A RAJESH PRASAD

v.

THE STATE OF BIHAR AND ANR. ETC.

(Criminal Appeal Nos. 111-113 of 2015)

B JANUARY 7, 2022

[L. NAGESWARA RAO, B. R. GAVAI AND B. V. NAGARATHNA, JJ.]

Penal Code, 1860: ss. 302/34, 120B – Explosive Substances Act, 1908 – ss. 3, 4 – In the instant case, the accused-respondent committed offence u/s 302 r/w 34 and 120B IPC by causing death of father of appellant-informant, and other deceased victim by use of explosive substance (bomb) and thereby was also charged u/s 3/4 of the Explosive Substances Act, 1908 – On trial, the accused was convicted and along with the term of imprisonment was also awarded death sentence – High Court acquitted him of all charges on the ground that there were flaws in the investigation and also in the evidence of the prosecution witnesses – While acquitting the accused, the High Court directed the appellant to be tried for the offence of perjury – Hence the instant appeal against setting aside the conviction of the respondent and also against the initiation of the proceeding for perjury – Held: Trial Court failed to appreciate the evidence of PWs-1, 3, 4 and 7 in proper perspective and further failed to recognize the fact that PW-7 (the appellant) did not at all support the case of the prosecution although he was the informant and hence, erroneously convicted the accused – However, having regard to the facts and circumstances of these cases, and bearing in mind that there were two deaths in the incident which was not proved beyond reasonable doubt, only the direction to trial court to initiate proceedings of perjury against the appellant is set aside – Rest of the impugned judgment of acquittal is affirmed.

Code of Criminal Procedure, 1973 – s. 378 – Power and Scope – Appellate court has full powers to review and to reverse the acquittal – For the High Court to take a different view on the evidence there must also be substantial and compelling reasons for holding that the trial court was wrong – The High Court in dealing with an appeal against the acquittal ought to be cautious because

the presumption of the innocence in the favour of the accused is not weakened by the fact that he has been acquitted at his trial but if the court holds otherwise then it should assign reasons for differing with the decision of the acquittal.

Appeal – Criminal Appellate Jurisdiction of Supreme Court – Extent and scope in cases of appeal against acquittal – The exercise of such power is rare in cases the order of the acquittal has been confirmed by the High Court – Such power can be exercised only when the High Court's conclusion is absolutely wrong, legally erroneous and perverse keeping in mind the facts of the case.

Partly allowing the appeals, the Court

HELD: 1. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [Para 30][1063-D-G]

2. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:(i)Where the approach or reasoning of the High Court is perverse:(a) where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic.(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses. (c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter.

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. (e) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner. (f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. (g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish 'motive.' (ii) Where acquittal would result is gross miscarriage of justice (a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence or based on extenuating circumstances which were purely based in imagination and fantasy. (b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [Para 30][1064-A-H; 1065-A-F]

State of U.P. v. Sahai **AIR 1981 SC 1442;** *Arunachalam v. Sadhananthan* **AIR 1979 (SC) 1284 : [1979] 3 SCR 482;** *State of Haryana v. Lakhbir Singh* **(1990) CrLJ 2274 (SC);** *State of Rajasthan v. Sukhpal Singh,* **AIR 1984 SC 207 : [1983] 2 SCR 53;** *State of UP v. Shanker*, **AIR 1981 SC 879;** *State of UP v. Hakim Singh* **AIR 1980 SC 184;** *State of UP v. Ranjha Ram,* **AIR 1986 SC 1959;** *State of Maharashtra v. Champalal Punjaji Shah,* **AIR 1981 SC 1675;** *Gurbachan v. Satyapal Singh,* **AIR 1990 SC 209 : 1989 (1) Suppl SCR 292;** *State of AP v. Bogam Chandraiah,* **AIR 1986 SC 1899;**

State of UP v. Pheru Singh, **AIR 1989 SC 1205 and** *State of Uttar Pradesh v. Pussu* **1983 AIR 867 (SC) : [1983] 3 SCR 294 - relied on.**

3. The High Court also noted flaws in the investigation of the case and in the evidence of the prosecution witnesses which are culled out as under: (i) PW-7 said that PW-4 drew up the written report while PW-4 denied the same. (ii) While PW-1 and PW-3 were related to the deceased and signed the seizure list immediately after the occurrence, yet PW-3 had stated that he was not aware of the other signatory to the seizure list. (iii) The statement of PW-1, who was a witness to the seizure list as well as an eye-witness , was recorded by the police one and half months later with no explanation either by the witness or by the police. (iv) Similarly, statement of PW-4 who is an eyewitness and a witness to the inquest report of the deceased and who is stated to have drawn up the written report given to the police, was recorded by the police after two months and twenty days. The High Court has noted that there is no explanation for the delay, though he could be presumed to be present at the Police Station when the written report was handed over to the Police. (v) PW-2, the shop owner of the PCO booth adjoining the betel shop of the deceased, was also allegedly injured during the occurrence but there is no injury report. (vi) While the prosecution witnesses alleged throwing of three or more bombs, the Investigating Officer stated that he found signs only of two explosions; first one being at the betel shop of the deceased and the second one near M/s Aditya Electronics, located 40-45 yards north of the site of the first explosion. [Para 52][1077-C-H; 1078-A-C]

4. The Fast Track Court has failed to appreciate the evidence of PWs-1, 3, 4 and 7 in their proper perspective and has further failed to recognise the fact that PW-7/the appellant herein did not at all support the case of the prosecution although he was the informant and hence, erroneously convicted the accused and sentenced two of them with death penalty and the third accused with imprisonment for life. The High Court was, therefore, justified in reversing the judgment and order of conviction passed by the Fast-Track Court. Further, the High

A **Court stated that this is a fit case for initiating proceedings of perjury against the appellant. No doubt, the appellant who was the informant did not at all support the case of the prosecution during trial and as a result, the High Court acquitted the accused. However, having regard to the facts and circumstances of these cases and bearing in mind that there were two deaths in the incident that occurred on 10th March, 2005 which has not been proved beyond reasonable doubt, the portion of the impugned judgment and order directing the trial court to initiate proceedings of perjury against the appellant is set aside. [Paras 54, 57, 58][1080-A-B, D-F]**

C *Atley vs. State of U.P.* **AIR 1955 SC 807;** *Sanwat Singh v. State of Rajasthan* **AIR 1961 SC 715 : [1961] 3 SCR 120;** *Aher Raja Khima v. State of Saurashtra* **AIR 1956 SC 217 : [1955] 2 SCR 1285;** *M.G. Agarwal v. State of Maharashtra,* **AIR 1963 SC 200 : [1963] 2 SCR 405;** D *Shivaji Sahabrao Bobade v. State of Maharashtra* **(1973) 2 SCC 793 : [1974] 1 SCR 489;** *Ramesh Babulal Doshi v. State of Gujarat* **(1996) 9 SCC 225 : [1996] 2 Suppl. SCR 265;** *Ajit Savant Majagvai v. State of Karnataka* **(1997) 7 SCC 110 : [1997] 3 Suppl. SCR 444;** *Ramesh Babulal Doshi v. State of Gujarat,* **(1996)** E **9 SCC 225 : [1996] 2 Suppl. SCR 265;** *Chandrappa & Ors. v. State of Karnataka,* **(2007) 4 SCC 415 : [2007] 2 SCR 630;** *Nepal Singh v. State of Haryana* **(2009) 12 SCC 351 : [2009] 6 SCR 982 – relied on.**

Case Law Reference

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AIR 1934 PC 227(2)	**relied on**	**Para 20**
AIR 1955 SC 807	**relied on**	**Para 21**
[1961] 3 SCR 120	**relied on**	**Para 21**
G **[1955] 2 SCR 1285**	**relied on**	**Para 21**
[1963] 2 SCR 405	**relied on**	**Para 22**
[1974] 1 SCR 489	**relied on**	**Para 23**
[1996] 2 Suppl. SCR 265	**relied on**	**Para 24**

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[1997] 3 Suppl. SCR 444	**relied on**	**Para 25**
[1996] 2 Suppl. SCR 265	**relied on**	**Para 26**
[2007] 2 SCR 630	**relied on**	**Para 27**
[2009] 6 SCR 982	**relied on**	**Para 29**
AIR 1981 SC 1442	**relied on**	**Para 30 (a)**
[1979] 3 SCR 482	**relied on**	**Para 30 (a)**
(1990) CrLJ 2274 (SC)	**relied on**	**Para 30 (a)**
[1983] 2 SCR 53	**relied on**	**Para 30 (B) (i) (a)**
AIR 1981 SC 879	**relied on**	**Para 30 (B) (i) (a)**
AIR 1980 SC 184	**relied on**	**Para 30 (B) (i) (b)**
[1983] 2 SCR 53	**relied on**	**Para 30 (B) (i) (c)**
[1979] 3 SCR 482	**relied on**	**Para 30 (B) (i) (d)**
AIR 1986 SC 1959	**relied on**	**Para 30 (B) (i) (e)**
AIR 1981 SC 1675	**relied on**	**Para 30 (B) (i) (f)**
[1989] (1) Suppl SCR 292	**relied on**	**Para 30 (B) (i) (f)**
AIR 1986 SC 1899	**relied on**	**Para 30 (B) (i) (f)**
AIR 1989 SC 1205	**relied on**	**Para 30 (B) (ii) (a)**
[1983] 3 SCR 294	**relied on**	**Para 30 (B) (ii) (a)**
[1982] 1 SCR 299	**relied on**	**Para 30 (B) (ii) (b)**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 111-113 of 2015.

From the Judgment and Order dated 05.08.2009 of the High Court of Judicature at Patna in Criminal Appeal (DB) Nos.714, 747 and 814 of 2008.

Ms. Prerna Singh, T. Mahipal, Advs. for the Appellant.

Saket Singh, Mrs. Niranjana Singh, Ranjan Mukherjee, Advs. for the Respondents.

A The Judgment of the Court was delivered by

NAGARATHNA J.

1. These appeals have been filed by the appellant - informant (PW-7 Rajesh Prasad) assailing the judgment and order dated 5th August, 2009 passed by the High Court of Judicature at Patna in Criminal Appeal
B Nos.714, 747 and 814 of 2008 by which the judgment of conviction dated 26th June, 2008 and order of sentence dated 30th June, 2008 passed by the Additional District & Sessions Judge, Fast Track Court-V, Munger, has been set aside by allowing the aforesaid appeals and by accordingly answering the Death Reference No.13/2008 and consequently acquitting
C all the accused.

2. The Court of Additional District & Sessions Judge, Fast Track Court-V, Munger, (hereinafter referred to as the 'Fast Track Court') vide its judgment dated 26th June, 2008 convicted the respondents herein viz., Upendra Ram, Mahendra Ram and Munna Ram. By order dated
D 30th June, 2021, the Fast Track Court sentenced Upendra Ram to undergo imprisonment for life with fine of Rs.5000/- and in default of payment of fine he was further to undergo rigorous imprisonment for one year for the offence under section 302/34 read with section 120B of the Indian Penal Code (for short, the 'IPC') and also sentenced to undergo rigorous imprisonment for one year for offence under section 504 of IPC and
E further sentenced to undergo rigorous imprisonment for ten years each for the offence under section 3/4 of the Explosive Substances Act, 1908 and ordered that the sentences run concurrently. The Fast Track Court sentenced the accused viz., Munna Ram and Mahendra Ram to death under sections 302/34 read with section 120B of IPC and sections 3/4 of
F Explosive Substances Act, 1908, subject to confirmation by the High Court. The Fast Track Court however acquitted the other accused viz., Fantus Mandal, Dhappu Ram and Chandrabhanu Prasad.

3. It is the case of the prosecution that on Thursday, 10th March, 2005, at about 5.00 pm, accused Mahendra Ram, Upendra Ram, Munna
G Ram, Dhappu Ram, all being sons of Kishori Ram and Chandrabhanu Prasad, with two other unknown persons proceeded towards the informant viz., Rajesh Prasad (PW-7) and protested that as the informant had opposed their illegal activities, his entire family would be blown off by a bomb. Accused Munna Ram threw a bomb at the informant's father Chhote Lal Mahto who was sitting in his betel (pan) shop. The rear
H portion of his father's head was blown off leading to his death. Accused

Mahendra Ram threw another bomb against O.P. Verma and as a result thereof, his head was blown away and he died on the spot. Further, Upendra Ram hurled another bomb which missed injuring anyone else and exploded on the road. Then accused Chandrabhanu and Dappu Ram stated that they would proceed from there as their job had been completed and they tried to flee from the spot, but the furious public caught hold of an unknown person and assaulted him as a result of which he was seriously injured and he died. The accused, while fleeing away, threatened that their action was a result of opposition by the informant against the illicit sale of liquor by them and if anyone again obstructed their business, they would face similar consequences. Accused-Chandrabhanu Prasad helped the accused-Munna Ram to flee from the spot.

4. The informant had further stated that he was objecting to the illegal sale of liquor by the accused and on account of enmity and in pursuance of their common intention and object, they had hurled bombs and killed the father of the informant as well as others.

5. On receipt of the said information, a case was registered at Kotawali PS being Case No.136/2005 dated 10thMarch, 2005 under sections 302/34, 120B of IPC and section 3/4 of the Explosive Substances Act, 1908 (hereinafter referred to as the 'Act') against the accused. The police investigated the case and submitted the chargesheet dated 7thJune, 2005 against the accused before the Court of Chief Judicial Magistrate, Munger, keeping investigation pending with regard to the other charges for offences under sections 302, 120B, 504, 225 of IPC and section 3/4 of the Act. On 8th June, 2005, the Chief Judicial Magistrate, Munger, took cognizance of the alleged offences against the accused and committed the case to the Court of Sessions after complying with the provision of section 207 of the Code of Criminal Procedure (for short, the 'Cr.PC') vide order dated 17th June, 2005.

6. The case was transferred to the Court of Additional District Judge-I, Munger and later on, to the Fast Track Court on 9th December, 2005. Thereafter, the charge for the concerned offences was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

7. The prosecution examined altogether ten witnesses and took note of Material Objects (MOs). Thereafter, statements of the accused under section 313 Cr.PC were recorded. All the accused denied the alleged occurrence and submitted that they were innocent and had been

A falsely implicated. They contended that there were dues in respect of liquor taken by Ashok Yadav from the informant who was running an illegal liquor shop. The said dues were demanded from Ashok Yadav for which there was a scuffle between them and the family of the informant assaulted Ashok Yadav. As a result, some unknown persons became furious and hurled bombs and caused the alleged occurrence. That the B associates of the informant had looted the tea shop of accused Dhappu Ram and that the informant had falsely implicated the accused.

8. We have heard Ms. Prerna Singh, learned counsel for the appellant; Sri Saket Singh, learned counsel for the State and Sri Ranjan Mukherjee, learned counsel for the respondents-accused and perused C the material on record.

9. Appellant's counsel submitted that the High Court was not right in setting aside the judgment of conviction and sentence passed by the Fast-Track Court, thereby acquitting the accused. She drew our attention to the evidence of PWs 3, 4, 5, 8, 9 and 10 and contended that the same D would clearly establish the guilt of the accused beyond reasonable doubt. However, the High Court has not appreciated the case of the appellant herein in its proper perspective and has set aside the judgment of the Fast-Track Court. The appellant-informant PW-7 who is one of the sons of the deceased Chhote Lal Mahto had clearly stated in the complaint E and also in his deposition about the culpability of the accused which has not been properly appreciated by the High Court.

10. While drawing our attention to the evidence on record, learned counsel for the appellant submitted that the High Court has arrived at incorrect conclusions and thereby reversing the judgment of the Fast-F Track Court.

11. Learned counsel for the appellant further contended that while acquitting the accused, the High Court has directed that proceedings of perjury be initiated against the appellant herein which was wholly unnecessary having regard to the fact that the Fast Track Court had G accepted the case of the prosecution and on the basis of the evidence of the appellant herein as well as other eyewitnesses had convicted the accused.

12. Learned counsel for the appellant finally contended that the impugned judgment of acquittal may be set aside and the judgment of the Fast Track Court be restored as the accused have committed serious H

offences under section 302/34 read with section 120B of IPC as well as other sections resulting in death of two persons, one being the father of the appellant as well as another, on account of the bombs hurled by the accused against the deceased. She submitted that the third bomb which was hurled by an accused missed injuring any person but that would not in any way lead to his acquittal.

13. Per contra, learned counsel appearing for the respondents-accused supported the judgment of the High Court and contended that the High Court has rightly perceived and assessed the evidence on record and as a result reversed the erroneous judgment of the Fast-Track Court. It was submitted that the Fast-Track Court failed to note that the evidence on record did not prove the case of the prosecution beyond reasonable doubt vis-à-vis the accused and despite that death penalty had been imposed on two of the accused and life imprisonment on another accused which has been rightly reversed by the High Court by a reasoned judgment. Therefore, the impugned judgment would not call for any interference at the hands of this Court as there is no merit in these appeals. Hence, the appeals may be dismissed.

14. Having heard the learned counsel appearing for the respective parties, the following points would arise for our consideration:

(a) Whether the High Court was justified in reversing the judgment of conviction and sentence awarded by the Fast-Track Court, thereby acquitting all the accused?

(b) Whether the judgment of the High Court calls for any interference or modification by this Court?

(c) What order?

15. The Fast-Track Court considered the case of the prosecution being that on 10th March, 2005 at about 5.00 pm, the accused came to the informant and stated that since the informant and his family were objecting to his illegal sale of country made liquor, he along with his family would be eliminated. Then, accused Munna Ram hurled a bomb that he was holding in his hand and the father of the informant, Chhote Lal Mahto, sitting at the betel shop died in the blast. Second bomb was hurled by accused Mahendra Ram causing the death of a pedestrian named O.P. Verma and the third bomb was thrown by accused Upendra Ram, which exploded on the road. The accused then fled from the spot. That the offences were committed by the accused as a result of objection

raised by the deceased Chhote Lal Mahto and his son PW-7 Rajesh Prasad-informant, appellant herein, against the illegal liquor business of the accused.

16. The Fast-Track Court also noted that the defence was unable to substantiate their case that the tea shop of accused Dhappu Ram had been looted by the informant and his associates. They further stated that there were disputes in respect of payment of prices of liquor by Ashok Yadav and as a result the latter and his associates had exploded the bombs.

17. The versions of PWs 1, 2, 3 and 4 who were eyewitnesses as well as that of PW-7 i.e. the informant were accepted by the Fast Track Court as being consistent with each other as their ocular testimony proved the prosecution case beyond any reasonable doubt. Accordingly, three of the accused were convicted and sentenced as noted above.

18. The Fast Track Court on considering the evidence on record held as under and came to the following conclusion:

(i) That PW-1, PW-3, PW-4 and PW-7 are related to each other, they being the son-in-law, cousin and sons of the deceased, Chhote Lal Mahto respectively. PW-2 is the shopkeeper of the PCO booth which is the shop adjoining the betel shop of the informant. PW-2 was also injured by a splinter of the bomb which was hurled on the deceased Chhote Lal Mahto who was in his betel shop. PW-8 also witnessed the occurrence. As such, PW-2 and PW-8 are independent witnesses. PW-5 is the doctor who performed the post-mortem examination of the deceased and PWs-9 and 10 are the Investigating Officers (IOs) of the case.

(ii) That totally three bombs were hurled resulting in the death of Chhotey Lal Mahto and another person and the third bomb exploded on the road. As a result, the public became furious and caught hold of an unknown person and assaulted him, which resulted in his death. It had come in the evidence that the said person was Ashok Yadav.

(iii) That the name of Fantus alias Udai Prakash Mandal had not been found in the FIR and the witnesses had not testified against his involvement in the occurrence nor has there been any overt act alleged against him.

(iv) No overt act had been alleged against Dhappu Ram and Chandrabhanu Prasad. A

(v) Consequently, Fantus Mandal, Dhappu Ram and Chandrabhanu Prasad were not found guilty of any offences alleged and they were acquitted.

(vi) Considering the evidence on record, it was found that Upendra Ram, Munna Ram and Mahendra Ram were guilty and they were convicted and sentenced as stated above by the Fast Track Court. B

19. In the appeals filed by the accused and in the Death Reference No.13/2008, the High Court, on considering the submissions made on behalf of the accused as well as the State, noted at the outset as under: C

> "It is trite law that acquittal of a co-accused cannot simpliciter be a ground for acquittal of other accused. There may be factors distinguishing the two cases. Alternately, an erroneous acquittal and absence of any challenge to the same cannot be a ground to demand similar treatment by others. Likewise, the testimony of an interested witness cannot be discarded on that ground alone. It would only require the Court to be more cautious and scrutinize the evidence carefully. Evidence, otherwise cogent and convincing cannot be rejected on the ground that there was no independent witness, though the occurrence had taken place on a busy road. But, there may be circumstances where the witnesses are interested and the manner of occurrence as described requires corroboration by independent witness also. Ultimately, therefore, it shall all depend on the facts and circumstances of the case. It has also to be kept in mind that it shall be those close to the deceased, who shall be most keen that the real culprits be booked." D E F

With the aforesaid observations, the High Court set aside the judgment of conviction of the accused who were convicted by the Fast-Track Court as well as sentence imposed upon them and accordingly, allowed the appeals by acquitting all the accused. G

20. Before proceeding further, it would be useful to review the approach to be adopted while deciding an appeal against acquittal by the trial court as well as by the High Court. Section 378 of the Cr.P.C deals with appeals in case of acquittal. In one of the earliest cases on the H

A powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in ***Sheo Swarup vs. R. Emperor, AIR 1934 PC 227(2)*** considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under:

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> "16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a
> C competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.
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> But in exercising the power conferred by the Code and before
> D 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
> E any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised
> F in the administration of justice."

It was stated that the appellate court has full powers to review and to reverse the acquittal.

21. In ***Atley vs. State of U.P., AIR 1955 SC 807***, the approach
G of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao J., (as His Lordship then was) in ***Sanwat Singh vs. State of Rajasthan, AIR 1961 SC 715***:

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"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in ***Sheo Swarup*** case afford a correct guide for the appellate court's approach to a case disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) 'substantial and compelling reasons', (ii) 'good and sufficiently cogent reasons', and (iii) 'strong reasons' are not intended 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."

The need for the aforesaid observations arose on account of observations of the majority in ***Aher Raja Khimavs. State of Saurashtra, AIR 1956 SC 217*** which stated that for the High Court to take a different view on the evidence *"there must also be substantial and compelling reasons for holding that the trial court was wrong."*

22. ***M.G. Agarwal vs. State of Maharashtra, AIR 1963 SC 200*** is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as His Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused *"is not certainly weakened by the fact that he has been acquitted at his trial."*

23. In ***Shivaji Sahabrao Bobade vs. State of Maharashtra, (1973) 2 SCC 793***, Krishna Iyer, J., observed as follows:

"In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

A 24. This Court in ***Ramesh Babulal Doshi vs. State of Gujarat, (1996) 9 SCC 225***, spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:

> "While sitting in judgment over an acquittal the appellate court is
> B first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained
> C in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.

D 25. In ***Ajit Savant Majagvai vs. State of Karnataka, (1997) 7 SCC 110***, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the Trial Court:

> E "16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:
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> F (1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.
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> (2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion
> G and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.
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> (3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal
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was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal. A

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court. B

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted. C

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box. D

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

26. This Court in ***Ramesh Babulal Doshi vs. State of Gujarat, (1996) 9 SCC 225*** observed vis-à-vis the powers of an appellate court while dealing with a judgment of acquittal, as under: E

"7. … While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then—and then only—reappraise the evidence to arrive at its own conclusions." F G

27. This Court in ***Chandrappa & Ors. vs. State of Karnataka, (2007) 4 SCC 415*****,** highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate H

court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.

28. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words:

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> *(1)* An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> *(2)* The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> *(3)* Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> *(4)* An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. A

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

29. In ***Nepal Singh vs. State of Haryana– (2009) 12 SCC 351***, B this Court reversed the judgment of the High Court which had set aside the judgment of acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappreciation of the evidence.

30. The circumstances under which an appeal would be entertained C by this Court from an order of acquittal passed by a High Court may be summarized as follows:

A) Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed upto the High Court. It is only in rarest of rare cases, where the D High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. ***[State of U.P. v. Sahai, AIR 1981 SC 1442]*** E

Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. ***[Arunachalam v. Sadhananthan, AIR 1979 (SC) 1284]*** F

An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. ***[State of Haryana v. Lakhbir Singh, (1990) CrLJ 2274 (SC)]*** G

B) However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows: H

A i) Where the approach or reasoning of the High Court is perverse:

a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. ***[State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207]***

B

For example, where direct, unanimous accounts of the eye-witnesses, were discounted without cogent reasoning; ***[State of UP v. Shanker, AIR 1981 SC 879]***

C

b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses; ***[State of UP v. Hakim Singh, AIR 1980 SC 184]***

D

c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. ***[State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207]***

E

d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. ***[Arunachalam v. Sadhanantham, AIR 1979 SC 1284]***

F

e) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner. ***[State of UP v. Ranjha Ram, AIR 1986 SC 1959]***

G

f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; ***[State of Maharashtra v. Champalal Punjaji Shah,***

H

AIR 1981 SC 1675] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. ***[Gurbachan v. Satpal Singh, AIR 1990 SC 209]***.

g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish 'motive.' ***[State of AP v. Bogam Chandraiah, AIR 1986 SC 1899]***

ii) Where acquittal would result is gross miscarriage of justice:

a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, ***[State of UP v. Pheru Singh, AIR 1989 SC 1205]*** or based on extenuating circumstances which were purely based in imagination and fantasy. ***[State of Uttar Pradesh v. Pussu 1983 AIR 867 (SC)]***

b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. ***[State of Maharashtra v. Champalal Punjaji Shah, AIR 1981 SC 1675]***

[Source : Durga Das Basu – "The Criminal Procedure Code, 1973" Sixth Edition Vol.II Chapter XXIX]

31. Bearing in mind the aforesaid discussion, we shall consider the evidence on record.

32. PWs-1, 3, 4 and 7 are related to each other and they are the son-in-law, cousin and sons of the deceased Chhote Lal Mahto, respectively. PW-1 in his examination-in-chief has stated that on 10.03.2005 at about 05.00 p.m., he saw Munna Ram, Mahendra Ram, Upendra Ram, Dappu Ram and other persons come near his shop and

A started abusing Chhote Lal Mahto (deceased) and his son Rajesh Prasad, appellant herein. That Munna Ram threw a bomb on Chhote Lal Mahto and as a result, he died. O.P. Verma also died as a result of Mahendra Ram throwing a bomb at him. The third bomb was thrown on the street and it did not injure anybody. At the same time, 20 to 25 people came to the spot, caught hold of a person, namely Ashok Yadav and started beating B him, as a result of which, it was "heard" that he had died. However, in his cross-examination, PW-1 has stated that the accused and other persons were abusing each other. He has also stated that he is not aware whether the police lodged a case before Rajesh Prasad (PW-7) or not. He has feigned ignorance about anything that happened before the C incident. He has also stated that the deceased Chhote Lal Mahto is his father-in-law. He has deposed that due to the explosion of the bomb, the area was covered with smoke and the Betel shop was not visible. He has also admitted that in his statement to the Police, he had stated that Mahendra Ram, Upendra Ram and Dhappu Ram came to his shop and started abusing his father-in-law. Chhote Lal Mahto pleaded not to do so D and also not to sell illicit liquor. That after abusing, they went away and returned ten minutes later. However, he has admitted that he does not remember whether he has stated before the Police that Upendra Ram started shouting and directed Mahendra Ram to get hold of the deceased and after that, Mahendra Ram threw a bomb. He has further stated that E it is wrong to suggest that his father-in-law and other persons died due to hurling of bombs by Ashok Yadav and other unknown persons.

33. PW-2/Prabhat Kumar Singh has stated that he runs a PCO (Public Call Office) booth and on 10.03.2005 at about 05.00 p.m., he was at the booth. That there was an altercation between Rajesh Prasad F (PW-7) and Mahendra Ram, Upendra Ram and Dhappu Ram. That Munna Ram threw a bomb at Chhote Lal Mahto's betel shop which hit him on his head and as a result of which his head was blown off. That PW-2 also came in contact with the splinters of the bomb and was injured as a result of the same. That he was baffled after seeing the dead body of Chhote Lal Mahto and left the spot after closing his shop. However, G during cross examination he has stated that he left the spot thirty minutes after the explosion.

34. He has also admitted that he is under police security as he has been threatened by the accused that if he deposes against them, he must be ready to face the consequences. That is why he went to the police H

station the previous evening and has deposed under police security. He has stated that he does not recognise Uday Prakash Mandal who was present in the Court. PW-2 has stated that he is a tenant in the house of Rajesh, the informant and that he signed the affidavit that was prepared based on his statements which he had made as "advised" by his advocate. He has also admitted that he had not seen Rajesh, Naresh or any of their family members beating Ashok Yadav. That the people left the scene of occurrence after the altercation amongst them ended. He has stated that after the occurrence, an associate of Munna Ram had caught hold of him. That Chandrabhanu Prasad's family helped Munna Ram flee from the spot.

35. PW-3 / Naresh Prasad @ Naresh Mahto has stated that on 10.03.2005, he saw Munna Rai (to be read as "Munna Ram") along with unknown persons hurling abuses in front of his betel shop, stating that he would destroy anyone who interfered with his business. His brother Rajesh Prasad (PW-7) came out of his house and tried to pacify Munna Rai but he threatened that he would blow off his entire family with the bomb. After such threat, he left the spot only to return after ten minutes along with Mahendra Rai, Upendra Rai (to be read as "Upendra Ram") and Happu Rai (to be read as "Dhappu Ram"). That Munna Rai threw a bomb at the betel shop in which his father was sitting, as a result of which his father's head was blown away and he died on the spot. Another bomb was blasted by Munna Rai and a pedestrian, namely, O.P. Verma died. That he went near his father and started crying. He does not know what happened thereafter. He is also not aware as to who else signed the seizure list on which his signature was found. While he identified the accused Munna Rai, Mahendra Rai, Upendra Rai, Happu Rai, Bhanu Ji (Chandrabhanu Prasad), he did not recognise another person, who was one among the accused. He had already stated that he did not see Chandrabhanu Prasad at the place of the occurrence.

36. In his cross-examination, he has stated that there is no personal enmity with the accused and his family members. In fact, there was "*Nyota Pehani"* (invites exchanged) between their families. He has also denied that there was any quarrel between him and Ashok Yadav and others such as Munna Rai. He has also denied that he and his family members beat up Ashok Yadav and others, as a result of which they came and threw a bomb in anger. He has also denied Happu's tea shop was looted on the day of occurrence. He has also denied that the police

A came at the place of occurrence within five minutes. That the Station House Officer, Kotwali P.S. did not record his *Fardbayan* at that time, but he took statement of Rajesh, Umesh, other villagers and PW-3. That the Daroga did not write *Fardbayan* in his presence, but took his signature on a plain paper and he does not know what was written in the application on the same. He has also stated that he is not aware of what was written B in the application to register FIR given by his brother as he was asleep when such an application was made.

That, in his statement to the police, he has stated that Munna Rai and unknown persons came to his betel shop and started hurling abuses. That he does not remember whether he had told the Police that bombs C were blasted by the accused.

37. Umesh Prasad Rai is PW-4 who has spoken about the abuses of Mahendra Rai, Upendra Rai, Munna Rai, Dhappu Rai to the effect that whoever interfered with or obstructed their illegal work would be blown away by a bomb. Munna Rai then threw a bomb at the betel shop D in which Chota Lal Mahto was sitting and as a result of which, his head blew up. Mahendra Rai then threw a second bomb which hit a passerby, O.P. Verma who was standing near M/s. Aditya Electronics and the third bomb was blasted by Upendra Rai which fell on the road and exploded. Thereafter, he went near the body of Chhote Lal Mahto and E kept crying. On hearing the sound of the bombs, several people gathered at the place of occurrence. That the inquest report of Chhote Lal Mahto was made before him and he had signed it.

38. In his cross-examination, he has stated that Chhote Lal Mahto was his uncle. He has stated that before the occurrence abuses were F hurled but he has no knowledge of any pre-existing scuffle between the accused and his brothers Rajesh and Naresh (sons of the deceased). That he had not informed the nearby police station after seeing the incident, but information was sent by someone else to the Police officers who arrived after ten minutes. The police did not record his statement on the day of the occurrence. He has also admitted that his *Fardbayan* G was not in his handwriting and that though he is an advocate, before signing the *Fardbayan* he did not read it. He has stated that there was no dispute between Rajesh and Ashok relating to illicit liquor and it is not true that it was in the course of such dispute that there was a scuffle and unknown persons blasted bombs in which his uncle and another person H died. He has stated that no bomb was thrown at the residence of Naresh

and Rajesh or at his house. That after two months and twenty days after the occurrence, he went to get his statement recorded because no officer came to record his statement. That, when the first bomb was blasted there was a stampede and he does not remember whether the shop keepers started shutting down their shops as there was much darkness. That he has not read the supervision note of SP and DSP. He has no knowledge that SP had given directions for recovering illicit liquor from the house of Rajesh, etc.

39. PW-7/Rajesh Prasad is the informant who is the son of the deceased Chhote Lal Mahto and the appellant herein. In his examination-in-chief, he has stated that on 10.03.2005 at about 05.00 p.m., he was at the door of his house and he saw Mahendra Rai, Upendra Rai and Munna Rai and other unknown persons come near his house, threatening that they would blow up his entire family with a bomb. Immediately, Munna Rai threw a bomb carried by him on his father Chhote Lal Mahto who was sitting in his betel shop and the back portion of his father's head blew away resulting in his instant death. Thereafter, Mahendra Rai threw another bomb near M/s. Aditi Electronics which hit O.P.Verma, a passerby, as a result of which his head blew away and he also died on the spot. Then Upendra Rai threw the bomb which fell on the road and exploded. The accused threatened them once again and fled the scene. That the reason behind the incident is that the accused were carrying on illegal business of liquor and he and his family members opposed the same and hence, there was a conspiracy and a common intention in pursuance of which his father was killed. That he filed a written complaint under his signature at the police station (Exhibit No.2/2). The Death Review Report of the dead body of his father was prepared in his presence and he had signed it (Exhibit No.4/1). He also identified six accused persons present in the Court.

40. In his cross-examination, he has stated that he did not see Chandrabhanu Prasad at the place of the incident. He did not see Dhappu Rai from the start to the end of the incident. That the written complaint which he had prepared was read over and some of it was heard. He did not read it completely. The complaint was made in the police station in the evening at 06.00 p.m. That he had engaged a private lawyer to present his case. That the first information report was not read over to him. That he does not know completely as to what is written in the first information report. He also does not know as to what he had mentioned

in the protest petition. That his lawyer had given him the first information report, so written and he had just signed the protest petition and he had not gone through it and understood it. That none of his brothers or relatives have ever read the case diary, supervision note and protest petition.

41. He has also admitted that there was no dispute or litigation between the family of Mahendra, Upendra, Munna, and his family. That on the date of the alleged incident, some heated exchanges between his father and Munna took place, but he does not know whether he has stated the said fact in the first information report or in his protest petition or before the Police. He has also denied that there were any disputes between them before the incident. He also does not know whether the police was informed immediately after the incident. That the police came at the scene of the crime at about 05.00 and 05.30 p.m., but he does not know which particular police officer came there. He has also no knowledge as to whether the inspector recorded the *Fardbayan* or whether the statements of Upendra, his brother or his family members were recorded by the police on the same day or not, but his statement was recorded.

42. Further, in his cross-examination, PW-7 has further denied that he had made any statement before the inspector, SP or DSP that before the incident at about 04.00 to 04.30 p.m., the accused abused the villagers in un-parliamentary language and when they could not tolerate it any more, they came out of the house and abused them. The accused threatened and went away. He also denied making any statement to the effect that Upendra Rai exploded the bomb which blew up after striking the road. He has confirmed the statement he made before the Inspector, SP and DSP that a bomb was exploded by Mahendra Rai near M/s. Aditi Electronics, which hit O.P. Verma, a passerby and he died on the spot. He had also admitted that he does not recall whether he had got recorded in his *Fardbayan* with the police that while running away, one of the accused was caught hold of by the people and was nearly beaten to death. He has further stated that he does not recall any other aspect of the case. For better appreciation of the same, it would be useful to extract paragraph 21 of his deposition as under:

> "21. I do not recall that whether I had got recorded in my Fard Beyan with the Police that while running away, one accused was caught by the people and after giving him beatings put him almost to death. I do not recall that I gave the statement to the Police

that I pulled up my sock and caught the hold of Munna Rai, who was freed by Chandrabhan and brother of Munna Rai and he ran away. I do not recall that I had stated that then Chandrabhan and Tappu said that our work is finished now and they ran away from there. It is not like that Mahendra, Upendra and Munna have not committed the incident and therefore, I am saying every time that I do not know."

Further, in paragraph Nos.25 and 26, PW-7 the informant (the appellant) has stated as under:

"25. It is not like that my brother, brother-in-law, Umesh and I together beat up the unknown criminals very badly near junction turn and they got annoyed and one of them said that just stay here we are coming back in few minutes and then they exploded the bombs. It is not like that just minutes after, criminals came there with bombs and while abusing to kill me, my brother, Umesh and brother-in-law and then we ran towards our house to save our life and then they threw the bomb, which fell near Aditi Electronics and we succeeded in escaping from there and closed ourselves inside the house and when they could not find us, unknown criminals exploded the bomb on our father in our Pan Shop. It is not like that when the accused persons after exploding the bomb started running away, people of the village raised the alarm and then all people gathered and managed to catch one of the criminals and beat up him to death. It is not like that when we heard the noise of the villagers that — illegible —, we came out after opening the door and we together beat up the unknown criminal. It is not like that we did not say in the loud voice before the people of the village that he works on the shop of Tappu Rai and Munna Rai, rob him and then we looted the shop of Tappu Rai and Munna Rai and destroyed it. Tappu Rai has no shop.

26. Tappu Rai has the tea shop at crossing in front of the Court of CJM, which has now destroyed. It is not like that when we asked the people to rob and damage the shop of Tappu Rai and Munna Rai, Mahendra and Upendra of his family and other members of his family came and they opposed our above intention and then we hatched the conspiracy and prepared a new application and submitted it with the Police Station in night at 9.00 pm in order to implicate them."

A In his further cross-examination, in paragraph 29, PW-7 he has stated as under:

> "29. …… I could not say that any pellet of the bomb hit any passerby and person in traffic. It just hurt O. P. Verma only. I did not make any such statement before the Police and DCP that in
B total five bombs were exploded. It is not like that I said that in total five bombs were exploded."

With regard to his statements before the DSP, PW-7 has categorically stated as under:

> "31. My statement was not recorded before the DSP Sahab. Again
C stated that I do not know whether I made the statement before the DSP Sahab or not. I do not know that I request the SP in the protest petition to handover the investigation to some Superior Officer. SP had gone for supervision or not, I cannot tell anything in this regard.
D 32. It is not like that on the order of DIG, SP had carried out the inspection of the scene of crime personally. I cannot tell anything in this regard. It is not like that in order to conceal the truth of the incident, I am stating that I am illiterate and concealing the fact regarding inspection carried out by SP Sahab.
E 33. It is not like that I made the statement to the SP that Naresh, Bablu, Aatish and I beat up Ashok Yadav very badly and when Munna came for his rescue, we also beat up him and then he ran away from there to save his life. (Objected to)."

With regard to the aspect of bombs being hurled, PW-7 at
F paragraphs 35 and 36 has stated as under:

> "35. It is incorrect to state that when first bomb exploded, stampede took place in the traffic and people started concealing themselves in order to save their life and shop started closing and we after saving our life ran away from there. It is incorrect to state that
G thereafter Ashok Yadav threw the bomb on my Pan Shop in its explosion my father had died and thereafter people of the village caught the hold of Ashok Yadav and beat up him till he died.
>
> 36. It is incorrect to state that quarrel took place with Ashok Yadav on demanding balance amount from him and he was beaten up
H and due to above reason, he exploded the bombs."

43. PW-9/Mani Lal Sahwas was the Sub-Inspector posted at P.S. Kotwali, Munger, on 10.03.2005. He has stated that he received information through telephone about the incident at about 17.15 hours and he, along with Sub-Inspector Md. Azhar and K.K. Gupta, along with an armed force left for Bhadeopur Gola Road and reached there at 17.20 hours. On arriving there, Rajesh Prasad, S/o. Late Chhote Lal Mahto gave a written application (Exhibit 3/3) about the cognizable offence. On the basis of the said application, he took up the investigation of the case at the place of occurrence and during the course of investigation, the statement of the informant was taken again and a case was registered. Thereafter, the inquest report of Chhote Lal Mahto was prepared (Exhibit 4/2), so also the inquest report of the deceased O.P.Verma was prepared. Their bodies were sent for post mortem at 19.30 hours to Sadar Hospital, Munger along with a constable. The remains of the bomb were collected and seizure list was prepared (Exhibit 1/2), so also the blood stained soil was collected and the seizure list is at Exhibit No.8. That the dead body of Chhote Lal Mahto was brought out of the betel shop by the relatives of the deceased. Inside the Betel shop, there was blood and flesh scattered as the head and upper neck of the deceased Chhote Lal Mahto was blown away. The occurrence of second blast was approximately 40 to 45 yards towards the north of the betel shop of the deceased, near M/s. Aditya Electronics on the footpath. The deceased was identified as Om Prakash Verma, a tea seller. Similar seizures were made at the scene of occurrence.

44. He further stated that Santosh Kumar Patil and Anil Mahto gave their statements on the same day. The accused were absconding. On the same day, the statements of other persons were recorded and on 12.03.2005 at about 06.40 a.m., the accused Munna Rai and Dhappu Rai were arrested. Subsequently, on 18.04.2005, the investigation was transferred to another officer.

45. In his cross-examination, the said witness has stated that Rajesh Prasad, the informant, did not state about Mahendra Rai and Uppendra Rai blasting bombs. Referring to the *Fardbayan* that was recorded at the place of occurrence, PW-9 has stated as follows: That the informant's statement does not record that Mahendra Rai, Uppendra Rai, Dhappu Rai were present; Instead, he has stated that Munna Rai went home to bring bombs and at that time, his brother was also there. That Umesh Prasad did not say that he was at his gate at the time when Munna Rai,

A Mahendra Rai, Uppendra Rai and Dhappu Rai were abusing and saying that whoever objects to their illegal activity would be blown up. That Umesh Prasad did not mention in his statement that the second bomb was blown by Mahendra Rai which hit a passerby by name O.P.Verma who was standing near M/s. Aditya Electronics and his head was blown away. Similarly, there was no statement that third bomb was blasted by
B Mahendra Rai, which fell on the street and made a loud noise.

46. Also, in the *Fardbayan* as well as in his statement, Rajesh Prasad, the appellant herein, had not stated that Munna Rai, Uppendra Rai, Mahendra Rai and Dhappu Rai came near his father's betel shop and started abusing and upon retaliation by his father, there was heated
C argument and they threatened to blow him up with a bomb.

47. PW-8 /Santosh Kumar Patel, in his examination-in-chief has stated that on 10.03.2005 at about 05.00 p.m. he was standing near his gate and he saw the accused and Chhote Lal Mahto engaged in indecent and foul abuses and heard threats of the accused to blow up the family
D of Chhote Lal Mahto with bombs and further, that Chhote Lal Mahto's head was blown up by Munna Rai. That O.P. Verma died in another bomb attack. But in his cross examination, he has stated that he could not have seen the occurrence of the incident from his house which is 100 yards away. He has further stated that his statement was recorded
E by the police at the place of occurrence and on the day of occurrence at 08.00 in the night. But he had not told the police that the third bomb was thrown on the road which did not hit anyone. Soon thereafter, the people of the area gathered and the people got aggressive and tried to catch hold of both the miscreants. He has further admitted that he did not state that the bomb was thrown at Rajesh's shop where his father was sitting
F and the bomb hit him.

48. On a consideration of the aforesaid evidence, we find that PW-7, who is the informant in his evidence, has resiled from what he had initially stated to the Police even though he claims to be an eye-witness to the occurrence. It has been established that Chandra Bhanu
G Prasad, though a resident of the locality, was not present during the occurrence of the incident. Similarly, the presence of Dhappu Ram and Fantush Mandal is doubted by PW-8. In fact, the Investigating Officer / PW-9 has also corroborated the fact that PW-7 had not stated anything about the bombs being thrown by Mahendra Ram, Upendra Ram and
H that there was no mention of Dhappu Ram. In the deposition of PW-3,

there has been no mention of Dhappu Ram, Munna Ram and Mahendra Ram as also in the evidence of PW-2. Further, PW-4 who is an advocate and who is said to have prepared the written report, has not been categorical in his evidence. It is denied by PW-8 who is also an advocate and an attesting witness to the written report, that the bomb was thrown at the informant's shop and that it hit the informant's father who died as a result of the same.

49. On the basis of the aforesaid evidence, the High Court, during the course of its reasoning, has come to the following conclusions:

a) The written report is specific but it attributes a trivial role to Chandrabhanu Prasad who was accompanied by Dhappu Ram and others. On the orders of Chandrabhanu Prasad, three bombs were thrown. Chandrabhanu Prasad freed co-accused Munna Ram when he was apprehended.

b) PW-7, the informant, was an eyewitness to the occurrence. In his cross examination, he stated that he had never seen Chandrabhanu Prasad and Dhappu Ram, who were residents of the same locality and were well known to him, present at any time throughout the occurrence. He also refused to identify Fantus Mandal whose name arose during investigation.

c) PW-2 stated that Chandrabhanu Prasad was a resident of the locality and was known to him but was not present during the entire occurrence. To the same effect is the statement of PW-3 and PW-4. PW-8 also stated that Dhappu Ram and Fantus Mandal were not present.

d) However, PWs 1, 2, 3 and 4 spoke about the presence of Dhappu Ram and gave his name in their statements under section 161 of Cr.PC.

e) PW-9, the Investigating Officer, has stated that the informant in his statement under section 161 Cr.PC had not stated anything about throwing of bombs by Mahendra Ram and Upendra Ram and neither had he named Dhappu Ram.

f) That during the course of the trial, PW-3 had not named Dhappu Ram, Munna Ram and Mahendra Ram and PW-2 had likewise not named Munna Ram, Mahendra Ram, Upendra Ram and Dhappu Ram.

A g) PW-7 had not stated anything about any accused being apprehended and beaten up. In his restatement also, he did not state that Munna Ram, Mahendra Ram, Upendra Ram and Dhappu Ram had come to the shop of his father and indulged in abuse.

B h) Likewise, PW-8 had also not made any statement, as was being deposed in Court.

In view of the above, the High Court held as under :

"The contradiction in the statement of the prosecution witnesses as stated during investigation and in the trial having been pointed out to them in the manner provided for in section 145 of the Evidence Act, and corroborated by the Investigating Officer, under section 157 of the Evidence Act lends credence to the allegation of the defence that an entirely new case was sought to be made out by the prosecution for what was essentially a different manner and sequence of events."

i) The police stated that they had arrived at the place of occurrence within 20 minutes of the incident i.e. at 5.20 pm which fact has been corroborated by PW-7, the informant and other prosecution witnesses. PW-7 denied any written report given to the police station at 9.00 pm. He stated that he had signed the written report prepared by PW-4 but was not aware of its contents.

F j) According to PW-7, PW-4, who is an advocate and is a cousin of PW-7, prepared a written report. PW-7 admitted that he is an attesting witness to the FIR but denied full knowledge or reading of the same before signing.

k) Similar is the denial by PW-8, a relative of PW-7. PW-8 is also an advocate and an attesting witness to the written report.

50. On the aforesaid evidence the High Court observed as under:

"They were not rustic witnesses but were practicing advocates fully aware of the nature and importance of the documents they were signing. It is not possible to accept their contention that they

H

signed it unaware of the full contents. It raises serious doubts that they were attempting to conceal something." A

51. With regard to the written report, the High Court has noted from the evidence as under :

"There is no explanation for this delay, though he could be presumed to be present at the Police Station when the written report was handed over to the police." B

52. The High Court has also noted flaws in the investigation of the case and in the evidence of the prosecution witnesses which are culled out as under:

C

(i) PW-7 said that PW-4 drew up the written report while PW-4 denied the same.

(ii) While PW-1 and PW-3 were related to the deceased and signed the seizure list immediately after the occurrence, yet PW-3 had stated that he was not aware of the other signatory to the seizure list. D

(iii) The statement of PW-1, who was a witness to the seizure list as well as an eyewitness , was recorded by the police one and half months later with no explanation either by the witness or by the police.

E

(iv) Similarly, statement of PW-4 who is an eyewitness and a witness to the inquest report of the deceased and who is stated to have drawn up the written report given to the police, was recorded by the police after two months and twenty days. The High Court has noted that there is no explanation for the delay, though he could be presumed to be present at the Police Station when the written report was handed over to the Police. F

(v) PW-2, the shop owner of the PCO booth adjoining the betel shop of the deceased, was also allegedly injured during the occurrence but there is no injury report. G

(vi) The contradiction in the evidence of PW-3 is noted as under:

"That PW-3 has stated that the police came within 20 to 25 minutes and took the statement of the informant, PW3 and others, but he has stated that PW-7 gave written report to H

A the police at 9 p.m., that he was sleeping at that time and unaware about it yet he stated that the report may have been given at 8.30 p.m. PW-7 on the other hand has stated that the written report was given to the police at 6 p.m., at the police station and had denied of having given any report to the police at 9 p.m. On the other hand, PW-9 who is IO in the matter stated that PW-7 gave him the written report immediately after he reached the place of occurrence."

(vii) While the prosecution witnesses alleged throwing of three or more bombs, the Investigating Officer stated that he found signs only of two explosions; first one being at the betel shop of the deceased and the second one near M/s Aditya Electronics, located 40-45 yards north of the site of the first explosion.

53. With regard to explosions which took place on the date of incident, the High Court has considered the evidence of PW-7, PW-1, and PW-9 and observed as under:

"This Court on consideration of the aforesaid material and nature of evidence is satisfied that the allegations against the accused cannot be stated to have been proved beyond all reasonable doubts. The several inconsistencies, contradictions in the statement of the witnesses and other necessary materials leave this Court satisfied that they have attempted to conceal more than they have sought to reveal of the occurrence. A different manner and sequence of the occurrence appears to have been presented by the prosecution for their convenience in a truncated manner implicating those desired and exonerating those against whom the allegations were originally made also. There is not a semblance of an explanation for exonerating those earlier accused with a primal role and those with regard to whom no statement was made before the Police. All these factors cast a serious doubt on the prosecution case.

The informant, in Court, has given up the entire genesis and the manner of occurrence when the two co-accused have been exonerated. The informant having implicitly accepted false implication, cannot be trusted of telling the truth. The principle of *falsus in uno, falsus in omnibus* has no application in the facts

of the case, when the prosecution has itself knocked out the basis edifice of its own case as distinct from peripheral issues.

The prosecution despite the nature of evidence given by its witnesses, did not consider it necessary to re-examine them under Section 137 of the Evidence Act or cross-examine them under Section 154 of the same.

The illicit liquor trade rivalry revealed during trial between the two sides, leaves this Court satisfied that in the facts and circumstances of the case, the charge cannot be stated to have been proved beyond all reasonable doubt. On the contrary, the prosecution has created a cobweb for itself and enmeshed itself, the benefit of which has to go to the accused.

Unfortunately, the trial court ignoring all these crucial issues inverted the law to hold that the defence was based on surmises and conjectures to hold the appellants guilty and there could not be two views of the occurrence to grant any benefit to the accused. And all this, while unquestionably granting acquittal to Chandra Bhanu, Dhappu Ram and Fantus as a case of no evidence. This Court finds it difficult to uphold the conviction let alone the death sentence.

The manner in which the trial proceeded as noticed above, leaves the impression that the prosecution witnesses considered the court room as a playing field for a friendly match. Unfortunately, the trial court assumed the role of a referee forgetting the important role that it had to play in the dispensation of justice dealing with the serious issue of a death sentence and life imprisonment affecting not only the liberty but also the life of a citizen.

The subversion of the legal maxim presumed innocent till proved guilty to say the least was unfortunate.

We are satisfied that the present case is a fit case for initiating proceedings of perjury against P.W.7, Rajesh Prasad son of Late Chhote Lal Prasad. We, accordingly direct the trial court to initiate proceedings, hold inquiry in accordance with law and pass appropriate orders."

54. We have extracted the observations made by the High Court while reversing the judgment of conviction giving categorical reasons

A for doing so. We also observe that the Fast Track Court has failed to appreciate the evidence of PWs-1, 3, 4 and 7 in their proper perspective and has further failed to recognise the fact that PW-7/the appellant herein did not at all support the case of the prosecution although he was the informant and hence, erroneously convicted the accused and sentenced two of them with death penalty and the third accused with imprisonment B for life. In our view, the High Court was, therefore, justified in reversing the judgment and order of conviction passed by the Fast-Track Court.

55. It is also noted that the State has not filed any appeal against the judgment and order of acquittal passed by the High Court.

C 56. Having re-appreciated the evidence of the witnesses, we find that the High Court was justified in reversing the judgment of conviction and sentencing the two of the accused, namely Munna Ram and Mahendra Ram with death penalty and imposing Upendra Ram to undergo life imprisonment and instead acquitting all the accused.

D 57. Further, the High Court has stated that this is a fit case for initiating proceedings of perjury against the appellant (PW-7) herein. No doubt, the appellant herein who was the informant did not at all support the case of the prosecution during trial and as a result, the High Court acquitted the accused. However, having regard to the facts and circumstances of these cases and bearing in mind that there were two E deaths in the incident that occurred on 10th March, 2005 which has not been proved beyond reasonable doubt, we set aside only that portion of the impugned judgment and order directing the trial court to initiate proceedings of perjury against the appellant herein. We affirm the rest of the judgment and order of acquittal passed by the High Court.

F 58. The appeals are allowed in part to the aforesaid extent only.

Devika Gujral Appeals partly allowed.
(Assisted by : Mahendra Yadav, LCRA)