugned judgment acquitted the Respondents. The findings of the Trial Court are recorded in paragraphs 44, 47 and 48 of the impugned judgment. The said findings of the Trial Court read as under:

“44. From the statements of PW1, PW6 and PW7 recorded in their cross-examination, the following circumstances come to light:

- 1. Private vehicles were used by the police team during their raid. The details of these vehicles have not been mentioned in the DD Entry. No logbooks of use of private vehicles have been maintained. None of them could recall the registration numbers of these private vehicles. PW7 in cross-examination has stated that their office has been provided unmarked vehicles of make Mahindra Scorpio and Maruti Gypsy but the same were not used in the raid. He tried to explain that these vehicles could be easily recognized by the accused persons as belonging to the police.*
- 2. The site plan Ex.PW1/D1 does not reflect the place where the police officials were standing. While PW1 and PW6 could state the point in the site plan where they had been placed but could not state where other members of the police team were standing. The site plan does not reflect the place where the police vehicles had been parked.*



3. *Admittedly only passersby were asked by the police team to join the investigation. PW1, PW5 and PW6 do state that a DTC Depot, an IGL Gas Station and a Police Booth were near the place of the apprehension but no effort was made to join any persons from these permanent establishments. Even though the police team was at the spot of apprehension from 5:30pm to 2am, none of these three witnesses could notice any PCR van/local beat staff having being passed the place of apprehension. Thus no public witness was associated with the apprehension of the accused persons.*
4. *SI Ravinder Kumar Tyagi PW1 had taken the rukka drawn by PW7 SI Vinay Tyagi for registration of the FIR. However PW11 SI Rajpal Dabas to whom further investigation was assigned had reached the place of apprehension at the stage of preparation of rukka itself. PW11 has stated that the investigation was handed over to him by Insp. Sanjay Dutt while PW1 has stated that the further investigation of the case was assigned to SI Rajpal Dabas by PW7 SI Vinay Tyagi.*
5. *Although the police had specific information about the particulars of the JKSRTG bus and its registration number in which the accused persons were stated to be come, neither its driver or conductor were associated with the investigation. Their statements were not recorded and they were not made witnesses in this case. The bus tickets alleged to have recovered from the personal search of Irshad All has not been verified from JKSRTG.*



6. *No crime team was called to the spot. No efforts were made to lift any fingerprints from the arms and ammunition seized from the accused persons.*

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47. The observations made by the Hon'ble High Court in the cases referred above apply to the facts of this case as;-

- (a) private vehicles were used in the raid without any record;*
- (b) passersby alone were asked to join the investigation without noting down their names and addresses which is not a credible effort especially when there was an IGL Station, DIG Depot and a Police Post nearby;*
- (c) the site plan of place of apprehension does not contain full material particulars;*
- (d) neither the driver nor the conductor of JKSRTC bus in which accused persons were stated to be coming were made witnesses in this case nor were the bus tickets recovered from the accused verified; and*
- (e) after apprehension of the accused persons further investigation was assigned to SI Rajpal Dabas who had reached the place of apprehension while the rukka was still being prepared by SI Vinay Tyagi. While PW11 SI Rajpal Dabas stated that the investigation was handed over to him by Insp. Sanjay Dutt, PW1 SI Ravinder Kumar Tyagi has stated that investigation of the case was assigned to SI Rajpal Dabas by PW7 SI*



Vinay Tyagi. No written order of any, senior police official regarding assignment of investigation was produced by the prosecution.

48. *In view of the ratio laid down in the cases of Ram Prakash vs. State and Mohd. Masoom vs. State of NOT of Delhi (supra), the prosecution has been unable to prove its case beyond reasonable doubt against the accused persons, benefit of which has to go to them. Both Muraif Qamar and Irshad Ali@Deepak are thus acquitted of the charges framed against them.”*

11. The State is in appeal against the said impugned judgment dated 22nd December, 2016.

Submissions on behalf of the Parties

12. Mr. Bahri, Id. APP submits that in the present case a huge quantity of explosives has been recovered from the Respondents. Id. APP argues that the charges had been framed *qua* the Respondents *vide* order dated 20th May, 2016 and the Trial Court has acquitted the Respondents basically by finding fault with the manner in which the case was investigated/conducted by the officials of the Special Cell of the Delhi Police.

13. It is further the submission on behalf of the State that though the Central Bureau of Investigation (hereinafter, 'CBI') has also investigated this case and a preliminary report as also a Closure Report has been filed on behalf of the CBI, the same cannot be the basis for acquitting the Respondents.

14. According to the Id. APP, the Trial Court erred in observing that the absence of public witnesses during the raid casts a doubt upon the version of



the police officials or upon the efforts allegedly undertaken by them to associate passersby with the raid. Mr. Bahri, ld. APP submits that few public witnesses were called by the police officials, however, they did not agree to come forward.

15. Moreover, ld. APP submits that there are sufficient case laws in support of the proposition that police officials are themselves sufficient witnesses and no independent witness would be needed to support their version. In support of this submission, the following judgments are relied upon by Mr. Bahri, ld. APP:

- *Baldev Singh v. State of Haryana, (2015) 17 SCC 554*
- *Karnel Singh v. State of M.P., 1995 CRL. L.J. 4173*
- *Ambika Prasad v. State (Delhi Admn.), (2000) 2 SCC 646*

16. Ld. APP relies upon the decision in *Baldev Singh (Supra)* to argue that the evidence of police officers cannot be discarded merely on the ground that they belong to the police force and they have the desire to see the success of the case. The relevant portion of the said decision reads as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”



17. Ld. APP further relies upon the decision in *Karnel Singh (Supra)* to argue that loopholes in the investigation solely cannot lead to the acquittal of the accused person. The relevant portion of the said decision reads as under:

“4. We have very carefully scrutinized the evidence having regard to the fact that (PW6) the investigation officer had not taken the care expected of him. He did not record the statements of the two witnesses nor did he refer to the attachment of the ‘Chaddi’ in his oral evidence. That was a very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. **There is no doubt that the investigation was casual and defective. But despite these deficiencies both the courts below have recorded a conviction. The question is: are they right?**

5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the ‘Chaddi’. That is the reason why we have said that the investigation was slip shod and defective.

6. We must admit that the defective investigation gave



us some anxious moments and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury.”

18. Further, as per the Id. APP, the Forensic Science Laboratory (hereinafter, 'FSL') Report also corroborates the fact that the explosives were present with the Respondents when they were apprehended by the officials of the Special Cell.

19. Ld. APP further submits that non-examination of the bus driver and conductor of the JKSRTC bus cannot be held against the prosecution inasmuch as when such a huge team of police officials were involved in the present case, especially against Respondents, who are stated to be involved with a terrorist outfit *i.e.*, Al-Badr. Ld. APP emphasizes that it is not unusual for independent witnesses to not come forward to give evidence.

20. Mr. Bahri, Id. APP has pointed out that as recorded in paragraph 23 of the impugned judgment, the Respondents have admitted certain documents including the sanction orders for their prosecution under Section 39 of the Arms Act, 1959. Ld. APP also highlights the fact that the investigation was fully monitored by Senior Police Officials of the Special Cell, therefore unfounded allegations cannot be made.

21. Finally, the Id. APP submits that the Special Cell of the Delhi Police having itself conducted a detailed investigation, the Respondents cannot, merely on the basis of the Closure Report filed by the CBI, be stated to have



no involvement in the commission of such a serious offence.

22. On the other hand, according to Mr. M. Sufian Siddiqui, Id. Counsel for the Respondents, the entire material placed on record by the Special Cell of the Delhi Police was planted. Mr. Siddiqui, Id. Counsel submits that there is no basis for the prosecution to argue that the alleged material which was seized by the officials of the Special Cell, was actually seized from the Respondents and was not planted.

23. Id. Counsel for the Respondents further submits that in such a busy area, from where the Respondents were apprehended, no independent witnesses had given evidence to support the case of the prosecution.

24. The further submissions of Mr. Siddiqui, Id. Counsel is that the CBI was directed to conduct an independent investigation in ***W.P.(CRL.) 501/2006***, titled ***Mohd. Kashif Ali v. The State of NCT of Delhi and Anr.*** wherein *vide* order dated 9th May, 2006, considering the doubts expressed by the Respondents, a preliminary enquiry was directed to be conducted. The relevant portion of the said order is set out below:

“I have heard learned counsel for the parties. Learned counsel for the petitioner has invited the attention of the Court to various, attendant circumstances around the time of the alleged arrest of the accused persons on 09.02.2006. The circumstances disclosed do cast a suspicion on the case of the prosecution in regard to the manner in which Mohd. Moarif Qumar @ Nawab and the other accused Mohd. Irshad Ali were apprehended by the officials of Special Cell and about the recovery of the contraband articles like explosives and detonators. The offences U/Ss 121/121A/122/123/120-B IPC read with Section 4/5 of explosive and Substance Act and Section 25 of Arras Act are very grave offences and may



*lead to a very severe punishment, if the charges are established. **Therefore, without commenting any further on the merits of the matter, this Court is of the considered opinion that it is a fit case where all inquiry by some independent agency is called for in the allegations made, in the present petition. Accordingly, the CBI, in the first instance, is called upon to undertake an inquiry into the matter and submit a report to this Court within four weeks.***

25. Subsequent to the preliminary report filed by the CBI, the Court again *vide* order dated 4th July, 2007 in *Mohd. Kashif Ali (Supra)* specifically records that the preliminary report of the CBI itself shows that the arrest of the Respondents does not inspire confidence. After considering this position, the Court directed an in-depth investigation into the matter. The said order is set out below:

*“Learned counsel for CBI states that the inquiry report has been filed in a sealed cover with the Registrar General of this court. A copy of the said report has also been placed on the record of this court. **Counsel further states that according to the Report, the arrest of Moarif Quamar and Irshad Ali on 9.2.2006, as shown in the case file of FIR No. 10/2006, Police Station Special Cell, Lodhi Road, Delhi, pursuant to the alleged recovery of arms, ammunitions, explosives etc. from them at Mukarba Chowk, G.T. Karnal Road, Delhi, does not inspire confidence. He, however, hastens to clarify that this is the prima facie view of the CBI and that a detailed probe will be required in case a conclusive finding has to be arrived at.***

In this view of the matter, in my opinion, it would be expedient if a thorough and detailed probe is carried out



*into the matter by the CBI, moreso, as charge has not yet been framed and the trial is still to take off. **CBI is accordingly directed to conduct an in-depth investigation into the case. The State shall fully cooperate in the same and hand over such material to the CBI, as may be required by the CBI for undertaking further investigation relating to FIR No. 10/2006, Police Station Special Cell, Lodhi Road, Delhi. Learned Counsel for the petitioners assures this court hat till the investigation is completed by the CBI, the Petitioners shall not move any application for bail either before the learned trial court or this court.***

List the case of awaiting the report of the CBI on 24th October, 2007.

A copy of this order be given dasti to learned counsel for the CBI as well as learned Standing Counsel for the State, as prayed.

26. It is the submission on behalf of the Respondents that it is only after these two orders which were passed by the High Court of Delhi that the CBI filed a detailed Closure Report dated 11th November, 2008. Ld. Counsel submits that in fact, the present matter had even travelled to Supreme Court and *vide* judgment dated 13th December, 2012 in ***Vinay Tyagi v. Irshad Ali @ Deepak & Ors., Criminal Appeal 2040-2041 of 2012***, the Supreme Court had directed as under:-

“50. Once the Court, has-taken this view, there, is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to



consider for arriving, at any appropriate conclusion, in accordance with law. It is also interesting to note that the CBI itself understood the order of the court and conducted only 'further investigation' as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

51. In our considered view, the trial court has to consider the entire record, including both the Delhi Police Report filed under Section ,173(2) of the Code as well as the Closure Report filed by the CBI and the documents filed along with these reports.

52. It appears, the trial court may have three options, firstly, it may accept the application of accused for discharge. Secondly, it may direct that the trial may proceed further in accordance with law and. thirdly, if it is dissatisfied any important aspect of investigation already conducted and in its considered opinion, it is just, proper and. necessary in the interest of justice to direct 'further investigation', it may do so.

53. Ergo, for the reasons recorded above, we modify the order of the High Court impugned in the present appeal to the above extent and direct the trial court to proceed with the case further in accordance with law.”

27. According to Mr. Siddiqui, Id. Counsel, a perusal of the above would show that the Trial Court had the opportunity of considering the Closure Report of the CBI and the other course of action as was contained in the said judgment. The trial in this matter has then continued and the Respondents have been acquitted *vide* the impugned judgment.

28. Reliance is also placed upon the extracts from the Closure Report of the CBI to show that there was sufficient evidence including the Call Data Record (hereinafter, 'CDR') to show how the Respondents were in touch



with senior officials of the IB and have also received calls from the landline, etc. of the Ministry of Home Affairs as well.

29. Ld. Counsel for the Respondents has placed reliance upon the following decisions:

- *Mallappa v. State of Karnataka, (2024) 3 SCC 544;*
- *Muralidhar v. State of Karnataka, (2014) 5 SCC 730;*
- *State of Goa v. Sanjay Thakran, (2007) 3 SCC 755; and*
- *Ramesh v. The State of Himachal Pradesh, Criminal Appeal No. 218 of 2017.*

30. According to ld. Counsel for the Respondent, the Supreme Court in the decision in *Mallappa (Supra)* discussed the ‘two-views theory’ and how the same is to be resolved in favour of the accused after appreciating the evidence. The relevant portion of the said decision reads as under:

“25. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on



the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The “two-views theory” has been judicially recognised by the courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.”

31. Ld. Counsel for the Respondents has placed reliance upon the decision of the Supreme Court in ***Muralidhar (Supra)*** wherein the approach to be adopted by an Appellate Court while dealing with an appeal against acquittal



has been considered. The relevant portion of the said decision reads as under:

“12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana



Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

***(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified.** Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in*



grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

32. Finally, Id. Counsel for the Respondents submits that the impugned judgment is a detailed judgment and the same does not warrant interference.

33. In rebuttal, Mr. Bahri, Id. APP submits that the Supreme Court *vide* judgment dated 13th December, 2012 in ***Vinay Tyagi (Supra)*** has made it clear that the Trial Court could proceed in any of the three routes as it deems appropriate.

34. Moreover, as per Mr. Bahri, Id. APP, it is impossible for any recovery of this quantum to be planted with anyone. Id. APP submits that in terms of Section 114(e) of the Indian Evidence Act, 1872, where police officials act in discharge of their official duties, a presumption attaches in favour of the legality and regularity of such acts.

35. Finally, Id. APP submits that even if the Respondents are presumed to be informers, carrying of such high quantities of explosives and other arms cannot be justified. Reliance is placed upon the decision in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*** to the effect that in such cases, the Court cannot interfere.



Analysis and Findings

36. The issue that would have to be determined in this appeal is as to whether in terms of the Supreme Court judgment dated 13th December, 2012 in *Vinay Tyagi (Supra)* and the three options that were set out therein, whether the acquittal deserves to be upheld.

37. In order to decide this issue, the findings in the Closure Report of the CBI as also the evidence, which was led before the Trial Court would have to be analyzed. The prosecution had examined a total of 11 witnesses, most of whom are police officials.

PW-1 SI Ravinder Kumar Tyagi

38. PW-1 SI Ravinder Kumar Tyagi was posted at the Special Cell, New Delhi Range at the time of the incident. According to him, on 9th February, 2006, SI Vinay Tyagi, who appeared as PW-7 in the present case, had got information that Respondent No. 2-Irshad Ali @ Deepak along with Respondent No. 1-Mohd. Muraif Quamar @ Nawab was coming from Jammu in a JKSRRTC bus along with arms and ammunition.

39. A raiding party is stated to have been formed under the supervision of Inspector Sanjay Dutt. It is admitted by PW-1 that three private cars and two two-wheelers were used by the raiding party. According to PW-1, when the raiding party reached Mukarba Chowk, the informer is stated to have identified the Respondents. The Respondents were thereafter followed and when they were about to cross the outer ring road, they were apprehended. Upon search, the following items were recovered from the Respondent No.1-Muraif Qamar:

- A Chinese Star make loaded pistol of .30 bore containing 8 live



cartridges;

- White envelope with three non-electronic detonators; and
- One ABCD timer of green colour and one ABCD timer of cream colour.

40. In the case of Respondent No. 2-Irshad Ali @ Deepak, the following items were recovered:

- A Chinese Star make loaded pistol of .30 bore containing 8 live cartridges; and
- A black coloured polythene in which a mixture of black and white oil based explosive is allegedly concealed, weighing two kilos.

41. Thereafter, the *rukka* is stated to have prepared and the FIR was registered. Both the Respondents were arrested by PW-11 SI Rajpal Dabas and their disclosure statements were recorded. PW-1 identified both the Respondents when the evidence of PW-1 was being recorded.

42. In cross-examination, PW-1 admitted that the official vehicles of the Special Cell of the Delhi Police were not used, though the same were available in the office. PW-1 also admitted that no bullet proof jacket was worn by any of the members of the police team. As per PW-1, there was an IGL gas station and a police booth nearby from the spot from where the Respondents were apprehended. However, none of the persons from the said two places were associated with the raid.

43. PW-1 during cross-examination was unable to give the names of the passersby, who were allegedly requested. PW-1 also could not state as to whether the JKSRTC bus was a government owned bus or a private bus. PW-1 also admitted that the driver and the conductor of the bus were not



associated with the proceedings. PW-1 further stated that the Respondents had tried to flee but were overpowered.

44. PW-1 also confirms that finger prints were not lifted from the weapons allegedly seized from the Respondents. PW-1 in his statement denies the allegation that the Respondents were wrongly implicated.

PW-2 Shri K.R. Mendiratta

45. PW-2 Shri K.R. Mendiratta from the Home Department of the GNCTD deposed in respect of sanction for prosecution which were obtained from the Hon'ble Lieutenant Governor.

PW-3 Retd. SI Krishan Pal

46. PW-3 Retd. SI Krishan Pal confirmed that he had written the FIR in the present case and registered the same. PW-3 also exhibited the present FIR.

PW-4 HC Satinder

47. PW-4 HC Satinder confirmed that he had been handed over the authority letter by SI R.S. Sehrawat for collecting the report of the CFSL laboratory from Chandigarh. PW-4 stated that the report was given to the Investigating Officer and exhibits were deposited in the *malkhana*.

PW-6 Inspector Subhash

48. PW-6 Inspector Subhash, who was the SHO PS. Sonia Vihar gave his testimony, which was similar to the testimony of PW-1. In his cross-examination, he did not recollect whether any government vehicle was available at the relevant time for conducting the raid or not. PW-6 confirmed that movement related to private vehicles is not recorded in the logbooks maintained by the Special Cell. He confirmed that bullet proof jackets were



not issued to him but he stated that the weapon he was carrying during the raid was issued to him one day prior the incident.

49. PW-6 stated that Inspector Sanjay Dutt had contacted 7 or 8 public persons but no one came forward to become an independent witness. PW-6 also did not recollect if any member of the raiding team had put on the bullet proof jackets or not but he confirmed that all raiding team members were armed with weapons. PW-6 did not recollect if the Investigating Officer had visited the police booth or IGL gas station to look for public witnesses or not at the time of the incident. PW-6 confirmed that the spot from where the Respondents were apprehended is very busy and there is heavy movement of human and vehicular traffic as the said road where the raiding party was standing connected G.T. Karnal Road with the Outer Ring Road. PW-6 stated that the JKSRTC bus was a government bus and had made a routine stop. The said bus also had a driver and conductor, whose names and particulars were not obtained by the officials of the Special Cell.

50. PW-6 in his statement also stated that the Respondents had tried to flee themselves but were overpowered by the police officials. PW-6 confirmed that he had prepared the seizure memo and that the Closure Report of the CBI had recommended action to be taken against himself, PW-1 SI Ravinder Kumar Tyagi and PW-7 Vinay Tyagi. PW-6 also denies the suggestion that the Respondents were falsely implicated or the fact that the Respondents were picked up from Kashmere Gate on 22nd December, 2005 and on 13th December, 2005 respectively and were kept in illegal confinement.



51. PW-6 also denied that the case set up on 9th February, 2006 was a case of false implication. PW-6 further denied the suggestion that SHO PS. Bhajanpura had got a missing report published relating to Respondent No.1- Muraif Qamar in Hindustan Times on 9th February, 2006, which led to this case being set up against them.

PW-7 Inspector Vinay Tyagi

52. PW-7 Inspector Vinay Tyagi stated that information was received from a Central Investigating Agency that a Kashmir based organization had set up a base in Delhi. PW-7 deposed that one Irshad Ali @ Deepak was frequently visiting Kashmir and collecting explosives, arms and ammunition through their handlers. According to PW-7, a team was formed under the leadership of Late Shri Mohan Chand Sharma (*passed away in the Batla House Encounter*), who had directed ACP Sanjiv Yadav to develop on this information, which was received. According to him, the two Respondents were associated with a militant organization and had gone to Kashmir to collect explosives, arms and ammunition. PW-7 thereafter, narrated the incident which occurred on 9th February, 2006. PW-7 also deposed relating to the entire raiding team and the details thereof. PW-7 deposed in respect of how the Respondents were apprehended.

53. The chronology of events as narrated by PW-7 is similar as was deposed by PW-1 and PW-6. PW-7 also stated that during interrogation, the Respondents had revealed that they had received the explosives, arms and ammunition from their handler in Jammu and Kashmir and the same were to be used for terrorist activities in Delhi. PW-7 identified all the seized material.



54. PW-7 stated that he had picked up the call of the secret informer, which was on a landline. PW-7 further stated in the cross-examination that the bullet proof jackets were issued to the team but he could not recall how many jackets were issued. PW-7 confirmed that vehicle numbers of the vehicles used in the raid were not mentioned in the DD entry and that no logbook of private vehicles is maintained. PW-7 stated that unmarked vehicles and official vehicles were not used as the same could be easily recognized by the Respondents as belonging to the police.

55. PW-7 stated that 4 to 5 passersby were asked to join the investigation, which they refused to do. He confirmed that he was not wearing a bullet proof jacket. PW-7 stated that the secret informer was standing with him and Inspector Sanjay Dutt when the Respondents were identified.

56. PW-7 also deposed that he was aware of the order of the Delhi High Court, which had directed the CBI to investigate the apprehension of the Respondents and that the CBI in its final report had recommended action against him. He denied the allegation of false implication and of illegal confinement of the Respondents.

PW-9 Shri Narender Kumar

57. PW-9 Shri Narender Kumar, who was then the Divisional Commissioner of Delhi deposed that he had ordered sanction to prosecute the Respondents under the provisions of Explosive Substances Act, 1908.

PW-11 Inspector Rajpal Dabas

58. PW-11 Inspector Rajpal Dabas also narrated the chronology of events, just like the other witnesses. In his cross-examination, he stated that he did not check if any official vehicle was available or not during the time of the



raid. PW-11 reached the spot at 9:30 PM. PW-11 stated that upon the arrest of Respondent No.1- Muraif Qamar, he had informed his relative about his arrest around mid-night.

59. PW-11 stated that he had not visited Srinagar at any point of time and no search was conducted at Srinagar before obtaining Non-Bailable Warrants of the Court of Chief Metropolitan Magistrate. PW-11 also stated that fingerprints were not lifted from the weapons seized from the Respondents. PW-11 denied the suggestion that the Respondents were working as informers or that they were falsely implicated. PW-11 also denied the suggestion relating to the missing report being published by PS. Bhajanpura.

Closure Report filed by the CBI

60. At this stage, after analysing the entire evidence, it would be relevant to consider the report of the CBI which had also looked into this case. The final report submitted by the CBI pursuant to the order dated 4th July, 2007 passed by this Court in *Mohd. Kashif Ali (Supra)* was subsequent to the preliminary inquiry report dated 30th May, 2007. CBI during the course of investigation then went into the FIR and chronology of events, which was given by the Special Cell of Delhi Police.

61. According to the CBI, Respondent No.1-Muraif Qamar had come to Delhi in the year 2000 to start the business of manufacturing photo album boxes at Mahavir Enclave near Palam Airport and thereafter, in Janakpuri and Nabi Karim. Finally, Muraif Qamar had shifted to Bhajanpura. According to the CBI, one Irshad Ali *i.e.*, Respondent No. 2, who was a friend of Muraif Qamar had introduced him to the officials of Special Cell.



62. Respondent No. 1-Muraif Qamar had come in contact with one Lalit Mohan Negi, Inspector, Special Cell of Delhi Police and was working as an informer for him. On 22nd December, 2005, Respondent No. 1-Muraif Qamar is stated to have left his workshop at around 11:00 AM to collect some raw materials, however, he did not return till the night on the said date. On the same day, two persons had visited his workshop enquiring about him and even obtained his mobile number. The brother of Muraif Qamar was informed about the disappearance of his brother and he came to the workshop on the next date to make enquiries.

63. On 28th December, 2005, the brother of the Respondent No.1-Muraif Qamar went to PS. Bhajanpura and a missing report was registered. In various newspapers, missing advertisements pertaining to Respondent-Muraif Qamar were also published. The said missing report was also sent by the brother of Muraif Quamar to various dignitaries, ministries, etc. As per the report filed by the CBI, the whereabouts of Muraif Qamar was not known until he was arrested on 9th February, 2006 by the Special Cell of the Delhi Police.

64. Insofar as the Respondent No.2-Irshad Ali is concerned, he was also residing in Mubarakpur, Nangloi, Delhi. He knew Muraif Qamar from childhood as they studied in the same *Madarsa* in Darbhanga, Bihar. Respondent No.2-Irshad Ali was plying an auto rickshaw for 6 to 7 years before he went missing.

65. The Closure Report of the CBI claims that one Khalid, who was an acquaintance of Respondent No.2-Irshad Ali had a dispute with him, but



since 2000, he was working as an informer to two inspectors of Special Cell, Delhi Police.

66. The CDR records of both the Respondents were also analyzed by the CBI, which showed that on 22nd December, 2005 the mobile number of Muraif Qamar was in Bhajanpura till about 11:00 AM and thereafter, shifted to Kashmere Gate till around 12:10 PM. However, subsequently, the said mobile number was switched off. On the said mobile number, Muraif Qamar had 16 calls on the said date with Irshad Ali till 12:10 PM.

67. Various calls were analyzed on both the Respondent's mobile numbers, which also showed that the last call from Irshad Ali's phone was about 11:30 hours on 12th December, 2005.

68. The investigation conducted by the CBI had disclosed facts:

- “i) There is nothing on record to show that they are the members of Al-badr, a terrorist outfit, particularly when no connecting documents were recovered from them. It becomes all the more important in view of the fact that some of the Delhi Police and Intelligence Officers have stated that they are their informers.*
- ii) No independent person has witnessed the seizure of arms, ammunitions and explosives, at a public place at around 7:30 pm on 09.02.06. The bus driver and conductor of JKSRTC bus were not even examined. However during the investigation by CBI S/Sh- Lalit Kumar and Guddu Kumar Bhagat the vendor/guard at Mukarba Chowk had stated that Delhi Police officials has contacted them, on 09.02.2006 but did not asked them to witness the proceedings at the alleged scene of occurrence.*
- iii) No searches were conducted at the residences or workplaces of the two accused. after their arrest.*



iv) *The charge sheet filed by the police does not disclose as to when and for what the two accused Moarif Quamar and Mohd. Irshad Ali went to Jammu and Kashmir.*

v) *As per records prepared by SI Raj Pal Dabas, the arms and ammunitions were delivered by Sheikh Pervej and Faiyaz Ahmed Radar, both residences of Batmaloo, Srinagar to, Irshad Ali and Moarif Qamar. However, the police does not appear to have made any effort to locate and interrogate/ them. They simply obtained NBWs from the court and sent them to the SSP, Srinagar, for execution, The News was later returned un-served due to incorrect/ non-existent addresses, In fact, the police team went to Jammu and Kashmir to conduct investigation regarding source of seized arms and Explosives at a much later dated i.e. on 22.6. 06, about four and half months after the alleged seizure and one and a half month after filing of the charge sheet on 6.5.06 and even after the matter was handed over to CBI on 9.5.06.*

vi) **The two tickets pertaining to JKSRTC were not seized from the personal search of Irshad Ali on 9.2.2006 at the time of his arrest. The bus tickets were shown recovered from Irshad Ali on 10.2.06 which is highly suspicious.**

vii) *Two of the vendors/guards at Mukarba Chowk have stated that Delhi Police officials had contacted them but did not ask them to witness the proceeding. **This is important as there are no independent witnesses to the recovery of contraband from the accused persons.***

69. The CBI in its Closure Report dated 11th November, 2008 concluded as under:

*“ The Investigation conducted by CBI has, thus, established that **Moarif Qamar and Irshad Ali were picked up on 22.12.2005 & 13.12.2005 respectively and thereafter kept in illegal detention till 09.02.2006.** The*



*identity of the persons responsible for kidnapping Moarif Qamar and Irshad Ali and for keeping them under illegal detention could not be established during investigation conducted so far. **The investigation conducted by CBI has also established that the recovery of contraband effected from Moarif Qamar and Irshad Ali by SI Vinay Tyagi which was witnessed by SI Subhash Vats and Ravinder Kumar Tyagi on 09.02.2006 at Mukarba Chowk, Delhi, is false and that false evidence/record has been fabricated to implicate Irshad Ali and Moarif Qamar for an oblique motive.***

Further investigation under provisions of Section 173(8) Cr.P.C. is being continued in regard to the role of other police officials who were a part of the inner cordon as also to fix up the identity of the persons responsible for picking up and in legal detention of Moarif Qamar and Irshad Ali. Additional list of witnesses and documents, if any, will be submitted to this Hon'ble Court”

70. Thus, a perusal of the Closure Report of the CBI reveals that as per the CBI there was no connection established between the Respondents and Al-Badr and that the entire incident, which is stated to have taken place on 9th February, 2006, did not inspire confidence. The CBI further concluded that the police officials of the Special Cell of the Delhi Police appear to have falsely implicated the Respondents in the said incident.

71. In the light of the above evidence and the CBI Closure Report, the Trial Court arrived at the following findings:

“(a) Private vehicles were used by the police team during their raid. The details of these vehicles have not been mentioned in the DD Entry. No logbooks of use of private vehicles have been maintained. None of them could recall the registration numbers of these private



vehicles. PW7 in cross-examination has stated that their office has been provided unmarked vehicles of make Mahindra Scorpio and Maruti Gypsy but the same were not used in the raid. He tried to explain that these vehicles could be easily recognized by the accused persons as belonging to the police.

(b) The site plan Ex.PW1/D1 does not reflect the place where the police officials were standing. While PW1 and PW6 could state the point in the site plan where they had been placed but could not state where other members of the police team were standing. The site plan does not reflect the place where the police vehicles had been parked.

(c) Admittedly only passersby were asked by the police team to join the investigation. PW1, PW5 and PW6 do state that a DTC Depot, an IGL Gas Station and a Police Booth, were near the place of the apprehension but no effort was made to join any persons from these permanent establishments. Even though the police team was at the spot of apprehension from 5:30 pm to 2 am, none of these three witnesses could notice any PCR van / local beat staff having being passed the place of apprehension. Thus no public witness was associated with the apprehension of the accused persons.

(d) SI Ravinder Kumar Tyagi PW1 had taken the rukka drawn by PW7 SI Vinay Tyagi for registration of the FIR. However PW11 SI Rajpal Dabas to whom further investigation was assigned had reached the place of apprehension at the stage of preparation of rukka itself. PW11 has stated that the investigation was handed over to him by Insp. Sanjay Dutt while PW1 has stated that the further investigation of the case was assigned to SI Rajpal Dabas by PW7 SI Vinay Tyagi.

(e) Although the police had specific information about the particulars of the JKSRTC bus and its registration number in which the accused persons were stated to be come, neither its driver or conductor were associated



with the investigation. Their statements were not recorded and they were not made witnesses in this case. The bus tickets alleged to have recovered from the personal search of Irshad All has not been verified from JKSRTC.

(f) No crime team was called to the spot. No efforts were made to lift any fingerprints from the arms and ammunition seized from the accused persons.”

Conclusions

72. The above findings of the Trial Court have to be judged on the basis of the evidence, which is on record. It is an admitted fact that private vehicles were used in the raid and no record of the same was maintained in the logbook. No independent passersby were made any witnesses, that too at a busy *chowk* like Mukarba Chowk. An IGL gas station and a police booth being in close vicinity, there is no reason as to why the police officials could not have asked for some officials from these places to join the raiding team and be present at the time when the raid was conducted also when the arrest was affected.

73. The fact of the missing report published by PS. Bhajanpura pertaining to the Respondent No.1- Muraif Qamar also cannot be disputed. Moreover, the site plan prepared by the officials of the Special Cell of the Delhi Police is extremely sketchy and does not show any of the relevant spots *i.e.*, places where the police officials were present or places where the police booth and IGL gas station were located. Even the driver and conductor of the JKSRTC bus were not made any witness to the raid.

74. In fact, if there existed an apprehension that the Respondents were terrorists, it remains inexplicable as to why the entire police raiding team



was not wearing bullet-proof jackets, particularly when enormous contradictions emerge from the testimonies of the various witnesses.

75. In the opinion of this Court, one of the best pieces of evidence in this case to challenge the Closure Report of the CBI and to dispute the same would have been the CDR of the Respondents. However, no evidence was led in respect of the CDR of the Respondent's mobile phone by the Special Cell of the Delhi Police, which is discussed in so much detail in the Closure Report of the CBI. Even the nature of the material recovered would show that there is a lot of similarity. Moreover, finger prints were not taken from the weapons recovered from the Respondents, which would have been impeachable proof of the Respondents carrying the said weapons. The findings of the Trial Court clearly point towards the fact that the guilt of the Respondents has not been established.

76. This Court is conscious of the stand of the Delhi police that senior police officials were involved in the present case and the evidence ought not to be disbelieved. Obviously, there can be no generalization that the testimony of police officials cannot be believed without independent evidence. As held in *Baldev Singh (Supra)* cited by Mr. Bahri, Id. APP, the evidence of police officials has to be *carefully scrutinized and independently appreciated*. It is very much possible that in some cases, the Court may convict based on the testimony of police officials. However, it depends on the facts of each case. In the present case, the Court has to come to the conclusion on the basis of evidence that the guilt of the Respondents has been established beyond reasonable doubt. The said threshold cannot be said to have crossed in this case, especially in view of the findings in the Closure



Report of the CBI. The Court is clear that the said closure report cannot be the basis for acquittal but while weighing the evidence on the balance and considering the fact that the said final report was available in this case with the police, some steps ought to have been taken to lead better evidence. For example, the CDR analysis relied upon by the CBI could have been disproved or some independent witnesses could have been called to prove the case of the prosecution. While police officials may be doing their bounden duty, some cases do not cross the threshold required as per law. This is one such case.

77. It is the settled position in law that when there is an acquittal, the Appellate Court should be reluctant in interfering with the same unless there is perversity in the judgment of the Trial Court. The Supreme Court in the decision in *Mohan v. State of Karnataka, (2022) 12 SCC 619* while discussing the powers that can be exercised by the Appellate Court against an order of acquittal held as under:

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



decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.

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

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



23. *This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in Anwar Ali v. State of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] : (SCC pp. 182-85, para 14)*

“14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , SCC p. 199)

‘20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665] , Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501] , Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v.



State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])'

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.3. In the recent decision of Vijay Mohan Singh [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , this Court again had an occasion to consider the scope of Section 378CrPC and the interference by the High Court (State of Karnataka v. Vijay Mohan Singh [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732]) in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (Vijay Mohan Singh [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , SCC pp. 447-49)

'31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappraisal of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while



acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under : (SCC p. 233)

*“10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. **Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.**”*

31.1. In Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the



High Court, this Court observed in para 8 as under : (SCC p. 416)

“8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not



justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.”

31.2. In K. Ramakrishnan Unnithan [K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.



31.3. In *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807] , in para 5, this Court observed and held as under : (AIR pp. 809-10)

“5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due



weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State [Surajpal Singh v. State, 1951 SCC 1207] ; Wilayat Khan v. State of U.P. [Wilayat Khan v. State of U.P., 1951 SCC 898]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.”

31.4. In K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.’”

78. Further, the Supreme Court in the decision in ***Bhupatbhai Bachubhai Chavda v. State of Gujarat, 2024 SCC OnLine SC 523*** observed as under:

*“6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappraise the evidence. **After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on***



evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

79. The Supreme Court in *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440 also observed as under:

“Scope of appeal filed against the acquittal

25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”



80. In the decision in *State of Goa v. Sanjay Thakran (Supra)* which is also relied upon the Id. Counsel for the Respondents, the Supreme Court observed as under:

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterised as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.”

81. In the present case, this Court does not find any infirmity in the impugned judgment. In fact, the case of the prosecution lacks credibility. The Closure Report of the CBI, especially analysis of the CDR details of the Respondents would show that there is independent evidence showing location of the Respondents and how their mobile phones got switched off on 13th December, 2005 and 22nd December, 2005 respectively. If there was any evidence to the contrary, the Special Cell of the Delhi Police ought to have produced the same on record to show usage of the mobile phones by



the Respondents post the said date. Lalit Kumar and Guddu Kumar Bhagat, independent persons at the Mukarba Chowk, who were interviewed by the CBI were not examined in the trial. Sheikh Pervej and Faiyaz Ahmed Radar who were alleged to have given the weapons to the accused persons were neither interrogated nor produced, though belated attempts were made to serve them. Thus, the obvious steps that ought to have been taken to establish the credibility of the seizure from the accused persons, were not been taken.

82. In the absence of any unimpeachable evidence, this Court is of the view that impugned judgement does not warrant any interference.

83. The appeal is, accordingly, dismissed. Pending applications, if any, are also disposed of.

84. Personal/Bail bond and surety of the Respondents, if any, are discharged.

**PRATHIBA M. SINGH
JUDGE**

**MADHU JAIN
JUDGE**

MAY 29, 2026/dk/ck