

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW)

"A.F.R"

Reserved on 26.07.2022

Delivered on 27.09.2022

Court No. - 1

Case :- CRIMINAL APPEAL No. - 437 of 2017

Appellant :- Lal Bahadur Patel

Respondent :- State of U.P.

Counsel for Appellant :- Sri R.B.S. Rathaur

**Counsel for Respondent :- Sri Pankaj Tiwari,
learned Additional Government Advocate, Sri
Sultan Hasan Ibrahim**

WITH

Case :- CRIMINAL APPEAL No. - 657 of 2017

Appellant :- Lal Singh Patel

Respondent :- State Of U.P. And Ors.

Counsel for Appellant :- Sri Sultan Hasan Ibrahim,

**Counsel for Respondent :- Sri Pankaj Tiwari,
Additional Govt. Advocate, Sri R.B.S. Rathaur**

WITH

**Case :- GOVERNMENT APPEAL No. - 1000163
of 2017**

Appellant :- State of U.P.

**Respondent :- Vimal Kumar Patel @ Malik And
Another**

**Counsel for Appellant :- Sri Pankaj Tiwari,
Additional Govt. Advocate**

Hon'ble Ramesh Sinha,J.
Hon'ble Mrs. Saroj Yadav,J.

(Per Mrs. Saroj Yadav, J. for the Bench)

1. Criminal Appeal No. 437 of 2017 has been preferred by the convict/appellant Lal Bahadur Patel, Criminal Appeal No. 657 of 2017 has been preferred by the complainant-Lal Singh Patel and Government Appeal No. 1000163 of 2017 has been preferred by State-appellant against the judgment and order passed by Additional Sessions Judge/Fast Track Court, Pratapgarh in Sessions Trial No. 26 of 2014 (State Versus Lal Bahadur Patel and others) arising out of Case Crime No. 62 of 2013, under Sections 302/34, 120-B and 506 of the Indian Penal Code, 1860 (in short "I.P.C"), Police Station Manikpur, District Pratapgarh, wherein trial Court convicted the appellant Lal Bahadur Patel, under Sections 302 IPC and acquitted co-accused Vimal Kumar Patel and Smt. Ramkali, under Sections 120-B and 506 IPC.

2. Necessary facts for disposal of these appeals in short are as under:-

A First Information Report (in short F.I.R.) was registered at Case Crime No. 63 of 2013, under Sections 302, 120-B and 506 IPC at Police Station Manikpur, District Pratapgarh on 17.07.2013, on the basis of written report submitted by the complainant

Lal Singh Patel. It was narrated in the written report that the father of the complainant was employed in Indian Railways at the post of Class IV. He died during his employment. His elder brother namely Lal Bahadur Patel had developed animosity towards his mother for division of money on the behest of his in-laws. Before two days of incident Ram Kali (mother-in-law) came to his house and threatened to kill his (complainant's) mother. On 17.07.2013 at about 10 A.M., when his mother, sister-in-law Rekha Devi and sister Anita went to spread manure in the agricultural field, Lal Bahadur Patel and his brother-in-law Vimal Kumar Patel reached there. Lal Bahadur Patel was armed with Axe and he on exhortation of Vimal Kumar Patel assaulted his mother on her head. His sister-in-law and sister raised alarm, then the complainant reached at the spot and found her mother ensanguined (Lahu-luhaan). He carried his mother to the Government Hospital, Kunda by Government Ambulance (108) but due to severe injury, she was referred to Swaroop Rani Hospital, Allahabad, where she died during the course of treatment. The complainant reached at the Police Station and lodged the F.I.R.

3. After investigation charge-sheet was submitted against the convict/appellant Lal Bahadur Patel and Vimal Kumar Patel, under Sections 302 and 506 IPC and against Ramkali under Sections 302, 120-B

and 506 IPC. The Magistrate concerned took cognizance of the offence and committed the case for trial to the Sessions Court. The Sessions Court framed the charges against Lal Bahadur Patel and Vimal Kumar Patel under Section 302 read with Section 34 IPC and against Ramkali under Sections 120-B and 506 IPC. All the accused persons denied the charges and claimed to be tried.

4. In order to prove its case the prosecution examined following witnesses:-

- (i) **P.W. 1-** Lal Singh Patel, the complainant;
- (ii) **P.W. 2-** Anita Devi, the daughter of the deceased;
- (iii) **P.W. 3-** Dr. Shailendra Kumar, who conducted autopsy of the deceased;
- (iv) **P.W. 4-** Constable Chandra Mauli Sharma;
- (v) **P.W. 5-** Mohammad Hashim-In-charge Inspector;
- (vi) **P.W. 6-** Balram Mishra- In-charge Inspector.

Apart from above witnesses, relevant documents have also been proved by the prosecution, which are as under:-

- (i) **Exhibit Ka-1-** Written report;
- (ii) **Exhibit Ka-2-** Post-mortem-examination report;
- (iii) **Exhibit Ka-3-** Chik F.I.R.;

- (iv) **Exhibit Ka-4-** Carbon copy of General Diary (G.D.);
- (v) **Exhibit Ka-5-** Site-plan;
- (vi) **Exhibit Ka-6-** Recovery Memo of blood soaked and plain soil from the spot;
- (vii) **Exhibit Ka-7-** Recovery memo of broken bangles found at the spot;
- (viii) **Exhibit Ka-8-** Carbon copy of entry in G.D. of taking the accused Lal Bahadur Patel on police custody remand;
- (ix) **Exhibit Ka-9-** Carbon copy of G.D. of recording statement of the accused Lal Bahadur Patel in police custody;
- (x) **Exhibit Ka-10-** Recovery memo of weapon of offence i.e. Axe and one shirt stained with blood;
- (xi) **Exhibit Ka-11-** Carbon copy of entry made in G.D. about the recovery of weapon;
- (xii) **Exhibit Ka-12-** Site-plan of place of recovery of offence;
- (xiii) **Exhibit Ka-13-** Charge-sheet;
- (xiv) **Exhibit Ka-14-** Inquest report;
- (xv) **Exhibit Ka-15-** Letter to Chief Medical Officer, Allahabad for conducting post-mortem;
- (xvi) **Exhibit Ka-16-** Letter to Reserve Inspector for post-mortem;

(xvii) **Exhibit Ka-17-** Police Form No. 13;

(xviii) **Exhibit Ka-18-** Photo nash;

(xix) **Exhibit Ka-19-** Specimen seal;

(xx) **Exhibit Ka-20-** Report of Forensic Science Laboratory, Lucknow.

5. After completion of evidence of prosecution, statements of accused persons under Section 313 of the Code of Criminal Procedure, 1973, (in short Cr.P.C.) were recorded, wherein accused persons denied the crime and stated that all the witnesses have deposed against them falsely and documentary evidence is also false and fabricated. Accused Ramkali has further stated that the complainant has falsely implicated her to harass her and she is innocent. The accused Lal Bahadur Patel stated that while his mother was guarding the Orchard, some unknown person killed her there and he has been implicated just for harassment. The accused Vimal Kumar Patel also stated that he has been implicated by the complainant only to harass him and he is innocent and has committed no offence.

6. In defence the accused persons examined Dr.Rajendra Kumar Tripathi, Medical Officer, Community Health Centre, Kunda, Pratapgarh as D.W. 1 and Vinod Kumar as D.W. 2.

7. After close of evidence, learned trial Court heard the arguments of both the sides. After

analyzing the evidence available on record, the trial Court came to the conclusion that the prosecution has failed to prove the charges against the accused Vimal Kumar Patel and accused Ramkali but found sufficient evidence against the accused Lal Bahadur Patel for holding him guilty of the charges framed under Section 302 IPC. Learned trial Court concluded that there is sufficient evidence that the accused Lal Bahadur Patel killed his mother by assaulting on her with an Axe, due to which she died. As a result, learned trial Court acquitted Vimal Kumar Patel and Ramkali and convicted Lal Bahadur Patel, under Section 302 IPC and sentenced him to life imprisonment coupled with a fine of Rs.20,000/- and in default of payment of fine further imprisonment of one year. Being aggrieved of this conviction Lal Bahadur Patel preferred Criminal Appeal No. 437 of 2017. The State preferred appeal against the acquittal of Vinod Kumar Patel and Ramkali being Government Appeal No. 1000163 of 2017, while the complainant Lal Singh Patel preferred appeal i.e. Criminal Appeal No. 657 of 2017 against the acquittal of Vinod Kumar Patel and Ramkali.

8. Heard Shri R.B.S. Rathaur, learned counsel for the convict/appellant Lal Bahadur Patel in Criminal Appeal No. 437 of 2017, Shri S.H. Ibrahim, learned counsel for the appellant/complainant-Lal Singh

Patel in Criminal Appeal No. 657 of 2017 and Shri Pankaj Tiwari, learned Additional Government Advocate for the State/appellant in Government Appeal No. 1000163 of 2017.

9. Learned counsel for the convict/appellant-Lal Bahadur Patel submitted that learned trial Court has committed error in holding guilty and sentencing the convict/appellant under Section 302 IPC. He further submitted that the F.I.R. is ante-timed as special report was sent after a considerable delay. He further submitted that deceased was admittedly alive for considerable time but her statement was not recorded. He further submitted that the deceased received only one injury on the back side of the head, which could not have been caused by the Axe allegedly recovered at the pointing out of the convict/appellant. He further submitted that the statement of P.W. 1- Anita Devi is not trust-worthy. He further submitted that the evidence of D.W. 1 and D.W. 2 has been ignored by the learned trial Court. There is no sufficient evidence to prove the case of the prosecution beyond reasonable doubt, hence the impugned judgment should be set aside and the convict/appellant should be acquitted.

10. Learned counsel for the appellant/complainant-Lal Singh Patel has submitted that acquittal order of Vimal Kumar Patel and Ramkali passed by the trial Court is not in accordance with law. Learned trial

Court has committed manifest error in acquitting these two persons. There was ample evidence to establish the charges framed against them. Ramkali conspired with two other persons to get killed the deceased, therefore, impugned judgment is erroneous to that extent and should be set aside.

11. Learned A.G.A. appearing on behalf of the State/appellant in Government Appeal No. 1000163 of 2017 submitted that learned trial Court has not considered the evidence in right perspective and erroneously acquitted the accused Vimal Kumar Patel and Ramkali. The incident was caused by the accused Lal Bahadur Patel on exhortation of Vimal Kumar Patel, who is brother-in-law of Lal Bahadur Patel. He further submitted that Ramkali came to the house of the deceased before two days of the incident and threatened to get her killed. She conspired with other co-accused persons and thus killed the deceased, hence the judgment of the trial court is erroneous to that extent and should be set aside and Vimal Kumar Patel and Ramkali should also be punished according to law. He further submitted that Anita Devi is the eye-witness of the incident and she has supported the case before the trial Court. Weapon of offence i.e. Axe was recovered at the pointing out of the convict/appellant and he confessed the crime, that will be read in evidence under Section 27 of the

Indian Evidence Act. Human blood was found on the axe in the forensic examination. Shirt of the convict/appellant was also recovered and taken into custody, on that also human blood was found in the forensic examination. He further submitted that statement of D.W. 1 is not reliable as he has deposed only to save the convict/appellant and statement of D.W. 2 is of no help to the convict/appellant. He further submitted that strong motive was there to commit the crime as there was dispute over the money received after the death of the husband of the deceased, who was a Government employee, hence the appeal of the convict/appellant-Lal Bahadur Patel should be dismissed.

12. Considered the rival submissions and perused the original record as well as record of the appeals.

13. It is a case of matricide wherein the convict/appellant-Lal bahadur Patel allegedly killed his mother for the dispute over the money received by his mother on the death of her husband and father of the convict, who was a Government employee and died during his employment.

14. The first information report of the incident was lodged by another son of the deceased, who is real younger brother of the convict/appellant. It was mentioned in the F.I.R. that the father of the complainant was employed in Indian Railways. He

died during his employment. The convict/appellant Lal Bahadur Patel was dissatisfied with his mother over division of money on the behest of his in-laws. On 17.07.2013 at about 10 A.M., when his mother, sister-in-law Rekha Devi and sister Anita went to spread manure in the agricultural field, Lal Bahadur Patel and his brother-in-law Vimal Kumar Patel reached there. Lal Bahadur Patel was armed with Axe and he on exhortation of Vimal Kumar Patel assaulted his mother on her head. His sister-in-law and sister raised alarm, then the complainant reached at the spot and found her mother ensanguined (Lahu-luhaan). He carried his mother to the Government Hospital, Kunda by Government Ambulance (108) but due to severe injury, she was referred to Swaroop Rani Hospital, Allahabad, where she died during the course of treatment. The complainant reached at the Police Station and lodged the F.I.R.

15. The complainant has been examined as P.W. 1. He has narrated the entire story before the trial Court step by step and fully proved the facts whatever has been stated in the F.I.R. A lengthy cross-examination has been made by the defence counsel but no major contradiction or adverse facts could be brought in the cross-examination. Anita, the daughter of the deceased has been examined as P.W. 2, who went with her mother along with her

sister-in-law to spread manure in the field. She is an eye-witness of the incident. She has stated before the trial Court that she has three brothers namely Lal Ji, Lal Bahadur and Lal Singh. Her father used to work as Cabin-man in Railway Department. He died during his service. Her elder brother Lal Ji got the service on his place. After the death of her father Rs. 9 Lacs were received as death cum retiral dues. The mother-in-law and brother-in-law of Lal Bahadur Patel used to instigate him to get the money distributed from her mother namely Kewla Devi and they used to altercate with her mother but her mother used to say that she will distribute the money only after the marriage of her daughter and son, who are to be married. She has further stated that when her mother was on the field to spread the manure, Lal Bahadur Patel and his brother-in-law came there and Lal Bahadur Patel hit her mother on her head by the Axe from back side. Her mother sustained injury on her head. She raised hue and cry, thereupon her younger brother Lal Singh and 2-4 more persons came there and the accused persons ran away. She has further stated that her mother was carried to the Hospital in a Government Ambulance from where she was referred to Swaroop Rani Nehru Hospital, Allahabad, where she died. A lengthy cross-examination has been made of this witness also but nothing adverse could be brought

in cross-examination evidence which could damage the case of prosecution. No material contradiction is there in her evidence.

16. P.W. 3 is Doctor, who conducted autopsy on the cadaver of the deceased. In the post-mortem examination he found following ante-mortem injuries on the cadaver:-

"(i) Lacerated wound 6 cm X 3 cm bone deep on right side of head 6 cm above right ear on opening scalp big hematoma present on right side of head;

(ii) Fracture of right temporal bone and right middle cranialfossa."

In the opinion of Doctor, injuries found on the cadaver of the deceased might have occurred by the back side of Axe. In the postmortem report, cause of death has been shown as coma as a result of ante-mortem injury.

17. Eye-witness account of the incident is there. P.W. 2- Anita, daughter of the deceased went to the field and she was present on the spot. Upon her cry, the complainant and other persons reached at the spot. As per the statement of the complainant- P.W. 1 at the time of incident he was present at the Orchard, he was at the distance of 10-15 paces and he reached at the spot as he was moving towards the place of incident from his Orchard and he saw that Lal Bahadur Patel was altercating with his mother

for the money and thereafter Lal Bahadur Patel assaulted his mother on head with the back side of an axe. He has stated that at the time of incident his sister-in-law and sister were present at the spot.

18. Recovery of weapon of offence was made at the pointing out of the appellant/convict Lal Bahadur Patel. At the time of recovery he told the Investigating Officer that this was the Axe, by which he killed his mother. He also got recovered a shirt, which he wore at the time of committing the crime. The shirt had blood stains. The Axe and shirt were sent for forensic examination and human blood was found on both the articles. The convict/appellant stated at the time of recovery of axe used in the crime that this is the axe which he used to hit his mother and after being injured his mother fell down upon him, therefore, his shirt got blood stains and he ran away upon being challenged by the people of the village. Recovery memo is Exhibit 10. This statement of the accused to the extent it relates to the discovery of articles is admissible in evidence under Section 27 of the Indian Evidence Act and will be read in evidence.

19. Hon'ble Apex Court in the case of ***Kishore Bhadke Versus State of Maharashtra (2017) 3 Supreme Court Cases 760*** has held that "[Section 27](#) of the Evidence Act is an exception to [Section 25](#) of the Act. [Section 25](#) mandates that no confession to a

Police Officer while in police custody shall be proved as against a person accused of any offence. [Section 27](#), however, provides that any fact deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

20. In **Mehboob Ali and another Versus State of Rajasthan (2016) 14 Supreme Court Cases 640**, the Hon'ble Apex Court in this regard has held as under:-

"12. [Section 25](#) of the Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. [Section 26](#) provides that no confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. [Section 27](#) is in the form of a proviso, it lays down how much of an information received from accused may be proved.

13. For application of [section 27](#) of Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the Police before

disclosure statement of the accused is recorded, is admissible in the evidence."

21. Hon'ble Apex Court further held in the above case as under:-

"16. This Court in *State (NCT of Delhi) v. Navjot Sandhu* alias Afsan Guru [(2005) 11 SCC 600] has considered the question of discovery of a fact referred to in section 27. This Court has considered plethora of decisions and explained the decision in *Pulukuri Kottaya & Ors. V. Emperor* [AIR 1947 PC 67] and held thus :

"125. We are of the view that Kottaya case [AIR 1947 PC 67] is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.

127. The crux of the ratio in Kottaya case was explained by this Court in *State of Maharashtra v. Damu*. Thomas J. observed that: (SCC p. 283, para 35)

'35. ...The decision of the Privy Council in *Pulukuri Kottaya v. Emperor* (supra) is the most quoted authority for supporting the interpretation that the

'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

22. In **Raju Manjhi Versus State of Bihar (2019)**
12 Supreme Court Cases 784, the Hon'ble Apex Court has held as under:-

"13. The other ground urged on behalf of the appellant is that the so called confessional statement of the appellant has no evidentiary value under law for the reason that it was extracted from the accused under duress by the police. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning to the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act.

27. How much of information received from accused may be proved.-Provided that, when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it

amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved. 14. In the case on hand, before looking at the confessional statement made by the accused-appellant in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes. From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/Head of the team of assailants and the crime was executed as per the plan made by him. It also came into light by his confession that the accused broke the doors of the house of informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act."

23. Learned counsel for the convict/appellant also argued that the copy of the F.I.R. was not sent to the Magistrate concerned within the time prescribed

under the law, hence adverse inference should be drawn against the prosecution.

24. This argument of the learned counsel for the convict/appellant is not tenable because where there is an eye-witness account and direct evidence then delay in sending the F.I.R. to the concerned Magistrate is immaterial. Therefore, F.I.R. cannot be termed as ante-timed and it cannot be treated as fatal.

25. In **Ombir Singh versus State of Uttar Pradesh and another (2020) 6 Supreme Court Cases 378**, the Hon'ble Apex Court in this regard has held as under:-

"19. The obligation is on the investigation officer to communicate the report to the Magistrate. The obligation cast on the investigating officer is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground."

26. *In Yogesh Singh versus Mahabeer Singh and others, (2017) 11 Supreme Court Cases 195*, the Hon'ble Apex Court in this regard has held as under:-

"40. It has been consistently held by this Court through a catena of judicial decisions that although in terms of [Section 157 Cr.P.C.](#), the police officer concerned is required to forward a copy of the FIR to the Magistrate empowered to take cognizance of such offence, promptly and without undue delay, it cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable and the trial stands vitiated. When there is positive evidence to the fact that the FIR was recorded without unreasonable delay and investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then in the absence of any prejudice to the accused, it cannot be concluded that the investigation was tainted and the prosecution story rendered unsupportable. [See *Pala Singh Vs. State of Punjab, (1972) 2 SCC 640*; *Sarwan Singh Vs. State of Punjab, (1976) 4 SCC 369*; *Anil Rai Vs. State of Bihar, (2001) 7 SCC 318*; *Munshi Prasad & Ors. Vs. State of Bihar, (2002) 1 SCC 351*; *Aqeel Ahmad Vs. State of U.P., (2008) 16 SCC 372*; *Dharamveer Vs. State of U.P., (2010) 4 SCC 469*; *Sandeep Vs. State of U.P., (2012) 6 SCC 107*]."

27. Learned counsel for the convict/appellant has insisted much on the evidence of D.W. 1 wherein he has stated that the deceased was brought by her daughter Sunita in injured condition in the Dispensary where he was working and she told him that she did not want any legal proceeding. Learned counsel for the convict/appellant while referring this statement argued that if the deceased was hit by the convict/appellant then her daughter Sunita might have told the same to the Doctor (D.W.1), so adverse inference should be drawn. This argument of the defence counsel is also not tenable because it is not necessary for the person reaching the hospital to tell the cause of injury everytime. It might be possible that she was not expecting the death of her mother at that time. Hence, this argument is also of no help. The evidence of D.W. 2 is also of no help to the convict/appellant because there is an eye-witness account of the incident and the complainant and P.W. 2 have stated about the incident and no material contradictions have been found in their evidence. Furthermore, there is no cogent reason to believe the testimony of D.W. 2.

28. To sum up, the prosecution has proved the charges levelled against the convict/appellant Lal Bahadur Patel under Section 302 IPC beyond reasonable doubt and the learned trial Court rightly relied upon the evidence of prosecution. An eye-

witness account was there; recovery of weapon of offence and the blood stained shirt was made at the pointing out of the convict/appellant Lal Bahadur Patel. In the forensic examination blood was found on the recovered articles. Furthermore, there was no reason for false implication of the convict/appellant.

29. So far as co-accused persons Vimal Kumar Patel and Ramkali are concerned, the prosecution could not prove the charges levelled against them beyond reasonable doubt as there is no recovery from their possession or at their pointing out. The trial Court rightly gave them benefit of doubt. It is well settled that acquittal recorded by the trial Court would not be disturbed if the view of the trial Court is a possible view.

30. Hon'ble Apex Court in the case of ***Achhar Singh Vs. State of Himachal Pradesh reported in 2021 SCC Online HP 870*** in this regard has laid down as under:-

"It is thus a well crystalized principle that if two views are possible, the High Court ought not to interfere with the trial Court's judgment. However, such a precautionary principle cannot be overstretched to portray that the "contours of appeal" against acquittal under Section 378 CrPC are limited to seeing whether or not the trial Court's view was impossible. It is equally well settled that there is no bar on the High Court's power to re-appreciate evidence in an appeal against

*acquittal*¹¹. This Court has held in a catena of decisions (including **Chandrappa v. State of Karnataka, (2007) 4 SCC 415, 42. State of Andhra Pradesh v. M. Madhusudhan Rao, (2008) 15 SCC 582 20-21 and Raveen Kumar v. State of Himachal Pradesh, 2020 SCC Online SC 869, 11.**) that the Cr.P.C does not differentiate in the power, scope, jurisdiction or limitation between appeals against judgments of conviction or acquittal and that the appellate Court is free to consider on both fact and law, despite the self-restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused".

31. In the result, these three appeals are **dismissed**.

32. The convict/appellant Lal Bahadur Patel is stated to be in jail, accordingly he shall serve out the sentence awarded by the trial Court.

33. The accused respondents namely Vimal Kumar Patel and Smt. Ramkali in Criminal appeal No. 657 of 2017 as well as Government Appeal No. 1000163 of 2017, who have already been acquitted by the Court below, are directed to file their personal bonds and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.

34. Office is directed to send a copy of this judgment along with lower Court record to the trial Court concerned for necessary information and compliance, forthwith.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date:- 27.09.2022

Arun