



2026:AHC-LKO:47080-DB

A.F.R.

Reserved on 04.06.2026

Delivered on 16.07.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL U/S 372 CR.P.C. No. - 79 of 2026

X Victim / Complainant Of Fir No. 68/2019

.....Appellant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Deptt. Lko
And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Abhishek Kumar Mishra, Vinod Kumar Mourya
Counsel for Respondent(s)	:	G.A.

HON'BLE ABDUL MOIN, J.

HON'BLE MRS. BABITA RANI, J.

(Per: Mrs. Babita Rani, J.)

1. Heard Shri Abhishek Kumar, learned counsel for the appellant and learned A.G.A. appearing for the respondent No.1.

2. This order shall dispose of the aforementioned appeal which has been preferred by victim of the case against the judgement and order dated 12.03.2026, passed by Additional District and Session Judge, fast track court, Unnao in Sessions Trial No. 686 of 2020, arising out of Crime No.68 of 2019, Police Station - Bihar, District - Unnao, In re; State vs. Hitender Pratap Singh @ Gaurav Kumar whereby the respondent no.2 (hereinafter referred to as 'accused') has been acquitted of the charges under Section 376, 506 of Indian Penal

information report against the accused with the allegations that on 18.01.2019 at around 01:00 P.M., when she was going towards her fields, the accused who was already present in the mustard field, dragged her and forcibly committed rape upon her. When she opposed and stated to report the incident at her home, the accused threatened to make the recorded video go viral to all the groups and under the guise of video threatened her to do as per his instructions and on several occasions, committed rape. She didn't tell anyone about the incident out of the fear. It has further been alleged that on 20.01.2019, sister of accused namely Deepika came to her house and told that she has been called by her brother and both of them left. On the way, she met the accused having a motorcycle and was asked to sit on the bike. Out of fear, she sat on it and was taken to Lal Kuan Tiraha, Police Station Bighapur, District Unnao, and made to sit inside a vehicle namely a Magic Van wherein a woman, namely Anjali was already seated, and was further taken to Kanpur railway station. At the said railway station, two unknown persons met and all of them set off for Ghaziabad railway station. It has been alleged that from the suspicious conversation between two unknown persons and the woman namely Anjali, she came to know that she has been fallen prey of conspiracy of her trafficking and on finding an opportunity, she informed her family through the phone of a passenger. Accordingly, on an information, the cousin of victim along with his acquaintances reached railway station. Seeing them approaching, Anjali and two unknown persons quit the train. In this way, victim managed to rescue herself and came back home along with her cousin and his acquaintance on 15.02.2019. Had her cousin not reached timely, she would have been sold or forced into prostitution. With the aforesaid allegations, she submitted typed application under her signature to register the case against the accused and his accomplice.

4. On the basis of the written tehrir, the first information report bearing number 68/2019 was registered against accused in Police Station Bihar, under Section 376/506/120-B of IPC.

perused the same and made the relevant entry in the case diary. Thereafter, the investigation was transferred to Senior Sub- Inspector Gaurav Kumar PW7, who carried out the investigation further. Again the investigation was handed over to PW5 Sub-Inspector Mor Mukut Pandey, who after completing entire investigation and its formalities and finding out prima facie incriminatory evidence only against the accused under section 376/506 of IPC, submitted the charge sheet before the court concerned who after taking the cognizance of the offence, committed the case for trial to the court of session. Learned trial court framed the charges against the accused in the aforementioned sections, to which the accused pleaded not guilty and claimed trial.

6. The prosecution opened its case and examined as many as two factual witnesses i.e. victim as PW1 and her father as PW2. Both the witnesses corroborated the incident, and its place, date and time. PW3, Dr. Geeta Agrawal, who conducted the medico legal examination of the victim and prepared the report Ex. Ka.4 indicated the age of victim about 19 years and found, the hymen old and torn and no external injury in her internal parts. As per this witness, no opinion of rape could be given. PW4 Head Constable Ajay Kumar Maurya deposed that on the basis of written application moved by the victim, he registered the first information report and corresponding entry of first information report in general diary. PW5 Sub-Inspector Mor Mukat Pandey deposed that after taking over the investigation by the administrative order of superior, he endeavoured to arrest the accused and consequently arrested him in front of his house on 10.08.2020 vide arrest memo Ex. Ka.7 and after completing all the formalities, filed charge sheet against the accused under section 376/506 IPC. PW6 Sub-Inspector Dinesh Kumar Mishra, who is the first investigating officer, corroborated the fact of registration of first information report in his presence. He further deposed that after taking over the investigation, he prepared the site plan Ex. Ka.9 and recorded the statements of witnesses as well as produced the victim before the magistrate for recording her statement under section 164

7. After conclusion of prosecution evidence, the statement of accused was recorded under section 313 of CRPC, in which the accused stated his false implication due to animosity. Accused challenged the allegations on the ground that at the time of alleged incident, he was not present at the spot rather was in Prayagraj, which is about 200 km away from the place of incident. He further submitted that a false and manipulated story was pressed into service by victim only to pressurise him in exercise of patent abuse of law.

8. After recording his statement, an opportunity was given to adduce the evidence oral as well as documentary in support of his defence. In documentary evidence, he filed the call record details issued by BSNL against his mobile no. 9935881641, information issued by the railways regarding the train, documents relating to the his examination in air force. However, no ocular evidence was adduced.

9. Learned trial court after hearing the arguments advanced by both the parties and considering the facts, circumstances and evidence available on record, passed the impugned order and judgement acquitting the accused from the charges levelled against him. The victim, being aggrieved, has filed the instant appeal.

10. While pressing the appeal, learned counsel for victim submitted that the acquittal of accused vide impugned order and judgement, has resulted in substantial injustice and illegality and the judgement has been passed ignoring the evidence available on the record. It is contended that the impugned judgement is patent miscarriage of justice and the accused has been granted benefit of doubt considering the minor contradictions in the evidence of PW1 and PW2 while heavily relying upon the defence of the accused, which is erroneous and tantamounts to grave miscarriage of justice. The victim, who is the star witness of the case, along with her father has established the prosecution story to the hilt that accused committed rape and recorded the incident in the video and when she expressed her strong protest, she was put in fear to viral the video on all the groups and on account of the video, she was raped by accused and

entire prosecution evidence as a whole, the only irresistible conclusion is that an offence of rape has been proved against the accused beyond reasonable doubt, but learned trial court, repelling, ignoring and ultimately disbelieving the evidence of the best witness of the case, reached on an unjustified and unreasonable conclusion and recorded non speaking findings rendering benefit of doubt to accused and passed impugned order and judgment of acquittal, therefore, the same is required to be interfered by this court by admitting the instant appeal. Concluding the arguments, it has been stated that the prosecution has proved its case beyond reasonable doubt to its chapter and verses, therefore, impugned order and judgement is bad in the eyes of law and deserves to be set aside.

11. We have heard the arguments of the state and perused the record minutely and meticulously.

12. Before advertng to the facts of the instant case, it may be beneficial to refer to the following pronouncements which deal with the scope of interference with a judgment of acquittal at the appellate stage. In the landmark judgment of **Suraj Singh vs. State of Uttar Pradesh, Criminal Appeal No. 1072 of 2004**, Hon'ble Supreme Court while dealing with an appeal pertaining to an acquittal, considered and clarified the legal position as below:-

"5.Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the

Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

6. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

8. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

9. 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 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.

10. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

11. The first important decision was rendered by the

present Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

12. Lord Russel summed up the legal position thus:

or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."

13. *His Lordship, then proceeded to observe: (IA p.404)*

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

14. *The Committee, however, cautioned appellate courts and stated: (IA p.404)*

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

To state this, however, is only to say that the

15. *In Nur Mohd. v. Emperor (AIR 1945 PC 151), the Committee reiterated the above view in Sheo Swarup (Supra) and held that in an appeal against acquittal, the High Court has full powers to review and to reverse acquittal.*

16. *So far as this Court is concerned, probably the first decision on the point was Prandas v. State (AIR 1954 SC 36) (though the case was decided on 14-3- 1950, it was reported only in 1954). In that case, the accused was acquitted by the trial court. The Provincial Government preferred an appeal which was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eyewitnesses.*

17. *Upholding the decision of the High Court and following the proposition of law in Sheo Swarup (supra), a six-Judge Bench held as follows:*

"6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."

(emphasis supplied)

18. *In Surajpal Singh v. State (1952 SCR 193), a two-Judge Bench observed that it was well established that in an appeal under Section 417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well*

19. In *Ajmer Singh v. State of Punjab* (1953 SCR 418) the accused was acquitted by the trial court but was convicted by the High Court in an appeal against acquittal filed by the State. The aggrieved accused approached this Court. It was contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed."

20. Upholding the contention, this Court said:

*"We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but **only for very substantial and compelling reasons.**"*

(emphasis supplied)

21. In *Atley v. State of U.P.* (AIR 1955 SC 807) this Court said:

"In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal Procedure Code came to the conclusion that the judgment of acquittal under appeal was perverse, it could not set aside that

presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated."

(emphasis supplied)

22. *In Aher Raja Khima v. State of Saurashtra (1955) 2 SCR 1285) the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong."*

(emphasis supplied)

23. *In Sanwat Singh v. State of Rajasthan (1961) 3 SCR*

"substantial and compelling reasons" used in certain decisions. It was observed inter-alia as follows:

"This Court obviously did not and could not add a condition to Section 417 of the Criminal Procedure Code. The words were intended to convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear reasons for coming to the conclusion that the order of acquittal was wrong."

The Court concluded as follows:

"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 in 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 "

"17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, 'the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons': vide Surajpal Singh v. State (1952 SCR, 193). Similarly in Ajmer Singh v. State of Punjab (1953 SCR 418), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are 'very substantial and compelling reasons to do so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in Sheo Swarup the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression

104) and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse."

(emphasis supplied)

25. Yet in another leading decision in Shivaji Sahabao Bobade v. State of Maharashtra (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

26. Putting emphasis on balance between importance of individual liberty and evil of acquitting guilty persons, this Court observed as follows:

"6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and

solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then breakdown and lose credibility with the community. The evil of acquitting a guilty person light- heartedly, as a learned author (Glanville Williams in Proof of Guilt) has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' 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."

(emphasis supplied)

27. In *K. Gopal Reddy v. State of A.P* (1979) 1 SCC 355, the Court was considering the power of the High Court

reasons' only and courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh v. State of Rajasthan (1961) 3 SCR. In Sanwat Singh case this Court harked back to the principles enunciated by the Privy Council in Sheo Swarup v. R. Emperor and reaffirmed those principles. After Sanwat Singh v. State of Rajasthan, this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup case. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In some cases (Ramaphupala Reddy v. State of A.P., (AIR 1971 SC 460) Bhim Singh Rup Singh v. State of Maharashtra (AIR 1974 SC 286), it has been said that to the principles laid down in Sanwat Singh case may be added the further principle that 'if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court' This of

necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable."

(emphasis supplied)

28. *In Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC, 225, this Court said:*

"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."

29. *In Allarakha K. Mansuri v. State of Gujarat (2002) 3*

conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."

30. *In Bhagwan Singh v. State of M.P. (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negating the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed:*

"7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by

accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to re- appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

31. *In Harijana Thirupala v. Public Prosecutor, High Court of A.P. (2002) 6 SCC 470, this Court said:*

"12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the

"21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

33. Again in *Kallu v. State of M.P.* (2006) 10 SCC 313, this Court stated:-

"8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial

accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

(emphasis supplied)

34. *From the above decisions, in Chandrappa and Ors. v. State of Karnataka (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:*

(1) An appellate court has full power to review, re-appreciate 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

guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

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

35. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see "The Mathematics of Proof II": Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p.340 (342)]: "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

37. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal (1988 (4) SCC 302).

38. The above position was highlighted in Krishnan and Anr. v. State represented by Inspector of Police (2003 (7) SCC 56).

39. So far as discrepancy between ocular evidence and medical evidence is concerned, this Court in Kamaljit Singh v. State of Punjab (2003 (12) SCC 155) observed as under:

"It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the

(4) SCC 302). When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference."

40. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

41. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

14. In **Jafarudheen vs State Of Kerala, (2022) 8 SCC 440**, the Hon'ble Supreme Court made the following observations:

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

15. In **Rajpal Singh v. Rajveer & Others; 2025 SCC OnLine SC 2823**, the Hon'ble Supreme Court held that even where the appellate court re-appreciates the evidence while dealing with a judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor. The relevant paragraph 9.2 is extracted here-in-below:

"9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial

to be possible by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor."

16. As per the law laid down as mentioned above, generally the order of acquittal passed by the court shall not be interfered with because the presumption of innocence of accused is further strengthened by acquittal and it is to be interfered only when there are compelling and substantial reasons for doing so. Further, if the evaluation and appreciation of evidence by the trial court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its finding, is reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible.

17. Before proceeding further, it will be profitable to mention the admitted facts of the case, at this juncture. As per first information report, the incident happened on 18.01.2019 and first information report has been lodged on 16.02.2019 with a delay of 28 days. PW2 is father of victim, who is only hearsay witness. There is no dispute that victim was major on the day of incident and educated and till the date of lodging the FIR, the incident was known to none. Accused and victim are co-villagers and grand father and father of accused were Gram Pradhan at a point of time. The mustard field was behind the house of victim and house of accused was also situated on the western side of house of victim.

18. In the wake of the above principles, admitted facts, and evidence on record, we have to see whether the findings recorded by learned trial court bears any error or perversity while passing the impugned order of acquittal of respondents.

19. As per prosecution, on 18.01.2019, at about 1 pm, when victim had gone to the fields for some work, she was raped by accused and

persons and came back home safely with her cousin. In order to prove its version, prosecution has examined two factual witnesses only i.e. victim as PW1 and her father as PW2. It is relevant to mention here that PW2, father of victim has admitted that he has no personal information about the incident having happened with her daughter and it is on 14.02.2019, when her daughter came back from Delhi, he came to know about the incident of rape. Therefore, his deposition is based on victim's account and not on his own knowledge and consequently, his evidence is of negligible value in the eyes of law, being hearsay one.

20. PW1, who is not only eyewitness and victim of offence committed against her, but also is a witness, around whom the entire sequence of events revolves, therefore, her testimony is having utmost importance and value and it is only her testimony, which will decide whether the impugned judgment is just or not.

21. At this stage, it will be apposite to refer to **Manjunath vs State of Karnataka, 2023 INSC 978**, per which Hon'ble Supreme Court has discussed the quality of a witness, which is reproduced as below:-

"22. For an eye witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value, the principle has been discussed in Raj Sandeep @ Deepu alias Deepu vs. State (NCT of Delhi) 35 as follows-

"22. In our considered opinion, the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what 35 (2012) 8 SCC 21 [2 Judge Bench] 35- [Cr. A No. 866 of

should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the

22. In the instant case, prosecution has classified its version broadly in three parts; firstly, the events in connection and at the time of commission of offence; secondly, alleged black mailing on account of video and subjected to rape; and thirdly, the incident dated 20.01.2019, as alleged. We have gone through the entire evidence of PW1 and entire circumstances and reached the conclusion that PW1 has not qualified the test of a 'Sterling witness' as is required to make the accused liable to be held guilty and punished. Therefore, after perusal of the testimony of the witnesses and appreciating the fact and circumstances, we find that the observation recorded by learned trial court are absolutely coherent and reasonable and are capable of being upheld on following grounds:-

i) first argument which needs answer is how the victim reached on the spot? Admittedly, first information has been lodged by the victim herself alleging that she had gone to the field at about 1:00 pm and was caught and raped by the accused who was already in the mustard field. Admittedly, her statement under Section 161 CrPC (Ex. ka.2) was recorded by constable Sunita on her dictation and statement under Section 164 (Ex. Ka.2) by learned magistrate. She testified in her chief examination in corroboration of her statement recorded under Sections 161 and 164 CrPC, stating that on the day of incident i.e.18.01.2019, accused came to her house and asked her to meet behind her house and then only she reached in the field. When she was put in cross examination, she testified that he came to her house at 12 pm and then she went to the mustard field at about 12:30 pm. Perusal of her evidence shows that the reason assigned by her to reach the place of occurrence, does not inspire confidence. We find two contradictory versions. In first information report, she demonstrated as if she was not knowing about the presence of accused in mustard field, on the contrary, in evidence she has admitted of her going to the place of

admission of victim established in clear terms that she was not forced to go to the mustard field. The victim is undisputedly educated, knowing her well being and interest fully. We also find no reason to believe as to why a girl would meet a person merely on his wish and that too, done, unless she gets approval of her own conscience and if for the sake of arguments, it is admitted that in good faith and trust and following instructions of accused, she reached there, then also, we fail to understand as to why she had talked covertly in a fully grown field. The surrounding facts and circumstances speaks volumes and suffice to show that in fact the story was not as it has been served.

iii) Continuing her account, the victim stated that she asked the accused as to what the matter was, but he did not say anything, and instead pushed her down to the ground. She categorically stated that accused did not come to her, rather she went to him. Narrating the incident, she further testified that accused took off his and her clothes one by one and committed rape with her for about half an hour. Victim admitted that the rape incident was recorded by the mobile of accused and not by any third person. She kept on deposing that when both of them lay down on ground, then only the accused set up his mobile phone to shoot the video and accordingly the entire incident was recorded. In last, she cleaned her private parts and had thrown away her underwear on the place itself and same was also recorded in video.

iv) One important fact admitted in her cross examination is that after the incident, both of them put on their clothes and saw the entire recorded video for half an hour at the place of occurrence itself. She further admitted that after watching it, she expressed her concern that if anyone else saw it, it would lead to great disgrace and in response, the

her will or consent. There is no dispute that the victim is major in age and had gone the place of occurrence by her own accord which is at the backside of her house and adjoining to the house of accused as well. Site plan also suggests that there were some other houses of inhabitants. In that eventuality, had she raised an alarm resisting the incident, someone certainly would have come forward to help her out, but the victim chose neither to raise noise, nor did she attempt to oppose it herself. It is also not out of place to mention here that if video is being recorded in the presence of the victim and thereafter, the victim and accused watch that video at leisure after the event, then there is no ground to admit that she was subjected to rape against her will. On the contrary, her own admission makes it crystal clear that incident did not occur without her consent and will and therefore, argument of learned counsel is rejected. As discussed here-in-above, we have dealt with first part of prosecution story as classified above.

23. Now, this court has to see as to whether she was subjected to repeated rape on the ground of video recording, as alleged in FIR. In her statement made to investigating officer, she got recorded that on account of alleged video, she was subjected to rape several times, however, no such evidence has been given by her during trial, therefore, the allegation of repeated rape being mere bald allegation, has not been proved.

24. The victim has alleged in her chief examination that sister of accused namely Deepika came to her house on 20.01.2019 and showed the video extending threats to viral the video in case she would not follow the instructions of her brother. However, this fact has not been disclosed in FIR, therefore, being material omission, this may go to the root of the case. At this juncture, it is relevant to mention that the investigating officer found no incriminating allegations against Deepika and exonerated her during the investigation itself. Further, from the facts and circumstances of the case, it is clear that the victim has not been subjected to repeated rape on the ground of video recording, as alleged in FIR.

nor same was ever circulated to any person singly or in groups. Investigating officer categorically stated that no evidence of alleged video was found from the possession of accused, hence, same could not be recovered. From the above details, it has been articulated that except the allegations of victim, no evidence of video was found at any point of time, nor there is any evidence placed on record that her modesty was outraged sexually on account of alleged video after the incident. We, therefore, find that nothing incriminating against the accused has emerged in the second part of the story of prosecution.

26. Now we come to the last i.e. third part of the prosecution story which deals with the allegations against accused of her taking away and being handed over to some unknown persons. As per FIR, on 20.01.2019, she was called by accused through Deepika. On the way, accused met her on motorcycle and she sat on it out of fear. She was taken to Lal Kaun Tiraha where the accused made her sit in a Magic car and was brought to railway station Kanpur Central and then to Delhi by two unknown persons and a woman namely Anjali. However, sensing their intentions, she saved herself by alerting her family members in time. During the cross examination, she admitted that tehrir was typed by a typist under her dictation and she put her signature on it and accordingly the FIR was registered. When she appeared before the court to testify, she deposed about her being taken away on 13.02.2019. Therefore, there are two contradictory date of occurrence, have been emerged on the record. The first information report was lodged on 16.02.2019 after her return to home i.e. 13.02.2019, therefore, we don't find any reason to discard the fact of her taking on 20.01.2019, in the peculiar circumstances, when the victim herself dictated the terms of details in FIR. Hence, placing the entire different date before the court would not only will shake the veracity of the evidence of victim, but also makes the prosecution story unbelievable.

27. As for allegation that Deepika extorted Rs. 1000/- repeatedly from victim by blackmailing her, it is pertinent to note that she has not

to her house between 8:30- 9 AM and she left with her to the road from where she got on the motorcycle of accused. However, it has emerged in her cross examination again that her leaving home with Deepika was either on 20.01.2019 or 13.02.2019, is incorrect; in fact, accused had taken her away from near the house. Again, she admitted that she did not state in the first information report that she accompanied Deepika to the road where she met the accused and then sat on his motorcycle and reached the Lal Kuan Bighapur with him. One more fact which drew our attention is deposition of the father of victim per which he deposed that in early morning when he got up, he saw a mobile on charging and inquired about the same and found his girl missing. It has been established from the evidence of father of victim, she had gone missing on 20.01.2019 at 03:00 AM. Therefore, the version of victim of her taking away between 8:30-09:00 AM, is in contradiction to the statement of her father, hence, the time and manner of her gone missing can not be accepted as gospel truth.

29. It has been alleged that after reaching at Lal Kaun, Bigha Pur, accused made her sit in a magic van, in which Anjali was already seated and himself disappeared from the scene. If the evidence of victim be assessed in totality, then it would transpire that despite having opportunity of raising alarm or mentioning anyone of her taking away, she made no efforts, while travelling by motorcycle, getting off at Lal Kuan to board a Magic car or at Kanpur railway station, (central) or finally during the train journey. We also fail to understand that why she did not even once bother to ask the accused as to where and why she was being taken, especially considering the fact when she was not accompanied by him after Lal Kaun, Bighapur. Having no whisper on record to this effect, makes the version unreliable in the backdrop of human conduct of any prudent person.

30. The prosecution version has been rejected to its threshold by learned trial court as victim has made unexplained and material improvement and changes in her deposition. The FIR only recounts

Anand Vihar through mobile of a co-passenger and travelling to Dwarika station with so called passenger and finally meeting her cousin Ashutosh and his acquaintances and returning home with all the three and her cousin Renu. PW6, the investigating officer admitted that no evidence was available in support of allegations of her going from her place to Delhi including magic car, Kanpur railway station or Delhi. PW7, another investigating officer also supported the version of PW6 and corroborated that no such evidence came into light during his investigation. To bolster the victim's version, it was the duty of prosecution to examine the witnesses with whom she came back to her house, however, no effort was made by prosecution to examine so called persons as prosecution witnesses, for reasons best known to the prosecution.

31. Having considered the circumstances detailed above, the contradictory evidence of prosecution witnesses in absence of any corroboration, has been found insufficient to prove the allegations against the accused for which he was charged with.

32. Concluding the third part of prosecution story as shown, it is pertinent to mention at this juncture that since the initiation of prosecution, it was defence taken by accused that at the time and on the day of incident, he was not at the scene of occurrence and rather was in Prayagraj. In support of his plea, he has also submitted the call details of his mobile, however no ocular evidence has been placed on record to prove the documentary evidence, detailed above, therefore, the defence as produced by accused, has not been proved as per law. Be it as it may be, the settled principle is that it is burden upon the prosecution to prove its case beyond all reasonable doubts by a convincing, plausible, trustworthy and consistent evidence, which the prosecution has failed in the instant case.

33. On the basis of norms set up by settled legal principles and on the basis of evidence placed on record, we have gathered the view that learned trial court has taken best probable view in the case in hand while discussing the entire facts and circumstances. Nothing

34. Keeping in view the aforesaid failure of prosecution to prove the guilt of accused, as observed by learned trial court, we are of considered view that judgement passed by learned trial court is not unreasonable, illogical and improbable. Accordingly no interference is warranted. Hence the appeal is **dismissed**.

July 16, 2026
S. Shivhare

(Mrs. Babita Rani,J.) (Abdul Moin,J.)