

## **Trial Judge : His Power**

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### **INTRODUCTION:**

We all know that " THE TRIAL JUDGE IS REALLY "ON TRIAL". There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact<sup>1</sup>. In Jagdish Singh vs Madhuri Devi, decided on 28 April, 2008, it was held that " Three requisites should normally be present before an appellate court reverses a finding of the trial court; (i) it applies its mind to reasons given by the trial court; (ii) it has no advantage of seeing and hearing the witnesses; and (iii) it records cogent and convincing reasons for disagreeing with the trial court."

At this juncture, I deem it is apt to remember the observations in FIRST NATIONAL JUDICIAL PAY COMMISSION REPORT, under the topic titled "THE TRIAL JUDGE IS REALLY "ON TRIAL"". In order to understand the concept of a trial judge succinctly, some of those observations are given as infra.

This central core of agreed standard is a must in every trial Judge, because, he has to dig out the nugget of truth through the clash of contradictions in our adversary system. He is primarily concerned about the justice, no matter to which side it may fall. In the quest for truth, it is therefore, necessary for him to be patient, dignified and courteous to litigants, witnesses, lawyers and others.

The atmosphere of the Court in certain cases is charged with high tension. The lawyers sometimes have an aggressive outlook against the Judge with assaultive mood against their opponents. Even the Judge's fairness is challenged when the ruling is given on any objection.

Indeed, in such a Court room drama, the Judge is really "on trial" and not the case on trial. Trial Judges working under a charged atmosphere and constantly under a psychological pressure has been even judicially recognised.

### **WHY IS APPEAL NOT AS EASY AS IT SOUNDS?**

In case of any mistakes or errors in the judgments of a trial judge, those judgments can be appealed. Despite the term "appeal" is so beautiful to hear, it is not as easy as it hears. To know why it is not as easy as it appears are 1. Appeal may be highly expensive. 2. Unless you entitle for indigent, appeal is very expensive. 3. The findings given by the trial judge should not be disturbed slightly. 4. Appeal may make you to linger around the court for further long time. 5. Although some may be able to post an appeal bond, the convicted persons, who are in jail, await for the appeal court to look at the errors of the trial judge. 6. Appeal courts rarely set aside the judgments delivered by the trial judges unless there is miscarriage of justice or grave procedural irregularity. 7. Even if a person can, in some fit cases, be serving probation, he has to wait for the appellate court to look at the errors or mistakes of the trial judge's rulings. 8. Awaiting for further several days or months or years looking at the errors of the trial judges, it may cause some mental agony to some persons.

It is undesirable to interfere with the findings of fact of the Trial Judge:

Dealing with the position of an appellate court hearing a civil appeal, the Privy Council observed in *Bombay Cotton Manufacturing Co. v. Motilal Shirlal*(1): "It is doubtless true that on appeal the whole case, including the facts, is within the jurisdiction of the Appeal Court. But generally speaking, it is undesirable to interfere with the findings of fact of the Trial Judge who sees and hears the witnesses and has an opportunity of noting their demeanor, especially in cases where the issue is simple and depends on the credit which attached to one or other of conflicting witnesses..... In making these observations their Lordships have no desire to restrict the discretion of the Appellate Courts in India in the consideration of evidence".

In *Surajpal Singh and others vs The State*<sup>2</sup>, wherein it was observed:

"It is well established that in an appeal under section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused. is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons".

In *W.C. Macdonald v. Fred Latimer*(1) where the Privy Council laid down that when there is a direct conflict between the oral evidence of the parties, and there is no documentary evidence that clearly affirms one view or contradicts the other, and there is no sufficient balance of improbability to displace the trial court's findings as to the truth of the oral evidence, the appellate court can interfere only on very clear proof of mistake by the trial court

In *Bhagwati and others vs The State of Uttar Pradesh*, [1976] 3 SCC 235 it is held: "Thus if the finding reached by the trial Judge cannot be said to be unreasonable, the appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record. This has been held to be so because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favor of the accused is not weakened by his acquittal. The appellate Court therefore should be slow' in disturbing the finding of fact of the trial Court, and if two views are reasonably possible of the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.<sup>3</sup>"

It is well-settled that while exercising powers of an appellate court, though the appellate court is entitled to re-appraise evidence recorded by the trial court, the appellate court can only interfere with the finding of the trial court not when such finding is incorrect, but when such finding is clearly wrong<sup>4</sup>.

In *Laxminarayan v. Returning Officer*, , the hon'ble Supreme Court, after referring to the judgments in *Sara Veeraswami v. Talluri Narayya*, AIR 1949 PC 32 and *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*, , laid down as under (page 78 of AIR 1974) :

"The power of the appellate court is very wide. It can reappraise the evidence and reverse the trial court's findings of fact. But like any other power it is not unconfined : it is subject to certain inherent limitations in relation to a conclusion of fact. While the trial court has not only read the evidence of witnesses on record but has also read their evidence in their faces, looks and demeanor the appellate court is confined to their evidence on record. Accordingly 'the view of the trial judge as to where credibility lies is entitled to great weight', (see *Sara Veeraswami v. Talluri Narayya*, AIR 1949 PC 32). However, the appellate court may interfere with a finding of fact if the trial

court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court, (see *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*, ). This limitation on the power of the appellate court in a first appeal from decree, on principle will also apply to an election appeal under Section 116A.<sup>5</sup>"

In *Sara Veeraswami v. Talluri Narayya*, AIR 1949 PC 32 : 75 IA 252, the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated; "But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to Courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

in *Sarju Pershad v. Jwaleshwari*, 1950 SCR 781, stated; "The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is and it is nothing more than a rule of practice that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.

in *Radha Prasad v. Gajadhar Singh*, (1960) 1 SCR 663, this Court reiterated;

"The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the Appeal Court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the Trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanor of the witness in Court. But, this does not mean that merely because an appeal court has not heard or seen the witness it will in no case reverse the findings of a Trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the Trial Judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the Trial Judge is wrong, the Appeal Court should have no hesitation in reversing the findings of the Trial Judge on such questions. Where the question is not of credibility based entirely on the demeanor of witnesses observed in Court but a question of inference of one fact from proved primary facts the Court of Appeal is in as good a position as the Trial Judge and is free to reverse the findings if it thinks that the inference made by the Trial Judge is not justified".

In *T.D. Gopalan v. Commissioner of Hindu Religious & Charitable Endowments, Madras*, (1973) 1 SCR 584, the Hon'ble Supreme Court said; "The High Court next proceeded to reproduce a summary of the statement of each of the witnesses produced by the defendants. No attempt whatsoever was made to discuss the reasons which the learned District Judge had given for not accepting their evidence except for a general observation here and there that nothing had been suggested in the cross-examination of a particular witness as to why he should have made a false statement. We apprehend that the uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court. We are, therefore, not in a position to know on what grounds the High Court disagreed with

the reasons which prevailed with the learned District Judge for not relying on the evidence of the witnesses produced by the defendants".

. In Baburao Bagaji Karemore v. Govind, , the Supreme Court again in an appeal under the Representation of the People Act, observed as under (page 413 of AIR 1974) : "It is needless for us to reiterate what has over a long course been observed in numerous decisions that a finding arrived at on an appreciation of conflicting testimony by a trial judge who had the opportunity of observing the demeanor of witnesses while giving evidence should not be lightly interfered with merely because an appellate court which had not the advantage of seeing and hearing the witnesses can take a different view. Before a finding of fact by a trial court can be set aside it must be established that the trial judge's findings were clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. This is not to say that a trial judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations and consequently it does not preclude an appellate court from examining and appreciating the evidence in order to ascertain whether the finding arrived at by the trial judge is warranted. If that is not warranted, it can, on its view of the evidence, arrive at a conclusion which is different from that arrived at by the trial court..."

There has not been any change and in all subsequent decisions, i.e., Ramesh Babu Lal Doshi v. State of Gujarat , George v. State of Kerala , Jaswant Singh v. State of Haryana , Bhagwan Singh and Ors. v. State of M.P. and Kallu v. State of M.P. , the aforesaid views have been reiterated. Recently, having a complete retrospect on all the earlier judgments, the Apex Court in Chandrappa (supra) has culled down, in para 41, the following principles regarding the power of the appellate court while dealing with an appeal against an order of acquittal<sup>6</sup>:

- (1) An appellate Court has full power to review, appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
- (3) Various expressions, such as, 'substantial and compelling reasons; 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an

appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favor of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

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

In *Mohd. Salamatullah and Ors v. Government of Andhra Pradesh*. After approving the grant of damages in case of breach of contract, the Court further held that the appellant court was not justified to interfere with finding of fact given by the trial Court regarding quantification of the damages even if it was based upon guess work<sup>7</sup>.

According to Jeremy F. Rosenthal<sup>8</sup>, For better or worse, he categorizes Judges into two categories: weak and strong. Weak judges guess at the law and try to make "safe" rulings which won't get them appealed. They often gravitate towards the prosecution because they feel safer ruling in their favor on close issues. Strong judges know the law and aren't afraid to disappoint the prosecution or the defense for that matter. Because strong judges give more predictable rulings, their dockets tend to be more efficient as a whole.

## **CONCLUSION:**

On thorough consideration of the above case-law, I am in no paucity to conclude that the principle is one of practice and governs the weight to be given to a finding of fact by the trial court. That too, in the quest for truth, it is therefore, necessary for a trial judge to be patient, dignified and courteous to litigants, witnesses, lawyers and others. At the same time, the trial judge should not forget the principle that this is

not to say that a trial judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations and consequently it does not preclude an appellate court from examining and appreciating the evidence in order to ascertain whether the finding arrived at by the trial judge is warranted.

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1. 1983 AIR 114, 1983 SCR (1) 851, Madhusudan Das Vs. Smt. Naryani Bai and Others

2. [1952] S.C.R. 193, 201. 1306

3. This was observed in 1990 AIR 847, 1990 SCR (1) 793, C.D. George Vs. Assistant Commissioner of Central Excise, Trichur.

4. 2005 124 CompCas 833 AP, 2006 65 SCL 38 AP , A.P. State Financial Corporation vs Mopeds India Limited (In Liquidation) And Ors.

5. This was observed in 2005 124 CompCas 833 AP, 2006 65 SCL 38 AP , A.P. State Financial Corporation vs Mopeds India Limited (In Liquidation) And Ors.

6. State Of U.P. vs Babu Son Of Manjaar And Ors. Decided on 19 September, 2007

7. Associated Builders, Engineers ... vs Union Of India (Uoi). Decided on 26 September, 2002

8. an attorney licensed to practice in the State of Texas.