2024 INSC 124

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 622 OF 2013

Kalinga @ Kushal ….Appellant

Versus

State of Karnataka By Police Inspector Hubli ….Respondent

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Master Hrithik, aged 2.5 years, lost his life on the fateful day of 03.11.2002 in Hubli, Karnataka. PW-1, his father and complainant in this case, filed a complaint and the allegation was levelled against the appellant/accused, who is the younger brother of PW-1. After a full-fledged trial, Trial Court acquitted the appellant from the charges levelled upon him. The High Court reversed the order of acquittal and convicted the appellant. The mystery of Hrithik's death continues as the matter has landed before this Court in the form of the present appeal, which assails

the order dated 28.03.2011 passed by the High Court of Karnataka (Circuit Bench at Dharwad) in Criminal Appeal No. 130/2005.

FACTUAL MATRIX

2. At the outset, we consider it apposite to note that there is considerable divergence between the parties (as well as between the decisions rendered by the Trial Court and the High Court) as regards the sequence of events and timelines involved in this case. To avoid any confusion or presumption, the facts delineated herein represent the version of the prosecution for the purpose of understanding the story. On 03.11.2002, at around 11 A.M., the son of PW-1 had gone out for playing and went missing. PW-1 and other family members of the child searched for him in and around the locality. Upon finding no trace of the child till evening, a missing complaint was lodged at around 10 P.M. by PW-1 at PS Vidyanagar, Hubli, Karnataka. The complaint came to be registered as Crime No. 215/2002.

3. Fast forward to 14.11.2002, the appellant (also the brother of PW-1) appeared at the house of PW-1 in a drunken state and started blabbering about the missing incident of Hrithik and about mishappening with the child. The encounter on 14.11.2002 happened late at night and PW-1 did not pursue the same at that point of time. On the morning of 15.11.2002, PW-1 went to his

shop and returned around 12:30 P.M. At this point, PW-1, his mother and wife enquired about the child from the appellant and the appellant stated that he had murdered Hrithik and thrown his body in the well. Thereafter, PW-1 took the appellant to PS Vidyanagar for filing the complaint which led to the registration of the First Information Report (FIR) in this case.

4. It is the case of the prosecution that on reaching the police station, the appellant confessed to the commission of crime as well as the act of throwing the child in the well. The voluntary statement of the accused, in the nature of extra judicial confession, was recorded by PW-16 (Investigating Officer/IO of the case) as Ex.P.21. At the instance of the appellant, PW-16 took PW-1, mother and wife of PW-1 and panchas in a police jeep to a place near the back side of Kamat Café. On reaching there, the appellant took PW-16, PW-1 and panchas near the well and told them that the dead body of the deceased was thrown in the said well. When they looked into the well, a dead body of a child was found floating there. The dead body was taken out and inquest panchnama was conducted. Thereafter, spot panchnama was prepared and the body was sent for post mortem. Thereafter, accused no. 2 and 3 were arrested and upon their disclosure and at their instance, jewelry articles exhibited as M.O.s 5 and 6 were recovered from PW-17, which were allegedly taken off from the body of the deceased child and were sold off to PW-17.

5. In this factual backdrop, PW-16 investigated the case and filed the chargesheet. Upon committal of the case to the Court of Sessions, charges were framed upon the three accused persons under Sections 201, 302, 363, 364 read with 34 of Indian Penal Code, 1860[1]. Upon the culmination of trial, the Trial Court acquitted all the accused persons vide order dated 30.04.2004 passed by Ld. ASJ-01, Dharwad (Hubli).

6. While ordering acquittal of the accused persons, the Trial Court gave the following reasons:

> i. There is no eye witness to support the case of the prosecution and the case is entirely based on circumstantial evidence.
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> ii. The prosecution case is built upon the extra-judicial confession of the appellant and factum of recovery of the dead body from the well in consequence of the information disclosed by the appellant.
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> iii. The credibility of an extra judicial confession depends upon the veracity of the witnesses before whom it is given and the circumstances in which it was given. The statements of PW-1 in the Court and in the complaint Ex.P1 are different. In the complaint, PW-1 had mentioned about the involved of co-accused persons, whereas his testimony in the Court was completely silent regarding the involved of other accused persons.
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> iv. PW-1 stated that his wife and mother were also present when the confession was made by the

[1] Hereinafter referred as "IPC"

appellant. However, neither wife nor mother of PW-1 was examined by the prosecution as a witness.

v. PW-1 deposed that after the confession was made by the appellant, he took the appellant to the police station where he disclosed the involvement of accused no. 2 and 3. However, in the complaint Ex.P1 which was given by him at the police station, there is no mention of accused no. 3. The contradiction in this regard is material as, if the appellant had disclosed the involvement of accused no. 2 and 3 before going to the police station, there was no reason for PW-1 to skip the name of accused no. 3 from Ex.P1.

vi. The Trial Court noted the multiplicity of versions by PW-1 and held that an extra judicial confession must be free from suspicion, which is not the case in the testimony of PW-1.

vii. The Trial Court also noted the discrepancy regarding the arrest of the accused. PW-1 deposed that he took the appellant to the police station after his disclosure, whereas PW-16 deposed that after registering the complaint, he had arrested the appellant from his house.

viii. No mention of the incident of utterance of certain words by the appellant on 14.11.2002 in the complaint given by PW-1 on the following day.

ix. PW-1 took no steps in furtherance of the information supplied by PW-5 that he had seen the appellant taking away the child on 03.11.2002 or in furtherance of the information supplied by PW-7, who had informed PW-1 on 10.11.2002 that he had seen three people throwing something into the well. The conduct of PW-1 was not found to be natural.

x. PW-1 failed to explain the discrepancy in the clothes allegedly worn by the deceased and the clothes found on the body of the deceased. Moreover, PW-12 deposed that at the time of filing the complaint, he had enquired from PW-1 regarding any ornaments on the child. PW-1 had replied in negative.

xi. The theory of last seen was also rejected by the Trial Court and PWs in that regard - PW-5, PW-6, PW-7 and PW-18 - were disbelieved.

7. The decision of the Trial Court was assailed before the High Court by the State in appeal. The High Court analyzed the evidence on record and partially allowed the appeal by holding the appellant guilty for the commission of offences punishable under Sections 201, 302, 363, 364 of IPC. Notably, the High Court was in agreement with the conclusion of acquittal regarding accused no. 2 and 3.

8. On a re-appreciation of evidence pitched against accused no. 2 and 3, the High Court agreed with the view of the Trial Court that the evidence was not trustworthy. The theory of last seen, as propounded to bring accused no. 2 and 3 within the ambit of criminality, was rejected. Similarly, the allegation of recovery of ornaments from PW-17 at the instance of the accused was also rejected. Since, there is no divergence of opinion with respect to accused no. 2 and 3, this Court is not required to delve further into the same. The High Court set aside the view of the Trial

Court regarding the rejection of the voluntary extra judicial confession of PW-1 and recovery of dead body of the deceased at his instance. The High Court went on to convict the appellant on the strength of the following reasons:

> i. The extra judicial confession of the appellant was a voluntary confession and there is no reason to doubt the same.
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> ii. Information disclosed by the appellant led to the discovery of dead body of the deceased and minor discrepancies in the version of PW-1 are not material.
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> iii. The Trial Court committed an error by not properly appreciating the evidence of PW-1, especially the voluntary statement and recovery of dead body.

SUBMISSIONS OF APPELLANT

9. Assailing the order of the High Court, the appellant submits that the High Court did not appreciate the discrepancies in the evidence of PW-1 and went on to accept the same. He further submits that the High Court failed to take note of the improvements made by PW-1 at every stage. He further submits that the Trial Court had elaborately appreciated the entire evidence on record and it was not open for the High Court to reappreciate the entire evidence and arrive at a different conclusion of its own. Further, it is submitted that the High Court

did not notice the absence of mother and wife of PW-1 from the list of witnesses of the prosecution.

10. The appellant further submits that the finding of the Trial Court regarding the sequence of arrest of the appellant has not been discussed at all in the impugned order. It is further submitted that the High Court did not examine the extra judicial confession of the appellant in its correct perspective, especially in light of the suspicion raised by the Trial Court. It is urged that the High Court did not subject the extra judicial confession to a stern test and went on to place undue reliance on the same. It is further contended that the High Court overlooked the discrepancy between the description of clothes found on the dead body and that indicated by PW-1 in his complaint. Lastly, it is submitted that if two views were possible on a reappreciation of evidence, the High Court must have adopted the view in favour of the accused, thereby providing benefit of doubt to the appellant.

11. *Per contra*, it is submitted on behalf of the State that there is no infirmity in the impugned order as it is based on a correct appreciation of evidence. It is further submitted that the voluntary extra judicial confession of PW-1 constituted crucial evidence and the fact that it led to the discovery of the dead body of the deceased, added credibility to the same. Reliance has been placed upon the decisions of this Court in ***Sansar Chand v. State of***

Rajasthan[2] and ***Piara Singh v. State of Punjab***[3]. It is further submitted that the Court must not consider every doubt as a reasonable doubt and minor discrepancies must not be allowed to demolish the entire testimony of a witness. In this regard, reliance has been placed upon the decisions of this Court in ***Mallikarjun v. State of Karnataka***[4] and ***Hari Singh & Anr. v. State of Uttar Pradesh***[5].

12. We have heard Sh. Sharan Thakur, Advocate for the appellant and Mr. Muhammed Ali Khan, AAG, for the respondent State.

DISCUSSION

13. We may now proceed to delineate the issues that arise for the consideration of this Court, as follows:

i. Whether the extra judicial confession of the appellant/accused was admissible, credible and sufficient for conviction of the accused thereon?

ii. Whether the testimony of PW-1 could be termed as reliable and trustworthy?

iii. Whether the chain of circumstantial evidence is complete and consistent for arriving at the conclusion of guilt?

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[2] (2010) 10 SCC 604
[3] (1977) 4 SCC 452
[4] (2019) 8 SCC 359
[5] Criminal Appeal No. 186 of 2018 (SC)

14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In ***Chandrapal v. State of Chattisgarh***[6], this Court reiterated the evidentiary value of an extra judicial confession in the following words:

> "11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of *State of M.P. Through CBI v. Paltan Mallah*, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused."

15. It is no more *res integra* that an extra judicial confession must be accepted with great care and caution. If it is not

[6] (2022) SCC On Line SC 705

supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.

16. In the present case, the extra judicial confession is essentially based on the deposition of PW-1, the father of the deceased. Without going into the aspect of PW-1 being an interested witness at the threshold, his testimony is fatal to the prosecution case on multiple parameters. PW-1 deposed that the appellant had arrived at his residence on 14.11.2002 and mentioned about the deceased. Despite so, the appellant was allowed to leave the residence and no action whatsoever was taken by PW-1. The incident took place on 03.11.2002 and despite lapse of 11 days, PW-1 had no clue about his deceased

son. On the eleventh day, when the appellant arrives at his residence and mentions adversely about his deceased son, PW-1 does nothing about it. In fact, on the next day as well, PW-1 started off normally and went to his shop in a routine manner. Thereafter, he came back home in the afternoon of 15.11.2002 and confronted the appellant about the incident. There is no explanation as to how the appellant arrived at his residence again on 15.11.2002. Nevertheless, PW-1 deposed that when he, his mother and wife confronted the appellant, he confessed to the murder of the deceased. Thereafter, they took him to the police station.

17. Before we refer to the proceedings which took place at the police station, it is of utmost relevance to note that the confession was made before PW-1, his mother and wife. However, the mother and wife of PW-1 were never examined as witnesses by the prosecution. This glaring mistake raises a serious doubt on the very existence of a confession, or even a statement, of this nature by the appellant.

18. Once the appellant was taken to the police station, as the examination in chief of PW-1, the appellant confessed to the act of throwing the deceased in the well along with accused no. 2 and 3. Notably, there was no mention of the co-accused persons in the original statement of the appellant, as per the examination in

chief of PW-1. One finds a third version of the same fact when the complaint Ex.P1 is perused. The said complaint was given by PW-1 at the police station of 15.11.2002. As per this complaint, the appellant was queried by PW-1 and his mother (presence of wife not mentioned). Furthermore, as per the complaint, the appellant confessed to the commission of offence along with one other accused (accused no.2) only. The complaint Ex.P1 is also silent on the episode that took place at the residence of PW-1 on 14.11.2002, a day prior to the filing of complaint. There is no explanation as to how and in what circumstances the incident of 14.11.2002 was omitted from Ex.P1. The omission assumes great importance in light of the fact that the incident of 14.11.2002 was the precursor of the confrontation that followed the next day, which culminated into the act of filing the complaint. The complaint Ex.P1 is also silent on the information received by PW-1 from PW-5 and PW-6 that they had seen his child going with the appellant on the date of incident. The introduction of these witnesses was an exercise of improvement, as we shall see in the following discussion.

19. The confession was followed by two things – arrest of the appellant and recovery of dead body of the deceased. The evidentiary aspects concerning these facts are equally doubtful. As per the testimony of PW-1, he had taken the appellant to the police station and he was arrested there. Contrarily, PW-16/I.O.

deposed that after recording the complaint, he had arrested the appellant from his house. The mode and manner of arrest, especially the place of arrest, is doubtful. It also raises a question on the aspect of confession – whether the confession was recorded when the appellant himself visited the police station with PW-1 or when he was arrested from his house and was taken to the police station by PW-16. The confessions, one made after a voluntary visit to the police station and the other made after arrest from the house, stand on materially different footings from the point of view of voluntariness. The likelihood of the latter being voluntary is fairly lesser in comparison to the former.

20. The next element which weighed upon the High Court in reversing acquittal is the recovery of dead body of the deceased at the instance of the appellant. Notably, the element of recovery is based on the same statement/confession of the appellant which, as observed above, fails to inspire the confidence of the Court. The Trial Court has rightly analyzed the evidence regarding the recovery of dead body and the High Court fell in an error in accepting the evidence on its face value, without addressing the reasonable doubts raised by the Trial Court.

21. The recovery of dead body from the well is not in question. However, the proof of such recovery to be at the instance of the appellant is essentially based on the disclosure statement made

by the appellant. Again, the prime witness for proving the disclosure statement is PW-1, whose testimony has failed to inspire the confidence of the Court, in light of the contradictions, multiplicity of versions and material improvements. The other witness to prove the recovery is PW-2, the panch. Notably, PW-2 was a waiter at a restaurant and he deposed that he had visited the police station himself. It is difficult to accept that PW-2 just happened to visit the police station on his own and ended up becoming a witness of recovery of the dead body. *Firstly*, his visit to the police station does not fit in the normal chain of circumstances as it is completely unexplained. A police station is not *per se* a public space where people happen to visit in the ordinary course of business and therefore, an explanation is warranted. *Secondly*, a normal person would generally be hesitant in becoming a witness to the recovery of a dead body. There is nothing on record to indicate that any notice to join investigation was given to PW-2 by the I.O./PW-16. In such circumstances, it would not be safe to rely upon the testimony of PW-2 as he could reasonably be a stock witness of the I.O.

22. Furthermore, we deem it appropriate to note that the identity of the dead body recovered from the well is also not beyond question. The Trial Court had also noted the doubts regarding the identity of the dead body, however, the identity of the deceased was held to be established in light of the fact that

the identification was done by PW-1, father of the deceased. The Trial Court also relied upon the fact that the identification was not challenged by either side. Be that as it may, we consider it important to note that there exist serious doubts regarding the identity of the dead body recovered from the well. The description of the deceased given by PW-1 in his complaint Ex.P1 did not match with the description of the dead body. The clothes found on the dead body were substantially different from the clothes mentioned by PW-1 in his complaint. The presence of ornaments was not mentioned in the complaint. Furthermore, identification of the dead body by face was not possible as the body had started decomposing due to lapse of time. Admittedly, the dead body was recovered after 12 days of the incident from a well. Sensitive body parts were found bitten by aquatic animals inside the well. The theory of ornaments has already been held to be a figment of imagination by the Trial Court and the High Court in an unequivocal manner. Therefore, the prosecution case regarding the identity of the dead body is not free from doubts.

23. Another circumstance which weighs against PW-1 in a material sense is the deafening silence on his part when PW-5 and PW-6 informed him regarding the factum of the deceased being thrown into the well. Notably, the said fact was brought to the knowledge of PW-1 well before 15.11.2002. Despite so, PW-1 maintained silence and did not even approach the police for

investigation or information on such a crucial aspect of investigation. An anxious father would have rushed to the police station on receiving an information of this nature. The subsequent conduct of PW-1, after the receipt of such material information, is unnatural. Furthermore, PW-5 only saw the appellant taking away the child, PW-6 also saw the appellant only and PW-7 saw three persons throwing the child in the well. The versions are manifold. In such circumstances, it cannot be held that the testimony of PW-1 is trustworthy and reliable.

24. Notably, it is a peculiar case wherein the appellant has been convicted for the commission of murder without ascertaining the cause of death in a conclusive manner. The report prepared by PW-14 reveals drowning as the cause of death. For attributing the act of throwing the deceased into the well upon the appellant, the prosecution has relied upon PW-7 and PW-18, the witnesses in support of the last seen theory. The testimonies of these witnesses have been held to be incredible by both Trial Court and the High Court. We suffice to observe that we agree with the findings of the said Courts on this point. Furthermore, the post mortem reveals the time of death within a time frame of 3 to 12 days. Allegedly, the death took place on 03.11.2002. Such a wide time frame concerning the crucial question of time of death raises a serious doubt on the reliability of the post mortem report. When this fact is seen in light of the already existing doubts on the

identity of the deceased, one is constrained to take the report with a pinch of salt. More so, this discrepancy again brings into question the element of recovery of the dead body and identity of the deceased.

25. This Court cannot lose sight of the fact that the Trial Court had appreciated the entire evidence in a comprehensive sense and the High Court reversed the view without arriving at any finding of perversity or illegality in the order of the Trial Court. The High Court took a cursory view of the matter and merely arrived at a different conclusion on a re-appreciation of evidence. It is settled law that the High Court, in exercise of appellate powers, may reappreciate the entire evidence. However, reversal of an order of acquittal is not to be based on mere existence of a different view or a mere difference of opinion. To permit so would be in violation of the two views theory, as reiterated by this Court from time to time in cases of this nature. In order to reverse an order of acquittal in appeal, it is essential to arrive at a finding that the order of the Trial Court was perverse or illegal; or that the Trial Court did not fully appreciate the evidence on record; or that the view of the Trial Court was not a possible view.

26. At the cost of repetition, it is reiterated that the anomaly of having two reasonably possible views in a matter is to be resolved in favour of the accused. For, after acquittal, the presumption of

innocence in favour of the accused gets reinforced. In ***Sanjeev v. State of H.P.***[7], this Court summarized the position in this regard and observed as follows:

> "7. It is well settled that:
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> 7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see ***Vijay Mohan Singh v. State of Karnataka***[8]***, Anwar Ali v. State of H.P.***[9]***)***
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> 7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see ***Atley v. State of U.P.***[10])
>
> 7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see ***Sambasivan v. State of Kerala***[11])"

27. It may be noted that the entire case of the prosecution is based on circumstantial evidence. The principles concerning circumstantial evidence are fairly settled and are generally referred as the "*Panchsheel*" principles. Essentially, circumstantial evidence comes into picture when there is absence of direct evidence. For proving a case on the basis of circumstantial evidence, it must be established that the chain of circumstances is complete. It must also be established that the

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[7] (2022) 6 SCC 294
[8] (2019) 5 SCC 436
[9] (2020) 10 SCC 166)
[10] AIR 1955 SC 807
[11] (1998) 5 SCC 412

chain of circumstances is consistent with the only conclusion of guilt. The margin of error in a case based on circumstantial evidence is minimal. For, the chain of circumstantial evidence is essentially meant to enable the court in drawing an *inference*. The task of fixing criminal liability upon a person on the strength of an inference must be approached with abundant caution. As discussed above, the circumstances sought to be proved by the prosecution are inconsistent and the inconsistencies in the chain of circumstances have not been explained by the prosecution. The doubtful existence of the extra judicial confession, unnatural conduct of PW-1, recovery of dead body in the presence of an unreliable witness PW-2, contradictions regarding arrest, unnatural prior and subsequent conduct of PW-1, incredible testimony of the witnesses in support of the last seen theory etc. are some of the inconsistencies which strike at the root of the prosecution case. To draw an inference of guilt on the basis of such evidence would result into nothing but failure of justice. The evidence on record completely fails the test laid down for the acceptability of circumstantial evidence. Therefore, in light of the consolidated discussion, all three issues are hereby answered in negative.

28. Before parting, we consider it our duty to refer to the catena of judgments relied upon by the respondent to contend that minor inconsistencies could not be construed as reasonable

doubts for ordering acquittal. Reference has been made to ***Sucha Singh v. State of Punjab***[12]***, Mallikarjun***[13] ***and Hari Singh v. State of Uttar Pradesh***[14].

29. No doubt, it is trite law that a reasonable doubt is essentially a serious doubt in the case of the prosecution and minor inconsistencies are not to be elevated to the status of a reasonable doubt. A reasonable doubt is one which renders the possibility of guilt as highly doubtful. It is also noteworthy that the purpose of criminal trial is not only to ensure that an innocent person is not punished, but it is also to ensure that the guilty does not escape unpunished. A judge owes this duty to the society and effective performance of this duty plays a crucial role in securing the faith of the common public in rule of law. Every case, wherein a guilty person goes unpunished due to any lacuna on the part of the investigating agency, prosecution or otherwise, shakes the conscience of the society at large and diminishes the value of the rule of law. Having observed so, the observations in this regard may not advance the case of the respondent in the present appeal. It is so because the inconsistencies in the case of the prosecution are not minor inconsistencies. As already discussed above, the prosecution has miserably failed to establish a coherent chain of

[12] (2003) 7 SCC 643
[13] Supra
[14] Supra

circumstances. The present case does not fall in the category of a light-hearted acquittal[15], which is shunned upon in law.

30. In light of the foregoing discussion, we hereby conclude that the High Court has erred in reversing the decision of acquittal. The evidence of the prosecution, at best, makes out a case for suspicion, and not for conviction. Accordingly, the impugned order and judgment are set aside. We find no infirmity in the order of the Trial Court and the same stands restored. Consequently, the appellant is acquitted from all the charges levelled upon him. The appellant is directed to be released forthwith, if lying in custody.

31. The captioned appeal stands disposed of in the aforesaid terms. Interim applications, if any, shall also stand disposed of.

32. No order as to costs.

……J.
[Bela M. Trivedi]

……..J.
[Satish Chandra Sharma]

New Delhi
February 20, 2024

[15] 'Proof of Guilt', Glanville Williams.