

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 20th November, 2009*
Judgment Delivered on: 14th December, 2009

+ **CRL.A.902/2008**

STATE ...Appellant

Through: Mr.Manoj Ohri, APP.
Mr.R.N.Mittal Sr. Advocate with
Mr.Puneet Mittal and Mr. Ujjawal Jha,
Advocates for the complainant.

Versus

GIAN CHAN JAIN & ORS. ...Respondents

Through: Mr. D.K. Thakur, Advocate for
respondent nos.1&3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 28.3.2006 learned MM had acquitted the accused persons i.e. G.C.Jain and Arun Yadav of the charges levelled against them under Section 120-B/467/468/471 of the IPC as also for the offence under Sections 380 & 427 of the IPC. Four persons had been charge-sheeted; Suresh could not be arrested; he was declared a proclaimed offender; Gajanand Sharma was appearing in the court for some time but thereafter he chose not to appear; he was also declared a proclaimed offender on 27.9.2003.

2. Incident is dated 23.3.1993. The FIR was registered on the complaint of SI A.C.Dwivedi, PS Defence Colony. FIR had initially been registered under Section 427/380 of the IPC. Thereafter Section 467/468 and 471 of the IPC read with Section 120-B of the IPC was added.

3. On 10.7.1995, the investigation was transferred from the local police to the crime branch. Charge-sheet was filed on 9.4.1996.

4. Briefly stated the facts of the case are that the complainant Shiv Shankar Sharma was in legal possession in his capacity as a tenant, of Shop No.39-A, NDSE, Part II, New Delhi. He was running a kerosene depot in the said premises. On 22.3.1993 in routine he closed his shop and returned to his home. On the following morning i.e. on 23.3.1993 at 10 AM when he reached his shop he saw it had been demolished, 14 drums of kerosene as also cash of Rs.1,000/- and certain other documents were found missing. His goods had been removed in truck no. DEG 5756; on 23.3.1996, the truck had again come to the spot; on enquiry by the complainant the driver of the truck informed him that he had been asked to remove goods at the instance of G.C.Jain.

5. In the course of the investigation G.C.Jain produced one affidavit Ex.PW-1/B dated 22.3.1993 purported to have been executed by the complainant Shiv Shankar Gupta wherein the complainant had agreed to voluntarily surrender this shop in favour of G.C.Jain. This affidavit also bore the signatures of Arun Yadav and Gajanand Sharma.

6. Case of the prosecution is that this was a forged affidavit and had been used by the respondents and their accomplices to usurp this premises of the complainant. Evidence had been gathered to the effect that this affidavit was in fact not signed by the complainant Shiv Shankar and this has been established by the report of the CFSL.

7. Before the Trial Court 20 witnesses were examined; the trial court however chose to disbelieve their versions and giving benefit of doubt to the respondents i.e. G.C.Jain and Arun Yadav, both had stood acquitted.

8. The trial court had held that the defence of the accused had all along been that he had handed over the affidavit dated 22.3.1993 to H.C. Bhag Singh for which he had been issued a valid receipt but investigation in this direction had not been carried out by the prosecution and prosecution had failed to establish beyond all reasonable doubt that the affidavit Ex.PW-1/B was the same affidavit which had been handed over by the accused to H.C.Bhag Singh; in the absence of which it could not be said that the respondents were in any way responsible for the alleged forgery on the said affidavit. The prosecution not having been able to discharge this onus that Ex.PW-1/B was the same affidavit which had been given by the accused, no evidence also having been led on theft or mischief causing damage to property; benefit of doubt had accrued in their favour entitling them to an acquittal. They had accordingly been acquitted by the impugned order dated 28.3.2006.

9. It is this order which has become the subject matter of this appeal. Respondents are the accused G.C.jain and Arun Yadav.

10. This appeal has been preferred by the State; the complainant is Shiv Shankar Sharma.

11. Powers of the court in an appeal against an order of acquittal are limited. In Ghurey Lal vs. State of U.P. 2008 4 CCC SC 49 (judgment relied upon by the counsel for the non-applicant) it has been held that the principles to overrule a judgment of acquittal by a trial court should be strictly followed; the said principles over the years have been crystallised and the rules have to be strictly adhered to. The following rules had been enunciated in this case:-

“1. The appellate court may only overrule or otherwise disturb the trial court’s acquittal if it has “very substantial and compelling reasons: for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court’s decision. “Very substantial and compelling reasons” exist when:

- i) The trial court’s conclusion with regard to the facts is palpably wrong;*
- ii) The trial court’s decision was based on an erroneous view of law;*
- iii) The trial court’s judgment is likely to result in “grave miscarriage of justice”;*
- iv) The entire approached of the trial court in dealing with the evidence was patently illegal;*
- v) The trial court’s judgment was manifestly unjust and unreasonable;*
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.*

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached- one that leads to acquittal, the other to conviction- the High Courts/appellate courts must rule in favour of the accused."

12. The law as enunciated above is an undisputed proposition. It is on this touch stone that the judgment of the trial court has to be appreciated.

13. Complainant Shiv Shankar Gupta has been examined as PW-1. He has deposed that on 22.3.1993 at 7.30 PM he had closed his shop leaving behind about Rs.1000/- in cash as also 14 drums containing 500 ltrs. of kerosene oil some of which were empty; on the following morning at about 10 AM he reached the shop and found it demolished. The drums were missing as also the cash. On enquiry he came to know that the articles were taken away in one truck no. DEG 5756. He further deposed that in his presence the truck again came back there; he enquired from the truck driver; he was told by the driver that the articles were removed on the direction of G.C.Jain. Arun Yadav and Suresh were also present in the truck at that time. Police was informed. His statement Ex.PW-1/A was recorded. He has admitted that his signatures were obtained on three blank papers besides his specimen signatures which was taken on three sheets Ex.PW-1/F-1 to F-3. PW-1 further deposed that in the course of the investigation he was informed that G.C.Jain had produced one affidavit purported to be an agreement between G.C.Jain and himself i.e. PW-1. PW-1 has denied his

signatures at point A and B on the said affidavit Ex.PW-1/B. He has categorically stated that he has not signed Ex.PW-1/B.

14. In his cross examination he has stated that the police had come to the spot at about 10.45 AM and remained there for one hour; police also made enquiry from Sayed Ali and Shehzad Ali and others. The truck remained there for a few minutes and it was then driven away from the spot in spite of the efforts he could not chase it; he deposed that he cannot say when Ex.PW-1/B was shown to him but it must have been somewhere around 24/25.3.1993; it was in the police station. He denied the suggestion that document which had been shown to him is not Ex.PW-1/B but was some other affidavit. He is a tenant in the shop and had been paying rent to Satya Devi who was his landlady. He further denied the suggestion that Arun Yadav has been falsely implicated in this case due to an earlier dispute which he had with him over the collection of kerosene oil. Police had admittedly reached the spot at 10.45 AM on 23.3.1993 and remained there for about one hour. His statement Ex.PW-1/A was recorded.

15. Owner of the truck Pradeep Kumar had been examined as PW-2. As per his version on oath he was the registered owner of truck No.DEG -5756 and on the day of incident driver Jagdish was plying the said truck. Vide Ex.PW-2/A PW-2 had informed the Investigating Officer that Jagdish had gone back to his village about 3-4 months ago and his whereabouts are not known but as and when his address is traced, same shall be informed. The truck had

been taken into possession by SI Mohan Lal PW-11 on 8.11.1994 vide memo Ex.PW-2/B.

16. In the course of the investigation Shehzad was also examined by the prosecution but he could not be produced as witness as he had expired. D.K.jain was the Notary Public who had allegedly attested Ex.PW-1/B. Gajraj Singh PW-4 had reached the spot to take photographs of the broken shop after the demolition had been effected; said photographs are Ex.PW-4/A & B. Rakesh Kumar PW-5 and Rajinder PW-6 had in the early hours of 23.3.1993 noted that the respondent G.C.Jain standing outside the shop of PW-1 and where the demolition of the shop was going on; on inquiry both the said PWs had been informed that matter has been compromised and settled with PW-1 and G.C.Jain had purchased this shop from PW-1.

17. Investigation of this case had been marked to Inspector Avnesh Divedi Pw-15. He had recorded the statement of the complainant Ex.PW-1/A; the rukka had been sent at 8.10 PM for the registration of the FIR. Site plan Ex.PW-15/B had been prepared at the pointing out of the complainant. PW-15 has deposed that the accused had produced the photocopy of an affidavit signed by the complainant which he had seized vide memo Ex.PW-15/C; original of that affidavit Ex.PW-1/B had been handed over to him by G.C.Jain which was seized vide memo Ex. PW-1/C. PW-15 further deposed that G.C.jain had refused to sign on either of the two seizure memos.

18. The said seizure memos are Ex.PW-1/C and Ex.PW-15/C. Vide Ex.PW-1/C original affidavit dated 22.3.1993 i.e. Ex.PW-1/B had been seized. Ex.PW-1/C categorically recites that the accused G.C.Jain had refused to sign this document i.e. seizure memo. This document had been attested by H.C.Charan Singh and the complainant.

19. Ex.PW-1/B i.e. an affidavit purported to have been signed by Shiv Shanker Gupta at point A and B. Version of the accused is that as per this document the complainant had voluntarily surrendered the occupation of the room i.e. the premises no. P-39, New Delhi South Extension, Part-II; pursuant to a negotiated settlement he had vacated the premises after due application of mind without any fear and force and he had received a sum of Rs.20,000/- in full and final settlement towards the cost of the construction. This affidavit had been attested by the Notary Public D.K.Jain PW-3 and has been witnessed by G.K.Saini and Arun Yadav. G.K.Sharma and Arun Yadav are the two co-accused along with G.C.Jain of whom G.K.Sharma was a proclaimed offender. Arun Yadav is second respondent before this Court.

20. The Notary Public i.e. D.K.Jain had come into witness box as PW-3; he had taken shifting stands. On oath he had stated that he had attested the affidavit Ex.PW-1/B. In his cross-examination he had stated that the signature had appeared on this affidavit prior to his attestation. He was again re-summoned in the witness box pursuant to an order on an application under Section 311 of the Cr.P.C. wherein he admitted that Ex.PW-16/A is a letter written in his

hand writing to the Investigating Officer of the Crime Branch. In this letter, it is stated that affidavit Ex.PW-1/B had not been attested by him.

21. This witness had taken different stand at different points of time. However, what can be gathered is that Ex.PW-1/B was an affidavit which had been brought to him for the purpose of attestation but the signature on the said affidavit had already been appended prior to his attestation; this is his first version. In his second version i.e. in Ex.PW-16/A he has written that Ex.PW-1/B has not been attested by him, he has also corroborated this on oath. Both these depositions establish that PW3 was not in a position to depose whether Ex.PW-1/B was signed by PW-1 or not; even otherwise little reliance can be placed upon such a confused witness.

22. The senior scientific officer V.K.Khanna who had examined specimen and questioned document including specimen handwriting of the complaint has come into witness box as PW-7. Vide his report Ex.PW-7/A dated 27.7.1993 he had opined that the questioned signatures of PW-1 at point Q1 and Q2, in comparison with the specimen signatures sent to him do not appear to be of the same person. In the course of the trial specimen signatures of PW-1 and the co-accused Arun Yadav had again been taken. On 2.8.1995, SI Naseeb Singh PW-10 had vide Ex.PW-10/A-1 to A-10 taken the specimen handwriting and specimen signatures of Arun Yadav. On 3.11.1995 Jaswinder Singh PW-8 had taken specimen handwriting and specimen signatures of PW-1 on vide Ex.PW-8/A-1 to A-5. These

handwriting had become the subject matter of subsequent reports of the CFSL Ex.PW-17/A and Ex.PW-17/B dated 31.1.1997 which had been proved in the testimony of PW-17 Harsh Vardhan. Vide these reports no conclusive opinion could be formed on Q-1 & Q-2 i.e. the questioned document relating to PW-1; it had however opined that Q-3 on Ex.PW-1/B is the handwriting of Arun Yadav.

23. Bhagwan Singh DW-6 had also examined the specimen and the questioned writing of the complainant PW-1. As per his report Ex.DW-6/13 dated 27.5.2005 the signatures Q-1 and Q-2 on Ex.PW-1/B are of the complainant Shiv Shanker Gupta; this witness had done diploma course in the examination of documents from the Institute of Criminology; he has in his cross-examination admitted that he has not seen the report of the CFSL Ex.PW-7/A and the subsequent report Ex.PW-17/A and the reason on which the said opinions had been based. This witness is a private person. No document in support of his claim that he had passed this diploma course has been exhibited in his testimony. He is not in the category of persons who are described under Section 293 of the Cr.P.C. which are those categories of scientist experts whose reports are per se admissible. He denied the suggestion that he is deposing falsely at the instance of the accused.

24. DW-6 had been brought into the witness box by the accused; there is no dispute about the proposition that the witnesses of the defence also have to be given an equal weightage as that of the prosecution; yet in this case DW-6 has failed to place on record even a single document that he had done a diploma course in the

examination of document; his admission that he has not seen the earlier expert reports Ex.PW-7/A and Ex.PW-17/A also throw doubt on the veracity of his report as an unbiased and unprejudiced person would have positively examined all the pros and cons including the earlier scientific reports on the basis of which the earlier government experts had been their findings in Ex.PW-7/A and Ex.PW-17/A; his reasoning is neither cogent nor clear; in his cross-examination he has admitted that he had given his conclusion on the alphabetical study of the documents; the individual writing characteristics had not been considered. In this scenario little reliance can be placed upon Ex.DW-6/13.

25. Learned counsel for the non-applicants had pointed out that the specimen signatures of the complainant had been taken during the course of the investigation without prior permission of the Court which had become the basis of the report Ex.PW-7/A and in view of the judgment in Rakesh Kumar vs. State 2004(2) CRJ 452 the signatures taken of the accused by the police during the investigation without prior permission of the Court cannot be used in the trial. This judgment had relied upon a judgment of the Supreme Court in Sukhvinder Singh & Ors. vs. State of Punjab 1994(5) SCC 152. The said judgments were both related to the specimen handwriting taken of an accused during the course of investigation without prior permission of the Court and their impact on the rights of an accused; in this case the specimen handwritings which are under challenge are not that of an accused but that of the complainant.

26. G.C.Jain had come into the witness box as DW-4. His defence all along is that Ex.PW-1/B is a sham document; it is not the affidavit which he had given to H.C. Bhag Singh; yet at the same time he has taken pains to prove this document to be correct by producing DW-6 who has purportedly testified that Q-1 and Q-2 on Ex.PW-1/B are signatures of PW-1; this itself reflects the contrary and shifting stands of the accused.

27. Admittedly up to 7.30 PM of 22.3.1993 the disputed shop was in the legal possession of the complainant Shiv Shanker Gupta. This has also been admitted by the accused G.C.Jain in his statement recorded under Section 313 of the Cr.P.C. He had also come into the witness box as DW-4. His version is that at 7.30 PM on 22.3.1993 an affidavit had been handed over to him by the complainant pursuant to a negotiated settlement arrived at between the parties whereupon the sum of Rs.20,000/- had been received by the complainant from the respondent G.C.Jain in full and final claim of his construction cost and he had been handed over the peaceful and vacant possession of the property to him. He has further deposed that it was in the presence of his friend R.P. Singh and Baldev Raj Chauhan that PW-1 had handed over the peaceful possession of the disputed shop to him on 22.3.1993.

28. Baldev Singh Chauhan had come into witness box as DW-5; he had corroborated this version of DW-4. DW-5 had stated that pursuant to this settlement Shiv Shanker Gupta had received a sum of money which were two packets of Rs.100/- notes each. In his cross-examination he has admitted that he is known to G.C.Jain

since the last 15 years; he has further admitted that pursuant to this payment of Rs.20,000/- paid by G.C.Jain to PW-1 no receipt had been given by PW-1.

29. It is surprising and rather unbelievable that if the physical possession of the property was being handed over by PW-1 to the petitioner, no document to the said effect had been executed; no handing over or taking over memo had been drawn; receipt of Rs.20,000/- had also not been taken from PW-1 by G.C.Jain. This defence has been set up as an afterthought, this is also clear from the fact that no such defence has been put up in the cross-examination effected on PW-1; or other witnesses of the prosecution; this also did not find mention in the statement of the accused under Section 313 of the Cr.P.C.

30. Further version of DW-4 shows that on 23.3.1993 when he was accosted by certain bad elements making a further demand of Rs.2 lacs upon him he contacted his lawyer Rajender Singh and he narrated the incident to him. Rajender Singh is a witness of the prosecution and he has stepped into witness box as PW-6. He has deposed that on 23.3.1993 while he was on a morning walk at about 5.30-6.00 AM, on reaching at P-39 A, South Extension-II he saw that G.C.Jain and one Suresh were standing near the shop of Shiv Shanker Gupta and 7/8 labourers were breaking the shop of Shiv Shanker Gupta. On inquiry, it was told by G.C.Jain that Shiv Shanker Gupta had compromised the matter with him. PW-6 has further deposed that G.C.Jain had come to his house at 8.00 AM and requested him to draft a complaint; thereafter he proceeded to his

Court at Tis Hazari as he is an advocate by profession. Later on he came to know that G.C.Jain has forcibly taken the shop of Shiv Shanker Gupta.

31. The timing in this version of DW-4 and PW-6 becomes relevant. DW-4 has stated that it was in the afternoon that he received threats from the complainant and he contacted his lawyer at about 10.00 AM. This version is contrary to the version of PW-6 who has stated that DW-4 had contacted him at 8.00AM; further he being an advocate had proceeded to Tis Hazari Courts in the morning and could not have possibly met DW-4 at 10.00 AM.

32. Rakesh Kumar PW-5 a neighbour in the vicinity has deposed that at about 6.15 AM in the morning when he was going to purchase milk, he saw that Mr.Jain standing near the shop of PW-1 and the shop was demolished. This version establishes that the demolition work must have been started in the very early morning hours i.e. probably about 4.00 AM and when PW-5 crossed the shop at 6.15 PM it had already stood demolished and 7-8 labourers were present there; on inquiry he had been told that the shop had been purchased by G.C.Jain from Shiv Shanker Gupta.

33. DW-4 has further deposed that he had been assaulted and beaten by the complainant. He had lodged a complaint with PW-15 who sent him for medical examination and his MLC was prepared. No such MLC is forthcoming. Rajbir Singh DW-7 the record clerk of the AIIMS had produced a photocopy of an MLC Ex.DW-7/A purported to be of the petitioner but the name of the patient could

not be revealed as it did not contain any name; date of admission is also blank.

34. Further, as per DW-4 at 1.00 PM H.C. Bhag Singh had come to his home to collect the affidavit. This version of DW-4 that he had handed over the original affidavit to H.C.Bhag Singh appears to be wholly inconsistent and improbable. PW-15 in his cross-examination has categorically denied that he had sent H.C. Bhag Singh to the house of the respondent to collect the original affidavit; he could not even say whether H.C.Bhag Singh was posted at police station Defence Colony or not. H.C.Bhag Singh was admittedly not a member of the investigating team; also not being posted at police station Defence Colony, at that time, it is impossible to believe that G.C.Jain would have been asked to handover the affidavit to H.C.Bhag Singh; H.C.Bhag Singh could have been brought into the witness box in defence but accused had deliberately omitted to do so; this was for the reason that there is no such H.C.Bhag Singh in the picture.

35. A fact specifically pleaded by the accused; it was incumbent upon him to have proved it, in the absence of which it cannot be said that any such affidavit had been handed over by him to H.C.Bhag Singh. More over the respondent has stated that he had been issued a receipt by H.C.Bhag Singh; where is that receipt? If this receipt had been issued to the respondent he should have produced it; It is also mysteriously missing.

36. In defence Pradeep DW-8 brother-in-law of G.C.Jain had come into witness box and deposed that at about 12-12.30 noon in his

presence G.C.Jain had handed over one affidavit to a police official Bhag Singh who has given him a receipt for the seizure of that document; this witness being closely related to G.C.Jain being his brother-in-law has deposed in favour of G.C.jain.

37. As already discussed supra, who is Bhag Singh? how had he come into the picture? he is not a part of the investigating team; why the receipt which had been given by H.C. Bhag Singh to the respondent has not been produced? or why H.C. Bhag Singh has not been brought into witness box? It was for the accused to explain all these circumstances which he has failed to do so.

38. Section 105 of the Evidence Act is based on the rule *ie incumbit probatio qui dicit, non qui negat* – the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof.

39. Conduct of the respondent G.C.jain become questionable. Admittedly there was a long drawn out litigation qua this property between PW-1 and GC Jain. G.C. Jain was not the owner of this property. PW-1 has categorically stated that he was paying rent of this shop to Ramanand. A Power of Attorney Ex.PW-9/B had been produced by the accused which is dated 7.6.1988 whereby Ramanand authorised the respondent G.C.Jain to deal with his property i.e. the property bearing No.P-39, South Extension-II. This document Ex.PW-9/B had been seized by SI Chetan Pal PW-9. The document shows that it was executed on 7.6.1988. In the witness box DW-4 has stated that he is the owner of the property and the

papers of the sale were prepared in his favour by Ramanand on 7.6.1988.

40. In this context it is relevant to state that the litigation between the parties were various suits filed by PW-1 against the respondent G.C.jain which were suits for perpetual and permanent injunction restraining the respondent G.C.Jain from interfering with the peaceful possession of his shop i.e. the disputed property bearing No.P-39, South Extension-II. PW-1 had handed over the documents relating to these suit proceedings which had been seized by the Investigating Officer vide Ex.PW-1/C and Ex.PW-1/D and the documents are Ex.PW-1/D-1 to D-7. These documents reflect the acrimony of the contentious litigation pending between the parties. Written statement filed by the respondent in these proceedings has also been perused. These are all proceedings after 7.6.1988. Nowhere in these pleadings the respondent has pleaded that he is the owner or the authorised attorney holder of this property by virtue of Ex.PW-9/B. Nowhere in these proceedings had this power of attorney ever surfaced.

41. DW-4 in his cross-examination has also admitted this position. It has come on record that in the year 1990 PW-1 had filed a suit against G.C.jain for injunction. Pursuant to a joint statement between the parties that G.C.Jain would not dispossess the respondent, vide order dated 15.6.1990 in suit no. 195/90 the suit had been disposed of. Thereafter in the year 1992 another suit had been filed for injunction i.e. suit no. 272/92 by PW-1. Matter had been compromised and pursuant to the undertaking given by

G.C.Jain that he would not interfere in the peaceful possession of the complainant the suit had been disposed off vide order dated 21.9.1993. This order is dated 22.1.1993.

42. This shows that two months prior to this incident the parties were still warring with one another and disputes over this property were on; so much so that contentious litigation between the parties was pending. DW-4 in his cross-examination has also admitted that on 17.2.1993 i.e. about one month prior to this incident a complaint had been lodged by PW-1 against him for an attempt to kidnap him. In his cross-examination DW-4 has admitted that he was called in the Dev Nagar Crime Branch regarding this complaint.

43. These facts clearly advance the version of the complainant that the parties were daggers drawn; this dispute was over this shop. So much so that a complaint for the alleged kidnapping of PW-1 by the respondent had also been filed by him.

44. In Suit No.258/93 titled as Shiv Shanker Gupta vs. G.C.jain i.e. a suit for perpetual injunction and declaration filed by PW-1 on 30.3.1993 the affidavit dated 22.3.1993 was the contentious issue; this suit had been decided in favour of PW-1 on 2.4.2002 and the legal understanding/affidavit dated 22.3.1993 had been declared null and void. In these proceedings defendant had filed his written statement but thereafter he chose to absent himself whereupon he was proceeded ex parte.

45. It is in this background that the affidavit dated 22.3.1993 has to be adjudged.

46. On this point learned counsel for the complainant drawing the attention of this Court to the decree dated 2.4.2002 in Suit No.358/93 (supra) has argued that this final finding of the Civil Court on this affidavit dated 22.3.1993 is binding on the criminal Court. Counsel for non-applicant has submitted that his defence has always been that Ex.PW-1/B is not the same document which he had handed over to H.C. Bhag Singh and as such the finding of the Civil Court on this document could not have any binding effect on this Court. This argument has little force in view of the discussion supra on this point. Principle of *res judicata* applies to criminal proceedings. It is different from the principle of *autrefois acquit* or double jeopardy as embodied in Section 300 of Cr.P.C. Where an issue of fact has been decided by a competent court and a finding has been reached in favour of an accused, it would constitute a *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb the finding of fact in issue, provided, however, (1) that the parties are the same (2) the fact in issue proved or not is identical with what is sought to be reagitated in subsequent trial. See AIR 1956 SC 415 Pritam Singh vs. State.

47. Arun Yadav is the attesting witness of Ex.PW-1/B. He has admitted his signature at point A-4 on the said document. He has also come into witness box as DW-1. His version on oath is that his signatures on the said document were taken under force and coercion; admittedly he has not made any complaint against this

force and coercion exercised upon him Ex.PW-17/A and Ex.PW-17/B had also opined that Ex.PW-1/B is signed by Arun Yadav. Presence of Arun Yadav was also duly identified by PW-1 as the person who was present in the truck at the time when the truck driver has come to collect the Malba from his shop. It is a sham defence.

48. Trial Court had based its version on a mis-appreciation of facts as also of the evidence. Trial Court has nowhere discussed the evidence of the prosecution; it has straightway jumped to the evidence in defence and has believed the entire version set up by the accused without giving any discussion on the evidence of the prosecution. The judgment of the Trial Court is not only perverse but it is based on manifest errors both on the factual as also on the legal aspects which has resulted in a gross miscarriage of justice qua the complainant. This Court sitting in appeal against the said order is constrained to set aside the said order.

49. Judgement of the Trial Court is accordingly set aside. Evidence on record has amply established that the respondents are guilty. They are convicted for having conspired with each other and having prepared the said forged affidavit Ex.PW-1/B with an intent to cheat the complainant. The shop of PW-1 had been illegally usurped, demolished and destroyed with the intention to cause an irreparable and wrongful loss and damage to the complainant and a consequent wrongful gain to the respondents. This was on the strength of the forged affidavit Ex.PW-1/B. Respondents i.e. G.C.Jain and Arun Ydav are accordingly convicted under Section 120B read with Sections 468/471 and Section 427 of the IPC. They are

sentenced to undergo RI for one year for the offence under Section 120B of the IPC; for the offence under Section 468 of the IPC they are sentenced to undergo RI for one year and to pay a fine of Rs.10,000/- each, in default of payment fine to undergo RI for three months. No separate sentence is called for under Section 471 of the IPC. For the offence under Section 427 of the IPC both the respondents are sentenced to undergo RI for six months. All the sentences shall run concurrently. Benefit of Section 428 of the Cr.P.C. be given to the respondents. Bail bonds and surety bonds of the respondents stand cancelled. They are directed to surrender forthwith to suffer the sentence.

50. Appeal is allowed in aforesaid terms.

(INDERMEET KAUR)
JUDGE

December 14, 2009
nandan