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basis, even fictionally, for the alleged surrender by Nani to Sarja with the result that at the date of the second transaction Sarja's rights were no better than *spes successionis*. In my opinion, therefore, the Courts below were right in holding that the deed of gift executed by Nani in favour of Mahadu does not bind the plaintiff.

The result is the appeal fails and must be dismissed with costs in favour of respondent No. 1.

Appeal dismissed.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

THE STATE *v.* VITHAL MARUTI PATIL.*

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Criminal Procedure Code (Act V of 1898) s. 417—Appeal against acquittal—When can High Court reverse the finding of trial Court—Test laid down by Supreme Court in such cases—‘Very substantial and compelling reasons’, meaning of.

Although in an appeal under s. 417 of the Criminal Procedure Code, 1898, the High Court has full power to review the evidence upon which the order of acquittal was founded, yet the presumption of innocence of the accused being reinforced by his acquittal by the trial Court, the finding of the trial Court, which had the advantage of seeing the witnesses and hearing their evidence, may be reversed “only for very substantial and compelling reasons” as laid down by the Supreme Court in *Surajpal Singh v. The State*.⁽¹⁾ It is therefore not enough for the prosecution to show that the case against the accused was proved beyond a reasonable doubt. In an appeal against acquittal (unlike an appeal against the order of conviction) the fact that the High Court may come to a different conclusion on the evidence in a particular case may not necessarily amount to “very substantial and compelling reasons” within the meaning of the test. The High Court must be satisfied that the findings of the trial Judge are grossly wrong or that the approach of the trial Judge to the evidence in the case, or the procedure adopted by him in trying the case, was so materially defective that there is a compelling reason which justifies interference with his findings. Complete failure on the part of the trial Judge to consider material evidence or his misconstruing any documents may amount to a compelling reason. If the decision under appeal is erroneous in law, the limitations

* Criminal Appeal No. 1070 of 1952.

⁽¹⁾ [1952] S. C. R. 193.

imposed by the test would not come into operation, but where findings of fact are concerned the test laid down by the Supreme Court in substance gives effect to the doctrine of "double presumption of innocence".

Therefore, in an appeal against acquittal it is necessary that the High Court must find that the finding impeached is so materially inconsistent with the evidence or the conclusion arrived at is otherwise so clearly wrong that it feels compelled to interfere with it; it is not enough for the prosecution to satisfy the High Court that the offence is proved beyond a reasonable doubt but the High Court must be satisfied that it is difficult, if not impossible, to see how a contrary view could be held on the materials available in the case.

Sheo Swarup v. King Emperor,⁽¹⁾ *Nur Mohamad v. Emperor*,⁽²⁾ and *Ramanugraha Singh v. Emperor*,⁽³⁾ referred to.

Appeal by the State against an order of acquittal passed by J. R. Nazareth, Sessions Judge of East Khandesh at Jalgaon.

The prosecution case was that on January 25, 1952, one Vithal (the accused) who was armed with a double-barrelled gun went to the house of one Rajaram at about 10 a. m. Rajaram was lying on a cot and his wife Rayabai was serving food to their children. As soon as the accused entered he asked Rajaram, "Asa kai Rajaram Patil?" and immediately he aimed at him and fired a shot. The accused was then 1½ cubits away from the cot. Rajaram died within 2 or 3 minutes of receiving the injury. Rajabai cried out and the accused turned away and was going towards the terrace with a view to escaping from the house. Hearing the cries of Rayabai, Rajaram's brother Bajirao and his two guests and his son rushed to the scene. A scuffle ensued between Bajirao and the accused while Bajirao attempted to snatch away the gun from the hand of the accused. The accused attempted to point the barrel at Bajirao, but in the course of the struggle he could not succeed in shooting Bajirao. The butt of the gun struck the forehead of Bajirao's wife and the shot went up in the air. The commotion brought some neighbours to the scene amongst whom was Shamrao Patil. He was sent to Pimalgaon Police Station to give information. On receipt of information the Sub-Inspector arrived on the scene. Investigations then commenced and the accused was arrested. The accused was charged under ss. 302 and 307 of the Indian Penal Code with having committed the murder of Rajaram and with having fired a shot at Bajirao with such intention or knowledge and under such circumstances that if by that act he had caused his death he would have been guilty of murder.

⁽¹⁾ (1934) 36 Bom. L. R. 1185, P.C. ⁽²⁾ (1945) 48 Bom. L. R. 287, P.C.

⁽³⁾ (1946) 48 Bom. L. R. 768, P.C.

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The defence was that the accused had not shot at Rajaram at all; that while he was on his way to Jalgaon via Pachora he received a message from Rajaram that Rajaram wanted to see him. The accused, therefore, went to Rajaram and he was dressed for a journey. According to the accused he used to carry the gun always with him. On this particular occasion since he was going on foot for some distance he wanted to try shooting wild animals or birds and besides he wanted to take his gun to Jalgaon for repairs. That is how the accused explained the fact of his possession of a loaded gun when he entered the house of Rajaram. On his entering the house there was a hot altercation between the accused and the deceased Rajaram, his brother and their guests. Rajaram then gave him blows on his head with pieces of fire-wood and they tried to snatch away the gun from him. In the course of the scuffle that ensued a shot accidentally hit Rajaram, while another shot went up high in the air. In other words, the defence was that death was due no doubt to the injury caused by the shot from the gun of the accused; but the shot had not been fired by the accused but was the result of an accident which took place in the course of the scuffle between him on the one hand and Rajaram and his partisans on the other. The accused pleaded that he was a debtor of Rajaram, that Rajaram was demanding more money than was due from him and his denial of Rajaram's claim exasperated him with the result that he started to assault the accused and in his attempt to snatch away the gun he met with an accidental death.

The case was tried by the Sessions Judge, East Khandesh with the aid of assessors; and the Judge and assessors agreed that the prosecution had not proved their case on either charge beyond a reasonable doubt. The accused was therefore acquitted of the offences under ss. 302 and 307, Indian Penal Code. He was, however, found guilty of the offence under s. 286 of the Indian Penal Code of negligent conduct with respect to an explosive substance and sentenced to four months rigorous imprisonment and a fine of Rs. 200, or in default further rigorous imprisonment for one month.

The State of Bombay appealed against the order of acquittal.

A. A. Mandgi, Assistant Government Pleader, for the State.

K. J. Khandalawalla, with M. A. Rane, for the accused.

Gajendragadkar J. [After stating facts the judgment proceeded.] Now, before we proceed to deal with the merits of

this case it is necessary to consider what our approach should be in dealing with an appeal against an acquittal like the present. Mr. Mandgi has invited our attention to two decisions of the Privy Council where this question has been considered. In *Sheo Swarup v. King Emperor*,⁽¹⁾ Lord Russell delivering the judgment of the Board has observed that on an appeal from an order of acquittal on a matter of fact the High Court has full power to interfere with the findings of fact of the trial Judge and 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. The learned Judge then referred to the provisions of s. 417 of the Code of Criminal Procedure which deals with the powers of the appellate Court and went on to observe that there was no limitation or restriction on the powers of the High Court in the exercise of its appellate jurisdiction, and no distinction is drawn as regards its powers in dealing with an appeal between an appeal from an order of acquittal and an appeal from a conviction. No doubt, the Court of Appeal will naturally attach proper weight and consideration even while dealing with an appeal against an acquittal to such matters as the views of the trial Judge as to the credibility of the witnesses, 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; the right of the accused to the benefit of any doubt and last, 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. Even so it was added that there was no foundation for the view taken by some of the Courts in India that the High Court has no power or jurisdiction to revise an order of acquittal on a matter of fact except in which the trial Court has "obstinately blundered" 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. The same question was again raised before the Board in *Nur Mohamad v. Emperor*⁽²⁾ and Lord Thankerton who dealt with the point on this occasion re-affirmed the view which had been expressed by Lord Russell in the earlier case. Mr. Mandgi says that if this principle is applied he would be entitled to ask us to review the

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evidence as a whole and if we are satisfied that the case against the accused has been proved beyond a reasonable doubt we should set aside the finding of the learned trial Judge and convict the accused of the offences charged.

Before we accept this contention, however, it is necessary to refer to a recent decision of the Supreme Court in *Surajpal Singh v. The State*,⁽¹⁾ Mr. Justice Fazal Ali, who delivered the judgment of the Bench has held that it is well settled that in an appeal under s. 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded. But he added that it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for *very substantial and compelling reasons*. It is true that in dealing with the facts of this particular case Mr. Justice Fazal Ali has pointed out that whereas the learned Sessions Judge had elaborately and exhaustively considered the evidence, the judgment of the High Court which reversed the trial Court's findings was very unsatisfactory. Some important features of the prosecution evidence which called for careful consideration had not been properly considered by the High Court and in fact it was observed that the treatment of the evidence by the High Court was "summary". Mr. Mandgi says that we should read the general observations in the light of the criticism made by Mr. Justice Fazal Ali against the judgment of the High Court. We do not think it would be a fair way of dealing with these observations. It is quite true that the earlier decisions of the Privy Council where this question has been examined on principle and in the light of the provisions of s. 417 were not cited before the Supreme Court; it is also true that their attention was apparently not drawn to the fact that there was a sharp difference of opinion on this question which had been taken before the Privy Council and the Privy Council had expressed themselves against the view that sought to impose limitations upon the powers of the appellate Court in dealing with criminal appeals against acquittal under s. 417 of the Criminal Procedure Code. Even so, with respect, the observations that are made are so general in terms that we are bound to follow those observations. We must, therefore,

⁽¹⁾ [1952] S. C. R. 193.

apply the test laid down by Mr. Justice Fazal Ali in dealing with the present appeal. If this question is again raised before the Supreme Court and considered by them in greater detail, it may be another matter. But meanwhile we must respectfully accept the guidance available from the test laid down in this judgment and adopt the said test in dealing with the appeal before us.

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We must, therefore, ask ourselves whether we are satisfied that there are "very substantial and compelling reasons" to reverse the findings of the trial Court. It would be noticed that this test involves a different approach altogether to the case before us. While applying this test it may not be enough for Mr. Mandgi to satisfy us that the prosecution case is proved against the accused beyond a reasonable doubt. In our opinion, unlike in an appeal against the order of conviction, the fact that we may come to a different conclusion on the evidence in a particular case may not necessarily amount to "very substantial and compelling reasons" within the meaning of the test laid down by Mr. Justice Fazal Ali while we are dealing with an appeal against acquittal. We must be satisfied that the findings of the learned trial Judge are grossly wrong or that the approach of the learned trial Judge to the evidence in the case, or the procedure adopted by him in trying the case, was so materially defective that there is a compelling reason which justifies our interference with his findings. If the trial Judge has completely failed to consider material evidence or if he has misconstrued any documents, that may amount to a compelling reason. If the decision under appeal is erroneous in law, the limitations imposed by this test would not come into operation. But in dealing with findings of fact, this test in substance gives effect to what is sometimes described as the doctrine of "double presumption of innocence". Perhaps, in actual application of this doctrine the findings of fact recorded by the trial Court would have to be treated as having substantially the same force and validity as the verdict of a jury. For it is well known that in dealing with the verdict of a jury on a reference under s. 307 of the Code of Criminal Procedure, the High Court does not interfere unless the verdict in question is perverse. The expression "perverse" has often become the subject-matter of judicial decisions and the interpretations put upon this expression cannot always be easily reconciled. However, in the decision of the Privy Council in *Ramanugrah Singh v. Emperor*⁽¹⁾

⁽¹⁾(1946) 48 Bom. L. R. 768.

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their Lordships have construed this expression to mean "unreasonable, manifestly wrong or against the weight of the evidence." Theoretically, under the provisions of the Criminal Procedure Code the two cases cannot of course be treated alike and it may be that in dealing with the verdict of a Jury we may have to apply a stricter test than in dealing with findings of fact recorded by the trial Court in a criminal trial. But in both cases it is necessary that we must find that the finding impeached is so materially inconsistent with the evidence or the conclusion arrived at is otherwise so clearly wrong that we feel *compelled* to interfere with the same. That, in our opinion, is the effect of the judgment of the Supreme Court. Inevitably, therefore, the Government Pleader must satisfy us in appeals against acquittals that the conclusions of the trial Court are not at all possible on the evidence on the record. In other words, we must not only come to the conclusion that the offence is proved beyond a reasonable doubt; but we must also feel satisfied that it is difficult if not impossible to see how a contrary view can be held on the material available in the case. We must, therefore, proceed to deal with this case in the light of these principles.

[After discussing evidence the judgment concluded.]

These are the broad features on which it would be possible to dispose of this appeal, having regard to the legal position in the matter. We have carefully considered the plea earnestly made before us by the learned Assistant Government Pleader in support of his appeal; but we are unable to accept his contention that in this particular case there are very substantial and compelling reasons to interfere with the order of acquittal passed by the learned Judge. Therefore, in our opinion the appeal must fail and the order of acquittal must be confirmed.

Appeal dismissed.

K. B. S.