SUPREME COURT OF INDIA

Govindaraju @ Govinda

Vs.

State by Sriramapuram P.S.

Crl.A.No.984 of 2007

(A.K. Patnaik and Swatanter Kumar JJ.)

15.03.2012

JUDGMENT

SWATANTER KUMAR, J.

1. The present appeal is directed against the judgment of conviction and order of sentence recorded by the High Court of Karnataka at Bangalore dated 29th November, 2006, setting aside the judgment of the trial court dated 9th March, 2000 acquitting all the accused for an offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short `IPC'). In short the case of the prosecution is that on 7th December, 1998, Sub- Inspector of Police (Law Order) Shri Veerabadhraiah of the Sriramapuram Police Station, PW1, was proceeding towards his house from duty on his motor cycle at about 10.45 p.m. When he reached the 6th Cross Road, 7th Main, he saw three persons chasing another person and when they reached near VNR Bar, the person who was being chased fell on the road. One of the three person who were chasing the victim, stabbed him on his chest thrice with knife. Thereafter, the other two persons also stabbed him on the chest. When the said PW1 was about to reach the spot, he saw the accused Govindaraju @ Govinda addressing one of the other two persons as Govardhan and telling them that the Police was coming and asked them to run away, whereafter they ran away from the spot. An attempt was made by PW-1 to follow them but the same proved to be in vain because they went into a Conservancy and disappeared into darkness. After this unsuccessful attempt, PW1 returned to the spot and saw the victim bleeding with injuries. With the help of a Constable, he shifted the victim to K.C.General Hospital, Malleswaram, where the victim was declared dead by the doctors. Upon search of the body of the deceased, his identity card was found on which his name and address had been given. The name of the

deceased was found to be Santhanam. Thereafter, PW1 went back to the Police Station and lodged a complaint, Ex.P1, on the basis of which FIR Ex.P2 was recorded by PW11, another Police Officer, who then investigated the case. The Investigating Officer, during the course of investigation, examined a number of witnesses, collected blood soaked earth and got recovered the knives with which the deceased was assaulted. Having recovered the weapons of crime, the Investigating Officer had sent these weapons for examination to the Forensic Science Laboratory (FSL) at Bangalore. However, that Laboratory had, without giving any detailed report, vide its letter dated 28th October, 1999, Ex.P15, informed the Commissioner of Police, Malleswaram, Bangalore, that the stains specimen cuttings/scraping was referred to Serologist at Calcutta for its origin and grouping results, which on receipt would be dispatched from that office. In all, eight articles were sent to the FSL including the blood clots, one pant, one kacha, one pair of socks and one chaku. No efforts were made to produce and prove the final report from the FSL, Calcutta and also no witness even examined from the FSL. It appears from the record that the weapons of offence were not sent to the FSL, Bangalore at all.

2. After completing the investigation, PW11 filed the charge- sheet before the Court of competent jurisdiction. The matter was committed to the Court of Sessions. The two accused faced the trial as the third accused was absconding and was not traceable at the time of filing of the charge-sheet or even subsequent thereto. The learned Sessions Judge had framed the charge against the accused under Section 302 read with Section 34 IPC vide its order dated 20th November, 1999. The learned trial Court, vide its judgment dated 9th March, 2000, acquitted both the appellant namely, Govindaraju @ Govinda and Govardhan @ Gunda.

3. Against the said judgment of acquittal passed by the learned trial court, the State preferred a leave to appeal before the High Court. The High Court declined the leave to appeal against the judgment of acquittal in favour of Govardhan @ Gunda and granted the leave to appeal against Govindaraju @ Govinda vide its order dated 3rd November, 2000. Finally, as noticed above, the High Court vide its judgment dated 29th November, 2006 found Govindaraju guilty of the offence under Section 302 IPC and sentenced him to civil imprisonment for life and fine of Rs.10,000/- in default to undergo rigorous imprisonment for a period of one year. Aggrieved from the said judgment of the High Court, the accused Govindaraju @ Govinda has filed the present appeal.

Points on which reversal of the judgment of acquittal by the High Court is challenged:

(i) The judgment of the High Court is contrary to the settled principles of criminal jurisprudence governing the conversion of order of acquittal into one that of conviction.

(ii) The judgment of the High Court suffers from palpable errors of law and appreciation of evidence. All the witnesses had turned hostile and the conviction of the appellant could not be based upon the sole testimony of a Police Officer, who himself was an interested witness. It is contended that the appellant Govindaraju @ Govinda has been falsely implicated in the case.

(iii) No independent or material witnesses were examined by the prosecution. Recovery of the alleged weapons of crime have not been proved in accordance with the provisions of Section 27 of the Indian Evidence Act, 1872 (hereafter referred to as the Act).

(iv) No seizure witness was examined and the statement of the Police Officer cannot by itself be made the basis for holding that there was lawful recovery, admissible in evidence, from the appellant.

(v) The ocular evidence is not supported by the medical evidence, even in regard to the injuries alleged to have been caused and found on the body of the deceased. The story put forward by PW1 is not only improbable but is impossible of being true.

(vi) The case of the prosecution is not supported by any scientific evidence.

(vii) Lastly, it is the contention of the appellant that they were charged with an offence under Section 302 read with Section 34 IPC. The trial court acquitted them. Leave to appeal preferred by the State qua one of the accused, i.e. Govardhan @ Gunda was not granted. Thus, the acquittal of the said accused attained finality. Once the accused Govardhan @ Gunda stands acquitted and the role attributable to the appellant-Govindaraju is lesser compared to that of Govardhan, the present appellant was also entitled to acquittal. The judgment of the High Court, thus, suffers from legal infirmities.

4. Contra to the above submissions, the learned counsel appearing for the State contended that, as argued, it is not a case of false implication. The area fell within the jurisdiction of PW1, who was the eye-witness to the occurrence. As per the records, the events took place as - At 10.55 p.m. the incident took place, 11.45 p.m. the First Information Report (hereinafter referred to as FIR) was registered and at 1.40 a.m., the copy of the FIR was placed before the Magistrate, which was duly initialed by the Duty Magistrate. This proved the truthfulness of the case of the prosecution. The weapons of offence were recovered from the house of the appellant. The panchas have admitted their signatures, even though they have turned hostile. On the basis of the collective evidence, both documentary and ocular, the prosecution has been able to prove its case beyond any reasonable doubt and thus, the judgment of the High Court does not call for any interference.

5. Keeping in view the submissions made by learned counsel appearing for the appellant and the State, now we may proceed to examine the first contention. In the present case, the trial Court had acquitted both the accused. As already noticed, against the judgment of acquittal, the State had preferred application for leave to appeal. The leave in the case of the present appellant, Govindaraju was granted by the High Court while it was refused in the case of the other accused, Govardhan. Thus, the judgment of acquittal in favour of Govardhan attained finality. We have to examine whether the High Court was justified in over turning the judgment of acquittal in favour of the appellant passed by the Trial court on merits of the case. The law is well-settled that an appeal against an order of acquittal is also an appeal under the Code of Criminal Procedure, 1973 (for short `Cr.P.C.') and an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole. It is no doubt true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial Court. But that is the end of the matter. It is for the Appellate Court to keep in view the relevant principles of law to re-appreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence, in consonance with the principles of criminal jurisprudence. {Ref. Girja Prasad (Dead) By LRs. v. State of M.P. [(2007) 7 SCC 625]}.

6. Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of

evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence. The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 Cr.P.C. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts. Under the scheme of the Cr.P.C., 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. In the case of State of Rajasthan v. Shera Ram alias Vishnu Dutta [(2012) 1 SCC 602], a Bench of this Court, of which one of us (Swatanter Kumar, J.) was a member, took the view that there may be no grave distinction between an appeal against acquittal and an appeal against conviction but the Court has to keep in mind the value of the presumption of innocence in favour of the accused duly endorsed by order of the Court, while the Court exercises its appellate jurisdiction. In this very case, the Court also examined various judgments of this Court dealing with the principles which may guide the exercise of jurisdiction by the Appellate Court in an appeal against a judgment of acquittal. We may usefully refer to the following paragraphs of that judgment:

> 8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

9. We may refer to a recent judgment of this Court in the case of State of Rajasthan, Through Secretary, Home Department v. Abdul Mannan [(2011) 8 SCC 65], wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same.

11. This Court referred to its various judgments and held as under:-

12. As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court.

13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt.

The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In State of M.P. v. Bacchudas, the Court was concerned with a case where the accused had been found guilty of an offence punishable under Section 304 Part II read with Section 34 IPC by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp. 138-39, paras 9-10)

> "9. 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 reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by

> this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, Ramesh Babulal Doshi v. State of Gujarat, Jaswant Singh v. State of Haryana, Raj Kishore Jha v. State of Bihar, State of Punjab v. Karnail Singh, State of Punjab v. Phola Singh, Suchand Pal v. Phani Pal and Sachchey Lal Tiwari v. State of U.P.
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> 10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference."

16. In a very recent judgment, a Bench of this Court in State of Kerala v. C.P. Rao decided on 16-5-2011, discussed the scope of interference by this Court in an order of acquittal and while reiterating the view of a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan, the Court held as under:

> 13. In coming to this conclusion, we are reminded of the well-settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan
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> 212. At SCR p. 129, Subba Rao, J. (as His Lordship then was) culled out the principles 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. Reference can also be usefully made to the judgment of this Court in Suman Sood v. State of Rajasthan, where this Court reiterated with approval the principles stated by the Court in earlier cases, particularly, Chandrappa v. State of Karnataka. Emphasising that expressions like substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal, the Court stated that such phraseologies are more in the nature of flourishes of language to emphasise the reluctance of an appellate court to interfere with the acquittal. Thus, where it is possible to take only one view i.e. the prosecution evidence points to the guilt of the accused and the judgment is on the face of it perverse, then the Court may interfere with an order of acquittal.

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

11. Also, this Court had the occasion to state the principles which may be taken into consideration by the appellate court while dealing with an appeal against acquittal. There is no absolute restriction in law to review and re-look the entire evidence on which the order of acquittal is founded. If, upon scrutiny, the appellate court finds that the lower court's decision is based on erroneous views and against the settled position of law then the said order of

> acquittal should be set aside. { Ors. [(1985) 4 SCC 476], Ors. [AIR 2003 SC 4664], Inspector of Police, Tamil Nadu v. John David [JT 2011 (5) SC 1] }
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> 12. To put it appropriately, we have to examine, with reference to the present case whether the impugned judgment of acquittal recorded by the High Court suffers from any legal infirmity or is based upon erroneous appreciation of evidence.
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> 13. In our considered view, the impugned judgment does not suffer from any legal infirmity and, therefore, does not call for any interference. In the normal course of events, we are required not to interfere with a judgment of acquittal.

7. The Court also took the view that the Appellate Court cannot lose sight of the fact that it must express its reason in the judgment, which led it to hold that acquittal is not justified. It was also held by this Court that the Appellate Court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the findings of the trial court. [See C. Antony v. K.G. Raghavan nair [(2003) 1 SCC 1]; and Bhim Singh Rup Singh v. State of Maharashtra [(1974) 3 SCC 762].

8. If we analyze the above principle somewhat concisely, it is obvious that 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 a case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. There are no jurisdictional limitations on the power of the Appellate Court but it is to be exercised with some circumspection. The paramount consideration of the Court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than that from the conviction of an innocent. If there is miscarriage of justice from the acquittal, the higher Court would examine the matter as a Court of fact and appeal while correcting the errors of law and in appreciation of evidence as well. Then the Appellate Court may even proceed to record the judgment of guilt to meet the ends of justice, if it is really called for.

9. In the present case, the High Court, in the very opening of its judgment, noticed that the prosecution had examined eleven witnesses, produced fifteen documents

and three material objects. The witnesses of seizure had turned hostile. PW4 and PW5 were examined to establish the fact that the knife was seized vide Exhibit P5 at the instance of the appellant. They also turned hostile. PW6 and PW8 were examined to establish the contents of Exhibit P6, another knife that was seized from the other accused, Govardhan. Even they did not support the case of the prosecution. PW7, the supplier at VNR Bar and an eye-witness, PW9, Mr. Thiruvengadam, the second eye-witness and PW10, Mr. Sheshidhar, the third eye-witness who were examined to corroborate the evidence of PW1 openly stated contrary to the case of the prosecution and did not support the version and statement of PW1. The trial Court noticed a number of other weaknesses in the case of the prosecution, including the evidence of PW1. It found that the statement of PW1 was not free of suspicion, particularly when there was no evidence to corroborate even his statement. The Court doubted the recovery and also the manner in which the recovery was made and sought to be proved before the Court in face of the fact that all the recovery witnesses had turned hostile and had bluntly denied their presence during the recovery of knives. The trial court also, while examining the statement of the doctor and the post-mortem report, Ex.P9, returned the finding that there were as many as ten injuries found on the body of the deceased and the opinion of the doctor was that the death of the deceased was due to shock and hemorrhage as a result of stab injuries sustained and even the medical evidence did not support the case of the prosecution. The accused had suffered certain injuries upon his hand and fingers. Referring to these observations, the trial court had returned the finding of acquittal of both the accused.

10. The judgment of the High Court, though to some extent, reappreciates the evidence but has not brought out as to how the trial court's judgment was perverse in law or in appreciation of evidence or whether the trial court's judgment suffered from certain erroneous approach and was based on conjectures and surmises in contradistinction to facts proved by evidence on record. A very vital distinction which the Court has to keep in mind while dealing with such appeals against the order of acquittal is that interference by the Court is justifiable only when a clear distinction is kept between perversity in appreciation of evidence and merely the possibility of another view. It may not be quite appropriate for the High Court to merely record that the judgment of the trial court was perverse without specifically dealing with the facets of perversity relating to the issues of law and/or appreciation of evidence, as otherwise such observations of the High Court may not be sustainable in law.

11. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon

the sole testimony of the police witness (eye-witness). It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In the case of Lallu Manjhi and Anr. vs. State of Jharkhand (2003) 2 SCC 401, this Court had classified the oral testimony of the witnesses into three categories:-

a. Wholly reliable;

b. Wholly unreliable; and

c. Neither wholly reliable nor wholly unreliable.

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty. Reference in this regard can be made to the cases of Joseph v. State of Kerala (2003) 1 SCC 465 and Tika Ram v. State of Madhya Pradesh (2007) 15 SCC 760. Even in the case of Jhapsa Kabari and Others v. State of Bihar (2001) 10 SCC 94, this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.

13. In the case of Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a 14 years old boy) did not name the wife of the deceased in the fardbayan, it would not in any way affect the testimony of the eye-witness i.e. the wife of the deceased, who had given graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the

statement of an eye-witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy.

14. In the present case, the sole eye-witness is stated to be a police officer i.e. P.W.-1. The entire case hinges upon the trustworthiness, reliability or otherwise of the testimony of this witness. The contention raised on behalf of the appellant is that the police officer, being the sole eye-witness, would be an interested witness, and in that situation, the possibility of a police officer falsely implicating innocent persons cannot be ruled out.

15. Therefore, the first question that arises for consideration is whether a police officer can be a sole witness. If so, then with particular reference to the facts of the present case, where he alone had witnessed the occurrence as per the case of the prosecution. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

16. This Court in the case of Girja Prasad (supra) while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

17. Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in

any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of Girja Prasad (supra), this Court noticed the judgment of the Court in the case of Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder.

18. In Tahir v. State (Delhi) [(1996) 3 SCC 338], dealing with a similar question, the Court held as under:-

> 6. ... .In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.

19. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record.

20. It is also not always necessary that wherever the witness turned hostile, the prosecution case must fail. Firstly, the part of the statement of such hostile witnesses that supports the case of the prosecution can always be taken into consideration. Secondly, where the sole witness is an eye-witness who can give a

graphic account of the events which he had witnessed, with some precision cogently and if such a statement is corroborated by other evidence, documentary or otherwise, then such statement in face of the hostile witness can still be a ground for holding the accused guilty of the crime that was committed. The Court has to act with greater caution and accept such evidence with greater degree of care in order to ensure that justice alone is done. The evidence so considered should unequivocally point towards the guilt of the accused.

21. Now, let us revert to the facts of the present case in light of the above principles. As already noticed, the prosecution had examined as many as 11 witnesses, out of which six witnesses were the material witnesses. The prosecution had cited PW-7, PW-9 and PW-10 as eye-witnesses to the occurrence. PW-7, Ganesh denied that he had made any statement to the Police. The prosecutor was granted permission to cross-examine him after having been declared hostile. He denied the entire case of the prosecution, however, strangely he was not confronted with his statement under Section 161 Cr.P.C. for the reasons best known to the prosecutor. PW-9 was cited as another eye-witness, who completely denied the case of the prosecution. Again, as it appears from the record, he was not confronted with his statement under Section 161 Cr.P.C., though a vague suggestion to that effect was made by the prosecutor. PW-10 is the third eye-witness who was cited. He denied that he made any statement to the police on 7th December, 1998 and said that he never told the police that the accused had come chasing one person near the VNR Bar. He denied any knowledge of the incident.

22. PW-8, Ganesha, was a witness to the recovery of the knife vide Ext. P-6. He, in his statement, admitted his signature on the recovery memo, but stated that he did not know why the Police had obtained his signatures. Even the other three witnesses i.e.

> PW-2 - PW-4 and PW-6 were witnesses to seizure memos vide which recoveries were effected, including the knife and clothes of the deceased. PW-3, who admitted his signatures on Ex. P4, stated that his signatures were obtained in the Police Station. PW-2 was a material witness of the prosecution. He denied that he had ever seen the accused and had gone to make any complaint in the Police Station, Srirampur in regard to any incident that had happened in his shop. He denied that anything was seized in his presence. Ext. P4, blood stained pant, is stated to have been recovered in his presence.

23. Now, we are left with two witnesses PW-1 and PW-11. PW-1 is the complainant and is a police officer. PW-11 is the Investigating Officer.

24. PW-1 had stated that while he was going back after finishing his duty on 7th December, 1998 at about 10.45 p.m. at 5th Cross, he saw three persons chasing another person. The person, who was being chased fell in front of the VNR Bar and the accused Govindaraju was one of the three persons who were chasing the victim. When he was about to reach the spot, he heard the accused Govindaraju telling one of the other persons Govardhan, to run away as the Police were coming. PW-1 stopped his bike and started chasing those assailants who were running away in a Conservancy, but they escaped. PW-1 came back to the spot. Thereafter, a Police Constable and a Head Constable came there and with their assistance, he shifted the victim to the K.C.G. Hospital. The doctors after examining the victim declared him `brought dead'. PW-1, on checking the pockets of the victim, found his identity card from which he got his details. He returned to the police station, rang up the higher officers and registered a case suo-moto in Criminal Appeal No. 358 of 1998 whereafter an FIR was registered. Ext. P-1, bore his signature at Ext. P-1(a) and the same was later handed over for further investigation to PW-11.

25. The first and foremost point that invites the attention of this Court is that according to the PW-1, he was nearly 30 yards away from the place where the victim fell on the ground and he saw the accused persons chasing the victim from about a distance of 75 feet.

26. As per his statement in cross-examination, he was on a motor cycle. It is not understandable why he could not increase the speed of his motor cycle so as to cover the distance of 30 yards before the injuries were inflicted on the deceased by the accused. Surely, seeing the police at such a short distance, the accused, if they were involved in the crime, would not have the courage of stabbing the victim (deceased) in front of a police officer who was carrying a gun. In the FIR (Ex. P-2) he had not mentioned the names of the accused. He did not even mention to PW-11 as to who the assailants were. On the contrary, in the post-mortem report, Ex. P-9, it has been recorded that as per police requisition in Forms 14(i) and (ii) the victim was said to have been assaulted with knife by some miscreants on 7th December, 1998 and he was pronounced dead on arrival to the hospital.

27. In furtherance to the proceedings taken out under Section 174 of the Cr.P.C, it may be noticed that the brother of the deceased Shri Ananda had identified the body of the deceased and made a statement before the Police saying that at the midnight of 7th December, 1998, wife of the deceased had come and informed him

that her husband was killed by some goons at Srirampur. Before this, a man named Govindaraju and the deceased had lodged Police complaint that there was a fight between them. This itself shows that Govindaraju had approached the Police. Thus, it is quite unbelievable that he would indulge in committing such a heinous crime. Furthermore, the entire record before us does not reflect the name of the third accused, who is stated to be absconding. This certainly is a circumstance not free of doubt.

> PW1 had seen three accused chasing and then inflicting injuries upon the deceased. It is quite strange to note that PW11 as well as PW1 could not even find the name of the third accused who was involved in the crime. Once the Court critically analyses and cautiously examines the prosecution evidence, the gaps become more and more widened and the lacunae become more significant.

28. This clearly shows that not only PW-1 was unaware of the names and identity of the assailants, but PW-11 was equally ignorant. It is not disputed that PW-1 was carrying a weapon and he could have easily displayed his weapon and called upon the accused to stop inflicting injuries upon the deceased or to not run away. But for reasons best known to PW-1, nothing of this sort was done by him.

29. There is no explanation on record as to how PW-1 came to know the name of the accused, Govindaraju. Similar is the situation with regard to the name of the third accused who had been absconding and in whose absence the trial proceeded. As it appears, the statement of PW-1 implicating the accused does not inspire confidence. Another aspect is that all the witnesses who were stated to be eye-witnesses like PW-2, PW-3, PW-7, PW-9 and PW-10 turned hostile and have not even partially supported the case of the prosecution. Thus, the statement of PW-1 does not find any corroboration. For instance, according to PW-1, the accused fell on the ground in front of the VNR Bar. PW-7 is the crucial eye-witness who, as per the version of the prosecution, is stated to have been claimed that he was standing in front of VNR Bar and had seen the occurrence.

30. He not only denied that he knew the deceased and the accused, but also that he had made any statement to the police. Thus, the evidence of PW-7 completely destroys the evidence of PW-1 in regard to the most crucial circumstance of the prosecution evidence. Besides this, all other witnesses who, according to the prosecution, had seen the accused committing the crime completely turned hostile and in no way supported the case of the prosecution. The statement of PW-1 therefore, suffers from improbabilities and is not free of suspicion. Its non-

corroboration by other witnesses or evidences adds to the statement of PW-1 lacking credence and reliability.

31. PW-11 is the Investigating Officer. He verified the FIR, went to the hospital and after deputing a Constable to take care of the dead body, he left for the scene of occurrence. Upon reaching there, he prepared a Spot Mahazar in presence of the witnesses, collected blood stains in plastic and sealed it. At about 15 feet away from the place of occurrence, he found a pair of chappal and a car belonging to the deceased which was also seized by him. He had recorded statements of various witnesses. Goverdhan had made a voluntary statement and got recovered the blood stained knife alongwith blood stained clothes, which were taken in to custody. The post mortem report Ext. P-9 was also received by him. The blood stained clothes were sent to the FSL for opinion and the report thereof was received as Ext. P-15. The weapons were produced before the doctor and his opinion was sought.

32. Even in relation to this witness (PW-11), there are certain lurking doubts. Firstly, it may be noticed that certain very important witnesses were not examined or got examined by this investigating officer. The doctor who had performed the post mortem and prepared the Post Mortem Report, Ext. P-9, was not produced before the Court. The Head Constable who had come to the help of PW-1 for taking the deceased to the hospital and was present immediately after the occurrence was also not examined. The Forensic Science Laboratory (for short the FSL) Report, Ext. P-15, was placed on record, however, no person from the FSL, Bangalore or Calcutta was examined in this case, again for reasons best known to the Investigating Officer/prosecution.

33. At the cost of repetition, we may refer to the contents of Ex.P15, the report of the FSL, Bangalore. It is recorded therein that the specimen cuttings/scrapings were referred to Serologist Calcutta for its origin and grouping results. As and when the report would be received from Bangalore, the same would be forwarded to the Court, which never happened.

34. The items at Sr. no. 1 to 8, which included clothes, blood clots, one chaku were found to be blood stained here and there on the blade etc. No other finding in this regard was recorded on Ext. P-15, though it was stated to be a result of the analysis. None was even examined from the FSL. Thus, the report of the FSL has been of no help to the prosecution.

35. Now, we will come to the recoveries which are stated to have been made in the present case, particularly the weapon of crime. Firstly, these recoveries were made

not in conformity with the provisions of Section 27 of the Indian Evidence Act, 1872. The memos do not bear the signatures of the accused upon their disclosure statements. First of all, this is a defect in the recovery of weapons and secondly, all the recovery witnesses have turned hostile, thus creating a serious doubt in the said recovery. According to PW4 and PW5, nothing was recovered from the appellant Govindaraju. According to PW6 and PW8, nothing was recovered from or at the behest of the accused, Goverdhan.

36. Ex.Mo1 was the knife recovered from Govindaraju while Mo2 and Mo3 were the knife and the blood-stained shirt recovered from the accused, Goverdhan. Ex.Mo1, the weapon of offence, did not contain any blood stain. Ex.Mo2, the knife that was recovered from the conservancy at the behest of the accused, Goverdhan was blood-stained. Ex.P15, the report of the FSL, shows that item no.7 `one chaku' was blood-stained. However, the prosecution has taken no steps to prove whether it was human blood, and if so, then was it of the same blood group as the deceased or not. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has affected during the course of an investigation and in accordance with law. However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case.

37. Ext. P-9 is the post mortem report of the deceased. The injuries on the body of the deceased have been noticed by the doctor as follows:-

> (1) Horizontally placed stab wound present over front and right side of chest situated 9 cms to the right of midline and lower border of right nipple measuring 3.5cm x 1.5cms x chest cavity deep. Margins are clear cut, inner end pointed outer end blunt.
>
> (2) Obliquely placed stab wound present over front of left side chest, situated over the left nipple, it is placed 11 cms to the left of mid line, measuring 2.5 cms x 1cm x chest cavity deep, margins are clear cut, upper inner end is pointed, lower outer end is blunt.
>
> (3) Horizontally placed stab wound present over front and outer aspect of left side of chest, situated 5 cms below the level of left nipple, 17 cms to the left of mid line measuring 4 cm x 1.5 cms x 5 cms, directed upwards and to

> the right in the muscle plane, inner end is pointed, outer end is blunt, margins are clean cut.
>
> (4) Superficially incised wound present over front of left side chest, horizontally placed measuring 6 cm x 1 cms.
>
> (5) Obliquely placed stab wound present over front and right side of chest, situated 1 cm to the right of mid-line and 4 cm below the level of right nipple measuring 2 cm X 1 cm X 3 cms, directed upwards, backwards to the left in the muscle plane, margins are clean out. Upper inner end is pointed and lower outer end is blunt.

38. From a bare reading of the above post-mortem report, it is clear that there were as many as 10 injuries on the person of the deceased. The doctor had further opined that death was due to shock and hemorrhage as a result of stab injuries found on the chest.

39. The injuries were piercing injuries between the intercasal space and the stab injuries damaged both the heart and the lungs. It has been noticed by the High Court that according to PW-1, the victim was not able to talk. The post mortem report clearly establishes injuries by knife. But the vital question is who caused these injuries. It takes some time to cause so many injuries, that too, on the one portion of the body i.e. the chest. If the statement of PW1 is to be taken to its logical conclusion, then it must follow that when the said witness saw the incident, the accused Govindaraju was not stabbing the deceased but, was watching the police coming towards them and had called upon one of the other accused, Goverdhan, to run away as the police was coming. Obviously, it must have also taken some time for the accused to inflict so many injuries upon the chest of the deceased. Thus, this would have provided sufficient time to PW1 to reach the spot, particularly when, according to the said witness he was only at a distance of 30 yards and was on a motorcycle. At this point of time, stabbing had not commenced as the accused were alleged to be chasing the victims. Despite of all this, PW-1 was not able to stop the further stabbing and/or running away of the accused, though he was on a motor cycle, equipped with a weapon and in a place where there were shops such as the VNR Bar and also nearby the conservancy area, which pre-supposes a thickly populated area. Thus, the statement of PW-1 does not even find corroboration from the medical evidence on record. The High Court in its judgment has correctly noticed that the place of incident in front of VNR Bar of Sriramapuram was not really in dispute and having regard to the time and place, it was quite possible, at least for the persons working in the Bar, to know what

exactly had happened. With this object, PW-7 was produced who, unfortunately, did not support the case of the prosecution. Having noticed this, we are unable to appreciate the reasons for the High Court to disturb the finding of acquittal recorded by the learned trial Court.

40. There is still another facet of this case which remains totally unexplained by PW-1. As per his statement Head Constable 345 and Police Constable 5857 had come on the spot. It was with their help that he had shifted the victim to the KCG Hospital. It is not understandable as to why he could not send the body of the victim to the hospital with one of them and trace the accused in the conservancy where they had got lost, along with the help of the Constable/Head Constable, as the case may be. This is an important link which is missing in the case of the prosecution, as it would have given definite evidence in regard to the identity of the accused as well as would have made it possible to arrest the accused at the earliest.

41. The High Court, while setting aside the judgment of acquittal in favour of the appellant Govindaraju, has also noticed that it may not have been possible for the PW-1 to notice the details explained in the complaint Ext. P-1, while riding a motor bike. This observation of the High Court is without any foundation. Firstly, PW-1 himself could have stated so, either before the Court or in Ext. P-1. Secondly, as per his own statement, his distance was only 75 feet when he noticed the accused chasing the victim and only 30 feet when the victim fell on the ground. Thus, nothing prevented an effective and efficient police officer from precluding the stabbing. If this version of the PW-1 is to be believed then nothing prevented him from stopping the commission of the crime or at least immediately arresting, if not all, at least one of the accused, since he himself was carrying a weapon and admittedly the accused were unarmed, that too, in a public place like near VNR Bar.

42. The High Court has also observed that PW-1 noticed when victim was being chased by assailants. This suggests that there must have been something else earlier to that event, some injuries might have been caused to the victim. On the other hand, it indicates that victim was aware of some danger to his life at the hands of the assailants. Therefore, he was running away from them but the assailants were chasing him holding the weapons in their hands. The High Court, therefore, convicted the appellant on the presumption that he must have stabbed him. It is a settled canon of appreciation of evidence that a presumption cannot be raised against the accused either of fact or in evidence. Equally true is the rule that evidence must be read as it is available on record. It was for PW-1 to explain and

categorically state whether the victim had suffered any injuries earlier or not because both, the accused and the victim, were within the sight of PW-1 and the former were chasing the latter.

43. We are unable to contribute to this presumption as it is based on no evidence. The case would have been totally different, if PW-2, PW-7, PW-9 and PW-10 had supported the case of the prosecution. Once, all these witnesses turned hostile and the statement of PW-1 is found to be not trustworthy, it will be very difficult for any court to return a finding of conviction in the facts and circumstances of the present case.

44. There is certainly some content in the submissions made before us that non-production of material witnesses like the doctor, who performed the post mortem and examined the victim before he was declared dead as well as of the Head Constable and the Constable who reached the site immediately upon the occurrence and the other two witnesses turning hostile, creates a reasonable doubt in the case of the prosecution and the court should also draw adverse inference against the prosecution for not examining the material witnesses. We have already dwelled upon appreciation of evidence at some length in the facts and circumstances of the present case. There is deficiency in the case of the prosecution as it should have proved its case beyond reasonable doubt with the help of these witnesses, which it chose not to produce before the Court, despite their availability. In this regard, we may refer to the judgment of this Court in the case of Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors. [(2001) 6 SCC 145] wherein this Court held as under:-

> 19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case

> the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself -- whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed.....

45. The applicability of the principle of `adverse inference' pre- supposes that withholding was of such material witnesses who could have stated precisely and cogently the events as they occurred. Without their examination, there would remain a vacuum in the case of the prosecution. The doctor was a cited witness but was still not examined. The name of the Head Constable and the Constable appears in the Police investigation but still they were not examined. It is true that in their absence the post mortem report and FSL report were exhibited and could be read in evidence. But still the lacuna in the case of the prosecution remains unexplained and the chain of events unconnected. For instance, the Head Constable could have described the events that occurred right from the place of occurrence to the death of the deceased. They could have well explained as to why it was not possible for one Police Officer, one Head Constable and one Constable to apprehend all the accused or any of them immediately after the occurrence or even make enquiry about their names. Similarly, the doctor could have explained whether inflicting of such injuries with the knife recovered was even possible or not. The expert from the FSL could have explained whether or not the weapons of offence contained human blood and, if so, of what blood group and whether the clothes of the deceased contained the same blood group as was on the weapons used in the commission of the crime. The uncertainties and unexplained matters of the FSL report could have been explained by the expert. There is no justification on record as to why these witnesses were not examined despite their availability. This Court

in the case of Takhaji Hiraji (supra) clearly stated that material witness is one who would unfold the genesis of the incident or an essential part of the prosecution case and by examining such witnesses the gaps or infirmities in the case of the prosecution could be supplied. If such a witness, without justification, is not examined, inference against the prosecution can be drawn by the Court. The fact that the witnesses who were necessary to unfold the narrative of the incident and though not examined, but were cited by the prosecution, certainly raises a suspicion. When the principal witnesses of the prosecution become hostile, greater is the requirement of the prosecution to examine all other material witnesses who could depose in completing the chain by proven facts. This view was reiterated by this Court in the case of Yakub Ismailbhai Patel v. State of Gujarat [(2004) 12 SCC 229].

46. We are certainly not indicating that despite all this, the statement of the Police Officer for recovery and other matters could not be believed and form the basis of conviction but where the statement of such witness is not reliable and does not aspire confidence, then the accused would be entitled to the benefit of doubt in accordance with law. Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recovery at the instance of the accused. { Anr. [(2001) 1 SCC 652]}. Similar would be the situation where the attesting witnesses turn hostile, but where the statement of the Police Officer itself is unreliable then it may be difficult for the Court to accept the recovery as lawful and legally admissible. The official acts of the Police should be presumed to be regularly performed and there is no occasion for the courts to begin with initial distrust to discard such evidence.

47. In the present case, on a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the learned trial Court had not fallen in error of law or appreciation of evidence in accordance with law. The High Court appears to have interfered with the judgment of acquittal only on the basis that `there was a possibility of another view'. The prosecution must prove its case beyond any reasonable doubt. Such is not the burden on the accused. The High Court has acted on certain legal and factual presumptions which cannot be sustained on the basis of the record before us and the principle of laws afore-noticed. The case of the prosecution, thus, suffers from proven improbabilities, infirmities, contradictions and the statement of the sole witness, the Police Officer, PW1, is not reliable and worthy of credence.

48. For the reasons afore-recorded and the view that we have taken, it is not necessary for us to deal with the legal question before us as to what would be the effect in law of the acquittal of Govardhan attaining finality, upon the case of the present appellant Govindaraju. We leave the question of law, Point No.7 open.

49. For the reasons afore-stated, we allow the present appeal acquitting the appellant of the offence under Section 302 IPC. He be set at liberty forthwith and his bail and surety bonds shall stand discharged.