

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

CRL.A.No. 225 of 2003 ()

AGAINST THE JUDGMENT IN CC 1508/1998 of J.M.F.C., CHANGANACHERRY DATED
03-05-2000

APPELLANT(S) /COMPLAINANT:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

RESPONDENTS/ACCUSED:

1. NIZAR, S/O.VARGHESE, PANAKKAL HOUSE,
PAZHANITHODU BHAGOM, RAMESWARAM VILLAGE
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

2. JEROM, S/O.ANTONY, KAREETHARA HOUSE,
THANKA NAGAR, WEST BHAGOM, RAMESWARAM VILLAGE
ERNAKULAM DISTRICT.

3. ANTONY SHAJI, S/O.YESUDAS,
KARAPARAMBIL HOUSE, PAZHANITHODU BHAGOM,
RAMESWARAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

R1 BY ADV. SRI.SHAIJAN C.GEORGE

R1 BY ADV. SRI.SHAIJAN C.GEORGE

R1 BY ADV. SMT.S.REKHA KUMARI

R1 BY ADV. SMT.SAJITHA GEORGE

R3-BY ADV.SMT.SHERIN C.GEORGE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 7.10.2015,
THE COURT ON 18-11-2015 DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.225 of 2003
.....

Dated this the 18th day of November, 2015

JUDGMENT

State of Kerala, the complainant in C.C.No.1508/1998 on the file of the Judicial First Class Magistrate Court, Changanacherry, is the appellant herein. The respondents, who are accused 1 to 3, were charge sheeted by the Circle Inspector of Police, Changanacherry police station in Crime No.392/1998 of that police station under section 379 read with section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 21.7.1998, at about 12.30 p.m, while the defacto complainant was travelling in a superfast bus of KSRTC from Kottayam to Thiruvananthapuram and when it reached Changanacherry bus stand, the accused in furtherance of their common intention committed theft of Rs.1,54,200/- kept in his big shopper bag from the bus and ran away from there and thereby all of them have committed the offence punishable under section 379 read with section 34 of the Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court, Changanacherry where it

was taken on file as C.C.No.1508/1998. When the accused appeared before the court below, after hearing both sides, charge under section 379 read with section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 7 were examined and Exts.P1 to P6 and Mos 1 to 5 were marked on their side. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and they are innocent of the same and they have been falsely implicated in the case. In fact, the first accused was in possession of Rs.1,80,000/-, the amount retained by him for purchasing fish as he is a fish merchant at Kochi and on account of some enmity, police have seized the amount from him and falsely implicated them in the case. No defence evidence was adduced except marking Exts. D1, D2 and C1 on their side. After considering the evidence on record, the court below found that the

prosecution has failed to prove that CW1, the defacto complainant, was in possession of the amount as claimed by him and the incident occurred as claimed by him and the articles seized from the possession of the accused belongs to CW1 and holding that the prosecution has failed to prove the case against the accused beyond reasonable doubt, acquitted the accused for the offence alleged giving them the benefit of doubt under section 248(1) of the Code. Aggrieved by the same, the above appeal has been preferred by the State.

4. After disposal of the case by the court below, the second accused, who is the second respondent herein, reported dead. Since appeal is against acquittal by the State, the appeal will abate on the death of the accused in view of section 394(1) of the Code of Criminal Procedure. So, the appeal as against the second accused, who is the second respondent herein, is dismissed as abated.

5. Heard Sri. Jibu P. Thomas, Public Prosecutor appearing for the State and Smt. Sherin C. George, counsel appearing for the third respondent and perused the records.

6. Learned Public Prosecutor argued that immediately after the incident, PW1 had lodged complaint and crime was

registered by the Changanacherry police and within half an hour of registering the crime, the accused persons were caught red handedly along with the stolen money and they were identified by PW1 from the police station as well. Further, PW1 had identified the amount that has been seized from the possession of the first accused and there is no explanation forthcoming from the first accused for the amount in his possession and in such circumstances, it can be only presumed that he was found to be in possession of stolen property and as such, the court below ought to have convicted the accused for the offence alleged. Seizure of the amount was also proved through the prosecution witnesses. The reasonings given by the court below are not sufficient or legal to acquit the accused on the basis of the evidence available on record. Appreciation of evidence made by the court below is perverse and the court below ought to have convicted the accused for the offence alleged. He had relied on the decision reported in **Rajan Babu v. Anitha Chandra Babu** (2011(3) KLT 415) and **Akil Alias Javed v. State** (NCT of Delhi)(2013 (7) SCC 125) in support of his case.

7. On the other hand, counsel for the respondents

submitted that the reasonings given by the court below are perfectly justifiable and it cannot be said that the reasonings given by the court below on the basis of evidence is not a possible view and it cannot be said to be a perverse one. In the case of circumstantial evidence, the prosecution has the duty to prove each link of chain of circumstances to prove guilt of the accused and no room for hypothesis of innocence in favour of the accused must be left out. If the chain is broken, then that benefit must be given to the accused. In this case prosecution has failed to prove that the defacto complainant was in possession of the amount and the accused and the defacto complainant were travelling in the same bus at the relevant time and the prosecution has to establish the identity of the accused and also identity of the stolen articles by examining the person who entrusted the amount to the defacto complainant which they have not established. The best witnesses who could have spoken about the incident were the persons travelled in the bus in which the accused as well as the defacto complainant said to have been travelled, according to the prosecution. But no attempt was made to examine any of the passengers or conductor of the bus to prove this aspect. Further, the details

mentioned in Ext.P1 regarding description of bundles of notes with description of the bank slip found therein create doubt regarding the time at which it was recorded as claimed by the prosecution. Further, according to PW1, a person with red bag had committed the offence along with two others whom he found running in Changanacherry bus stand when he realized loss of the amount. But the bag seized was not a red bag as claimed by the prosecution. Further, the evidence adduced creates doubt regarding the total amount said to have been recovered from the possession of the accused when he was alleged to have been caught by PW6. All these things threw suspicion about the prosecution case and so the court below was perfectly justified in coming to the conclusion that the prosecution has not proved the case against the accused beyond reasonable doubt and he is entitled to get the benefit of doubt. He had also argued that in the case of acquittal, the appellate court must be slow in reversing the order of acquittal unless the view taken by the court below is perverse and not possible on the basis of evidence. Even if alternate view is possible on the basis of evidence, the appellate court is not entitled to substitute its views if the view taken by the court below is also probable

and possible on the basis of the evidence adduced. He had relied on the decisions reported in **Chandrappa and Others v. State of Karnataka** (2007 (4) SCC 415), **Ghurey Lal v. State of Uttar Pradesh** (2008 (10) SCC 450) and **Murugesan & 16 others v. State Through Inspector of Police** (2013 SAR (Criminal) 179) in support of his case.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

PW1 was working as an Accountant under a rubber merchant by name K.S. Sarathchandran of Vithura in Thiruvananthapuram district. According to him, he came with load of rubbersheets to Thodupuzha to be delivered to M/s M.K.John & Company, Thodupuzha and accordingly, he delivered the same and obtained Rs.1,54,200/- being its value and thereafter he came to Kottayam and boarded a super fast bus to Thiruvananthapuram on 21.7.1998. At about 12.30 p.m on that day, when the KSRTC bus reached Changanacherry bus stand, he found the weight of his carry bag light, in which he had kept the money, and at that time three persons got down from the KSRTC bus and ran away from there, one of whom was holding a red bag in his hand.

Immediately he made hue and cry and got down from the bus and informed the police constable in the bus stand and as directed by one of the police officials there, he went to Changanacherry police station and gave Ext.P1 statement regarding the incident, which was recorded by PW6, the Sub Inspector of Police of, Changanacherry police station. Immediately he gave intimation to nearby police station through wireless. On the basis of Ext.P1, he registered Ext.P5 First Information Report as Crime No.392/1998 of Changanacherry police station under section 379 read with section 34 of the Indian Penal Code against identifiable three persons. He went to Perunna bus stand as part of his investigation and he got information that three persons entered a KSRTC bus with a red bag in a suspicious manner. Immediately he went to Perunna bus stand and enquired about the same with PW2, the police constable who was on duty there, and he told that those three persons had boarded the KSRTC bus and they got into the bus while the bus was moving and one of the person was holding a bag with red checks and they chased the bus and stopped the same and conducted search of the bus and saw the first accused holding a bag with

red checks and accused 2 and 3 were also with him. When he questioned him, he told that he was Joy @ Nizar of Ernakulam and they disclosed that they were coming from Kottayam and from KSRTC bus stand, they had torn the big shopper bag of one person and took the amount of Rs.1,54,2000/- and on verification of the bag, he found Mos 1 to 3 series currency notes containing two bundles of five hundred rupee notes, five bundles of hundred rupee notes and 42 loose currency notes of hundred rupee denominations. When he examined MO4 bag, he found some personal properties of the accused persons. Thereafter he seized the same as per Ext.P3 mahazer in the presence of PW4 and another. He arrested them and came to the police station and got identified the accused persons through PW1, who was there in the police station. Thereafter he seized MO5 big shopper in which PW1 was carrying the amount. He went to the place of occurrence and prepared Ext.P4 scene mahzer in the presence of PW5 and another. He questioned the witnesses and recorded their statements. Further investigation in this case was conducted by PW7, the Circle Inspector of Police, Changanacherry. He verified the investigation conducted by

PW6 and completed the investigation and submitted final report.

9. Before going into the facts of the case, let me consider the principles laid down by the Apex Court regarding appreciation of evidence to be done in an appeal filed against order of acquittal passed by the trial court. In the decision reported in **Chandrappa and Others v. State of Karnataka** (2007 (4) SCC 415), after considering all the decisions on this aspect, the Apex Court has formulated certain general principles, which reads as follows:

“The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re 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 emphasis 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 favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall 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”.

10. The same view has been reiterated in the decision reported in **Ghurey Lal v. State of Uttar Pradesh** (2008 (10) SCC 450). In this case, after reiterating the principles laid down in **Chandrappa's case** (cited supra) further observed that:

“The accused is presumed innocent until proven guilty. The trial court's acquittal bolsters the presumption that he is innocent. On proper analysis of the ratio and

findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue."

11. It has been further observed that:

"If trial court's view is also possible and plausible, the High Court should not substitute the same by its own possible view. Due or proper weight and consideration must be given to the trial court's decisions and findings. This is especially true when a witness' credibility is at issue. The difference in treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence. While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the Judges of the High Court have reversed the judgment of the trial court without placing the very substantial reasons given by it in support of its conclusion."

12. It is further held that :

"An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly

unsustainable. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. The appellate court undoubtedly has wide powers of re appreciating and reevaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse”.

13. In the same decision it has been further observed that:

“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”.

14. In the same decision it has been observed that:

“The appellate court is given wide powers to review the evidence to come to its own conclusions. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Code of Criminal Procedure. Its power of reviewing evidence is wide and the appellate court can re appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law. But this power must be

exercised with great care and caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal”.

15. The same view has been reiterated in the decision reported in **Murugesan & 16 others v. State Through Inspector of Police** (2013 SAR (Criminal) 179). In this case, the Supreme Court further observed that if two reasonable conclusions are possible on the basis of evidence on record, appellate Court should not disturb the finding of acquittal recorded by trial Court.

16. Further, in order to punish a person for theft defined under section 378 of the Indian Penal Code, it must be proved by the prosecution that the accused had removed the movable property from the actual or physical possession of another person without consent. Theft is an offence against possession and not title. The criminal court is not required to adjudicate on rival claims on title claim by the parties while dealing with offences of theft. This was so held in the decision reported in **Rajan Babu's case** (cited supra). Further, in **Akil**

Alias Javed's case (cited supra), it has been observed that if alleged stolen articles were found in the possession of the accused, it is for him to explain as to how he came into possession of the said articles, whether they were owned by him or in what other manner those articles came into possession and if it is not explained, but simply denied the recovery made from him, the court can presume that he had failed to discharge his onus and there is no reason to disbelieve the complainant. With this principles in mind, the case in hand has to be considered.

17. The court below had acquitted the accused on the following grounds:

1. From the circumstances, the recording of Ext.P1 statement with so many details of the currency notes said to have been stolen creates doubt and it could only be anti timed after the arrest of the accused persons and registration of crime as Crime No.392/1998 against accused persons on the basis of the alleged confession statement given by them.

2. The prosecution has not proved that the defacto complainant had come into possession of so much amount and it is not safe to rely on his evidence alone for proving

possession of the currency notes as claimed by him in the absence of any corroborative evidence adduced on the side of the prosecution on this aspect.

3. The prosecution has not proved the actual place of theft beyond reasonable doubt and travelling of the accused in the bus in which PW1 was also said to have travelling at the time of commission of the crime.

4. The recovery is also not proper and does not inspire confidence of the court.

5. The prosecution also failed to prove the identity of the accused as the person who have committed the crime as claimed by the prosecution. It is on the basis of the above findings and observations derived from the court below on the basis of appreciation of evidence that the order of acquittal was passed by the trial court. It is for this Court to consider as to whether those findings of the courts below are proper, possible and can it be said to be perverse on the basis of the evidence available on record.

18. In this case, there is no eye witness to the incident. According to PW1, he was an Accountant of one Sarathchandran of Vithura and, as instructed by him, he came with rubber

load and delivered the same to M/s. John & Company at Thodupuzha and collected Rs.1,54,200/- being the sale price of the same on the previous day of the incident and thereafter, he came to Kottayam and boarded a super fast bus from the KSRTC bus stand and he was standing in the vehicle and there were lot of rush in the bus. Even, according to him, he was carrying a bag in his hand with the money and when the bus reached Changavanam, he had to put the bag down so as to take ticket and when the bus reached Changanacherry, when he lifted the bag, he found it was having less weight and found that the amount was missing from the bag and he made hue and cry and saw three persons running through the bus stand at Changanacherry, one of whom holding a red bag, whom he identified later as the first accused. In order to establish this fact, he will have to prove that he was an employee of Sarathchandran of Vithura, who is a rubber merchant, and he delivered the rubber on his behalf to M/s. John & Company, Thodupuzha and collected the amount from there and he was in possession of the same at the relevant time. But, neither Sarathchandran nor anybody from M/s. John & Company of Thodupzha were examined to prove the entrustment

of money with PW1, which he was said to be carrying at that time. Unless it is proved by the prosecution by adducing convincing evidence, it cannot be said that the prosecution has proved that PW1 was in possession of the amount, which was said to have been stolen on that day. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution has failed to prove that he was in possession of the amount which was said to have been lost as mere statement of PW1 alone on that aspect without proper corroboration is not sufficient to prove that fact.

19. Further, according to PW1 in Ext.P1, the bus was full of passengers and he was standing in the bus by holding the bag in his hand till he had placed the bag down at Changavanam for the purpose of getting the ticket. There was push and pull in the vehicle due to heavy rush and when the bus reached Changanacherry, some people get down from the bus and he found his bag was having less weight and when he examined, the bottom of the bag was seen torn off. He made hue and cry and he got down from the bus and informed the police constable in the bus stand and as instructed by another police constable,

he went to the police station and gave Ext.P1 statement at about 12.30 p.m on that day. But, when he was examined before court, his case was that when the bus was stopped at Changanacherry, he found his bag was having loss of weight and realized that the amount was lost and at that time three persons got down from the bus and ran away from there and one of whom was holding a red bag in his hand, whom he later identified as the first accused. He had also identified that the third accused was standing before him and accused 1 and 2 were standing behind him at the relevant time. But, no such version was made by him in Ext.P1.

20. Further, if the persons had got down from the bus when PW1 made hue and cry, then the persons in the bus stand would have chased them and caught hold of them. Further, if such an incident had happened inside the bus, and it was revealed while the bus was in Changanacherry bus stand, then normally the conductor of the bus would have taken the bus to the police station and lodged complaint in respect of the same. That was not done in this case.

21. Further, PW1 had not mentioned that he was travelling in the super fast bus at the relevant time when he gave Ext.P1

statement. He had not produced the bus ticket also. Further, if really the incident had happened from the bus as stated by PW1, then the place of occurrence was the bus in which he had travelled and passengers in the bus including the conductor of the bus would have been the best witnesses to prove the travelling of PW1 and accused persons in the bus at the relevant time. But no such evidence was collected by the investigating agency to prove that PW1 and accused were travelling in the same bus at the relevant time so as to connect the accused persons with the commission of the crime. No attempt was made on the side of the investigating officer even to trace out the bus in which PW1 had alleged to have travelled on that day so as to ascertain as to whether he had travelled in the bus and any such incident had happened from the bus as claimed by the prosecution. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution has failed to prove beyond reasonable doubt that PW1 and accused persons were travelling in the same bus at the relevant time so as to connect the accused with the commission of the crime.

22. Further, it is seen from Ext.P1 that details of bundles

of the notes including the bank from where it was obtained were given in detail. There is no evidence forthcoming on the side of the prosecution to prove that the notes with the description mentioned were the notes entrusted to him by M/s. John & Company, Thodupuzha. Further, one may not be able to remember all these minute details of the bundle of notes probably they may be able to say the total amount and also number of bundles kept by them. The description of the bank slip mentioned on the bundle etc could not be remembered by a person unless he had noted the same in some place. Further, it was brought out in evidence of PW6 that after arresting the accused, he had registered Crime No.393/1998 on the basis of the information narrated while he questioned the accused persons and it is also mentioned in the evidence of PW6 that when he seized Mos 1 to 3 currency notes as per Ext.P3 mahazer, he had mentioned the details of the notes recovered. It is also seen from the evidence that Ext.P5 First Information Report in Crime No.392/1998 of Changanacherry police station had reached the court only on the next day at 2.20 p.m, whereas it was said to have been registered on 21.7.1998 at 12.30 p.m and the recovery was effected and the

alleged arrest was made on 21.7.1998 at about 1.00 p.m. There is no explanation forthcoming for the delay in sending the First Information Report to court though the accused was arrested on 21.7.1998 at 1.00 p.m along with the currency notes. The currency notes were produced before court only on 30.7.1998. So the minute details of the currency notes mentioned in Ext.P1 statement probablises the fact that the First Information Statement should have been recorded only after the arrest of the accused and registration of Crime No.393/1998 of Changanacherry police station as observed by the court below. So the court below was perfectly justified in coming to the conclusion that the First Information Report in this case was not registered at the time mentioned in the First Information Report and the possibility of anti timing of the First Information Report under the circumstances cannot be ruled out.

23. Further, it is seen from Ext.D1 petition filed by the accused immediately on his production before court to conduct search of Changanacherry police station to find out as to whether an amount of Rs.25,800/- was in the police station and according to him police had taken Rs.1,80,000/- from his

possession and they were trying to falsely implicate him in this case and also in another case with the balance amount found to be in his possession at that time. Further, it was brought out in the evidence of PW5, an independent witness that there was a talk in the bus stand that an amount of Rs.1,80,000/- was seized from the possession of the accused. So this also creates some doubt regarding the total amount said to have been seized from the possession of the accused and it cannot be said that the prosecution has proved beyond reasonable doubt that the accused were found to be in possession of the currency notes alleged to have been stolen from PW1 alone as claimed by the prosecution. Delay in producing the currency notes was also not explained by the prosecution. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution has failed to prove beyond reasonable doubt that the amounts said to have been recovered from the accused was the same amount alleged to have been stolen from the possession of PW1.

24. The court below also rightly came to the conclusion that identification of the accused as the person who committed the crime by PW1 from the police is also doubtful

as there was no possibility for PW1 to identify those persons as the persons travelling in the bus especially when the bus was overcrowded with passengers and he had no occasion to see any of the persons so as to recollect them later. Even according to him, there was push and pull in the bus when the bus reached Changanacherry and it was thereafter he had seen three persons running through the bus stand, one of whom holding a red bag in his hand. Further, it will be seen from the bag that it was not a red colour bag, but it was a checked bag with multicolour and red colour was not a prominent colour in the bag as well. Under the circumstances, the court below was perfectly justified in coming to the conclusion that the identification made by PW1 of the accused persons as the persons who committed crime is not safe to rely on without corroboration from the independent witnesses by examining the persons travelled in the bus at the relevant time or the conductor of the bus in which PW1 had said to have travelled on that day.

25. In the case of circumstantial evidence, it is for the prosecution to prove all links of chain of circumstances to make the chain complete and point out conclusively that it

was done by the accused and non other than the accused could have done the same and all hypothesis of innocence of the accused must be ruled out by completing the chain of circumstances to be established by the prosecution. If any link in the chain has broken, then that benefit must be given to the accused. This was so held in the decision reported in **Bodh Raji v. State of Jammu & Kashmir** (2002 (3) KLT SN 102 (C.No.137)SC. In this case, as rightly pointed out by the court below, the link of chain of circumstances has been broken and all the links to establish hypothesis of the guilt of the accused persons as required under law to rely on circumstantial evidence to convict the accused has not been established in this case. The dictum laid down in the decision reported in **Akil Alias Javed's case** (cited supra) is not applicable to the facts of this case as there were other evidence against the accused to prove their identification apart from the recovery of the stolen article as well. Further in that case, the stolen articles were identified properly by the defacto complainant. In this case, identification of the stolen articles itself was doubtful in view of the discussions made above.

26. From the evidence available on record, the view

taken by the court below for acquitting the accused cannot be said to be perverse as such a view is not possible at all so as to exercise the power of the appellate court to reverse the order of acquittal passed by the court below. If two views are possible on the basis of the same set of evidence adduced by the prosecution and one view in favour of the accused which has been relied on by the court below to acquit the accused is also possible, then even if other view is also possible on re-appreciation of evidence, that is not a ground for the appellate court to upset the order of acquittal passed by the court below by substituting the probable alternate view of the appellate court. So under the circumstances and in view of the discussions made above, it cannot be said that the finding of the court below is perverse warranting interference at the hands of this Court and the order of acquittal passed by the court below in the circumstances of the case cannot be said to be perverse and it is not liable to be interfered at the hands of this Court. So the appeal lacks merit and the same is liable to be dismissed.

In the result, the appeal fails and the same is hereby dismissed. The order of acquittal passed by the court below against the accused is hereby confirmed.

Office is directed to communicate a copy of this judgment to the concerned court at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

cl