

1. **An appellate court can intervene in a judgment of acquittal only if there are “compelling and substantial reasons,” such as perversity in the original judgment, for doing so. The court has the authority to re-appreciate the evidence and arrive at its own conclusions.**
2. **Under Sections 306, 307, and 308 of the Criminal Procedure Code, an accused person can seek a pardon at any time after case commitment but before judgment, with the condition of full disclosure of facts related to the offence.**
3. **Common intention and common object, as defined by Sections 34 and 149 of the Indian Penal Code, are distinct. Common intention requires a pre-arranged plan, while common object does not.**
4. **The burden of proving common intention lies on the prosecution and can be inferred from proved facts and circumstances. Mere presence among assailants can suffice if a common intention exists.**
5. **For an approver’s testimony to be reliable, it generally needs to be corroborated in material particulars. Corroboration can come from other witnesses or even circumstantial evidence.**
6. **Unreliable testimony from an approver cannot serve as the foundation for a conviction, even if attempts are made to corroborate it.**
7. **Delays in reporting to the police in a murder case were deemed acceptable if the priority was medical treatment for the injured, as was the case with Approver Dey.**
8. **Testimony from hostile witnesses can still be admissible if corroborated, with the court emphasizing the quality of the testimony over the quantity.**
9. **In cases involving multiple assailants, it’s natural for witnesses to not recognize or remember all individuals involved. Courts must carefully verify such witness accounts.**
10. **Section 306 of the Criminal Procedure Code allows for tendering a pardon to an accomplice to ensure that heinous crimes committed by multiple people can be adequately prosecuted, given the accomplice’s full and true disclosure.**

Supreme Court after considering various judgments laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court

should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

SUPREME COURT OF INDIA

Before: Justice P. Sathasivam and Justice H.L. Gokhale.

Mrinal Das and others – Appellants

Versus

State of Tripura – Respondent

Criminal Appeal No. 1994 of 2009 with No. 1719 of 2011 (Arising out of SLP (Crl.) No. 6728 of 2011 (Crl. M.P. No. 17812 of 2008).

5.9.2011.

Criminal Trial - Acquittal - Parameters, in which interference can be made in a [judgment](#) of acquittal - Held, It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by

the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed. [Para 8]

Criminal Procedure Code, Sections 306, 307 and 308 - Approver - Tendor of pardon by accomplice - Accused sought pardon after 4 years of occurrence - Sought to become an approver - pardon can be tendered at any time after commitment of a case but before the judgment is pronounced.[Para 29]

Criminal Procedure Code, Sections 306, 307 and 308 - Accused explained that out of repentance, he once made an attempt to commit suicide by hanging himself - Thereafter, he decided to divulge the whole incident leading to the killing before the Court - He asserted that he had decided to disclose the whole incident voluntarily on the advise of the members of his family - He identified all the accused persons in the Court by name and face - Accused sought pardon after 4 years of occurrence - Sought to become an approver - Pardon can be tendered at any time after commitment of a case but before the judgment is pronounced - Cannot be said that his statement was not reliable - He asserted that he lost his mental peace - Decision to disclose was voluntary.[Para 29 and 32]

Indian Penal Code, Sections 34 and 149 - Common intention and common object - Distinction - A clear distinction made out between common intention and common object is that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concept. Though there is substantial difference between the two sections, namely, Sections 34 and 149 Indian Penal Code, to some extent they also overlap and it is a question to be determined on the facts of each case. [Para 45]

Criminal Procedure Code, Sections 306, 307 and 308 - Tendor of pardon to an accomplice - The object of Section 306 of the Code is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon, the offence may be brought home to the rest - This Section empowers the Chief Judicial Magistrate or a Metropolitan Magistrate to tender a pardon to a person supposed to have been directly or indirectly concerned in or privy to an offence to which the section applies, at any stage of the investigation or inquiry or trial of the

offence on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence - Under Section 306 of the Code, the Magistrate of the First Class is also empowered to tender pardon to an accomplice at any stage of inquiry or trial but not at the stage of investigation on condition of his making full and true disclosure of the entire circumstances within his knowledge relative to the crime. Section 307 of the Code vests the Court to which the commitment is made, with power to tender a pardon to an accomplice. [Para 33]

Indian Penal Code, Section 34, 149 - Common intention - Proof of - Burden of proof - Lies on prosecution - There is no bar in convicting the accused under substantive section read with Section 34 if the evidence discloses commission of an offence in furtherance of the common intention of them all - It is also settled position that in order to convict a person vicariously liable under Section 34 or Section 149 Indian Penal Code, it is not necessary to prove that each and every one of them had indulged in overt acts in order to apply Section 34, apart from the fact that there should be two or more accused - Two facts must be established, namely a) common intention b) participation of accused in the commission of an offence. It requires a pre-arranged plan and pre-supposes prior concept - Therefore, there must be prior meeting of minds - It can also be developed at the spur of the moment but there must be pre-arrangement or pre-meditated concept - In order to seek the aid of Section 34 Indian Penal Code, it is not necessary that individual act of the accused persons has to be proved by the prosecution by direct evidence - Again, as mentioned above, common intention has to be inferred from proved facts and circumstances and once there exist common intention, mere presence of the accused persons among the assailants would be sufficient proof of their participation in the offence. Held, As rightly observed by the High Court, though the trial Court was of the view that the evidence of an approver contains full and correct version of the incident so far as participation of the accused Tapan Das (A-5) and Gautam Das (A-11), however, there is no plausible reason by the trial Court as to why the other part of the statement of the approver could not be believed. We agree with the conclusion of the High Court that the trial Court failed to explain or adduce sufficient reasons as to why the other part of the evidence that the accused persons named by the approver were found present in the place of occurrence could not be believed for the purpose of invoking Section 34 when two or more eye-witnesses corroborated the testimony of approver (PW-6) specifically naming six accused persons including the two convicted appellants.

Indian Penal Code, Section 34 - Common intention - Proof of - Burden of proof - Lies on prosecution - The existence of common intention amongst the participants in the crime is the essential element for application of Section 34 and it is not necessary that the acts of several persons charged with the commission of an offence jointly must be the same or identically similar. [Para 46, 47]

Evidence Act, Sections 133 and 114 III(b) - Criminal Procedure Code, Sections 306, 307 and 308 - Approver - Evidentiary value of testimony of approver - Held :-

(i) Though a conviction is not illegal merely because it proceeds on uncorroborated testimony of an approver, yet universal practice is not to convict upon testimony of an accomplice unless it is corroborated in material particulars. [Para 8]

(ii) Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable. [Para 19]

(iii) Once the evidence of the approver is found to be not reliable, the worth of his evidence is lost and such evidence, even by seeking corroboration, cannot be made the foundation of a conviction. [Para 17]

Indian Penal Code, Section 302 - Murder case - Delay in informing Police - Approver Dey narrates the entire series of events, from the conspiracy to the gunshot that injured the deceased - Criticisms that Dey omitted details in the initial complaint are dismissed; the court finds all relevant details are included and omissions are negligible - Questions were raised as to why Dey did not inform police personnel in a nearby mobile van immediately; he explains that the priority was to get the injured to the hospital - Court finds no fault in Dey's decision to prioritize medical treatment over immediate reporting to police personnel - Approver acknowledges that Deceased was the Secretary of DYFI, leading to claims of false implication due to political rivalry - Court is not persuaded by the argument of false implication based on political rivalry and rejects the objection. [Para 39(a)]

Evidence Act, Section 154 - Indian Penal Code, Section 302 - Evidentiary value of testimony of hostile witness - Multiple witnesses, including those declared hostile, corroborated the prosecution's case, reinforcing that corroborated parts of a hostile witness's testimony can be admissible - The court emphasizes the importance of careful consideration when a witness has been inconsistent, stating that corroboration with other witnesses is generally needed - Six accused persons were identified by more than one eyewitness, including two key convicts-appellants - The court emphasizes that it's the quality, not the quantity, of eyewitness testimony that is crucial for conviction - The High Court's identification of six accused persons, based on the corroborative testimony from multiple eye-witnesses, is fully endorsed by the reviewing court - It is well settled that in a criminal trial, credible evidence of even hostile witnesses can form the basis for conviction. In other words, in the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence. [Para 42, 43 and 44]

Indian Penal Code, Section 302 - Criminal trial of murder case - Identification of assailants - In a case of this nature where large number of persons committed the crime, it is but natural that due to fear and confusion a witness cannot recognise and remember all the assailants. If any witness furnishes all the details accurately, in that event also it is the duty of the Court to verify his version carefully - Allegation that 13 accused person committed the offence of murder - In a case of this nature where large number of persons committed the crime, it is but natural that due to fear and confusion a witness cannot recognise and remember all the assailants - If any witness furnishes all the details accurately, in that event also it is the duty of the Court to verify his version carefully. [Para 49]

Cases Referred :-

1. *Abdul Sattar v. Union Territory, Chandigarh*, 1986(1) RCR (Criminal) 483 : 1985 (Supp) SCC 599.
2. *Babu v. State of Kerala*, 2011(5) RCR (Criminal) 113 : (2010)9 SCC 189.
3. *Bhiva Doulu Patil v. State of Maharashtra*, AIR 1963 Supreme Court 599 : (1963)3 SCR 830.
4. *Chandrappa v. State of Karnataka*, 2007(2) RCR (Criminal) 92 : 2007(1) R.A.J. 841 : (2007)4 SCC 415.
5. *Dagdu v. State of Maharashtra*, (1977)3 SCC 68.
6. *Ganpat v. State of Haryana*, 2011(1) RCR (Criminal) 539 : 2011(1) R.A.J. 262 : (2010)12 SCC 59.
7. *K. Hashim v. State of Tamil Nadu*, 2004(4) RCR (Criminal) 982 : 2005(1) Apex Criminal 114 : (2005) 1 SCC 237 : 2005 Cri.L.J. 143.
8. *Lachi Ram v. State of Punjab*, (1967)1 SCR 243.
9. *Mohd. Husain Umar Kochra etc. v. K. S. Dalipsinghji*, (1969)3 SCC 429.
10. *Narayan Chetanram Chaudhary v. State of Maharashtra*, 2000(4) RCR (Criminal) 75 : (2000)8 SCC 457.
11. *Rampal Pithwa Rahidas v. State of Maharashtra*, 1994 Supp (2) SCC 73.
12. *Ramprasad v. State of Maharashtra*, 1999(2) RCR (Criminal) 819 : 1999 Cri.L.J. 2889.
13. *Ravinder Singh v. State of Haryana*, (1975)3 SCC 742.
14. *Sarwan Singh S/o Rattan Singh v. State of Punjab*, AIR 1957 Supreme Court 637 : 1957 SCR 953.
15. *Sheshanna Bhumanna Yadav v. State of Maharashtra*, (1970)2 SCC 122.
16. *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*, 2010(2) RCR (Criminal) 692 : 2010(3) Recent Apex Judgments (R.A.J.) 1 : (2010) 6 SCC 1.
17. *Sitaram Sao @ Mungeri v. State of Jharkhand*, 2008(1) RCR (Criminal) 72 : 2007(6) R.A.J. 260 : (2007)12 SCC 630.
18. *State of Goa v. Sanjay Thakran*, 2007(2) RCR (Criminal) 458 : 2007(2) R.A.J. 101 : (2007)3 SCC 755.
19. *State of Madhya Pradesh v. Ramesh*, 2011(2) RCR (Criminal) 582 : 2011(2) Recent Apex Judgments (R.A.J.) 397 : (2011)4 SCC 786.

20. *State of Uttar Pradesh v. Jagram*, (2009)17 SCC 405.
21. *State of Uttar Pradesh v. Naresh*, 2011(2) RCR (Criminal) 364 : 2011(2) Recent Apex Judgments (R.A.J.) 221 : (2011)4 SCC 324.
22. *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*, 2011(1) RCR (Criminal) 57 : 2010(6) R.A.J. 419 : (2010)13 SCC 657.
23. *Suresh Chandra Bahri v. State of Bihar*, 1994(3) RCR (Criminal) 1 : 1995 Supp (1) SCC 80.

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JUDGMENT

P. Sathasivam, J. –

***Mrinal Das v. The State of Tripura*, 2011 PLRonline 0204 (SC)**

2011 (9) SCC 479,

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