

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 352 of 2001

- The State Of C.G.

---- Appellant

Versus

1. Murari Prasad Gupta, aged about 42 years, S/o Bholaram Gupta, Occupation- Business.
2. Baijnath, aged about 45 years, S/o Bholaram Gupta, Occupation- Business.
3. Sunil Kumar Gupta, aged about 26 years, S/o Jagarnath Prasad Gupta, Occupation- Business.
4. Jagarnath, aged about 51 years, S/o Bholaram Gupta, Occupation- Service.

All residents of Nagar Deviganj Road, Ambikapur, District Sarguja (CG)

---- Respondents

For Appellant	:	Shri Avinash K Mishra, Panel Lawyer
For Respondents	:	Shri R.V. Rajwade, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

Per P. Diwaker, J

27/06/2017

1. Heard on admission.
2. In this acquittal appeal the appellant State has assailed the judgment of acquittal dated 13.12.2001 passed by the 2nd Additional Sessions Judge, Ambikapur, District Sarguja (CG) in Sessions Trial No.188/93 acquitting the respondents herein of the charges under Sections 120B & 436/34 of the Indian Penal Code (for short 'the IPC').

3. As per prosecution case, on 20.4.1992 a written complaint (Ex.P-9) was lodged by complainant Inderchand Jain alleging in it that he is tenant in the shops owned by the accused persons from where he is doing the business of selling electric & crockeries items and an eviction dispute between them is pending in the Court. It is further alleged that in the night intervening 19th & 20th April, 1992 the accused persons set the shop of the complainant afire with the help of magnesium rod after passing the inflammable substance by making an orifice in the wall. On account of this fire incident, the complainant has suffered loss of about Rs.3,50,000/-. Based on this complaint, FIR (Ex.P-37) was registered under Section 436/34 of IPC against the accused persons. Immediately after the incident the personnel from the electricity department and that of municipal corporation reached on the spot and according to personnel of electricity department, the fire was not due to electric fault. Subsequently, the technical experts were called who after due examination opined vide Ex.P-3 that the fire incident could have taken place by use of certain chemicals. In the course of investigation, a hole was noticed in the wall and according to the prosecution, the said chemical could have been passed inside the shop from the said hole. Memorandum of accused Jagarnath was recorded vide Ex.P-6 in which he disclosed the names of other accused persons and also admitted that after passing the kerosene oil by making an orifice in the wall, the shop was put on fire with the help of magnesium rod. Certain articles were recovered from the spot vide Ex.P-4.
4. On completion of investigation, charge sheet was filed against the accused persons for the offence punishable under Sections 120(B) & 436/34 of the IPC followed by framing of charges by the Court below under above sections.

5. The prosecution in order to bring home the charges levelled against the accused examined as many as 17 witnesses. Statements of the accused/respondents were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded false implication.
6. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, acquitted accused/respondents of the charges levelled against them. Hence this acquittal appeal by the State.
7. Learned counsel for the appellant submits that;
 - the trial Court has erred in law in acquitting the accused/respondents as there are ample evidence showing their involvement in the crime in question.
 - the accused persons after sprinkling kerosene oil inside the shop by making a hole in the wall put the shop on fire with the help of magnesium rod.
 - the accused persons have motive to commit the crime in question as they somehow wanted to evict the complainant from their shops.
8. On the other hand, counsel for the respondents has supported the impugned judgment of acquittal and submitted that there is no direct evidence showing involvement of respondents in the crime in question. He further submits that the prosecution has failed to prove that chemical was used by the respondents for putting the shop on fire as there is no report of FSL confirming use of chemical for putting the shop on fire. Initially the case of prosecution was that the respondents have sprinkled kerosene oil inside the shop through shutter, however, subsequently it is their say that kerosene was sprinkled inside the shop by making a hole in the wall and thereafter shop was put on fire with the help of some chemical. He further submits that there is no damage panchanama on

record and thus there is no concrete proof regarding the damage caused to the complainant. He further submits that considering the fact that the appeal is against the judgment of acquittal, scope for interference is very limited.

9. We have heard learned counsel for the parties and perused the material available on record.
10. Original complainant Inderchand died prior to his examination in the Court and the allegations levelled in the complaint are alleged to have been proved by his son namely Rajroop Jain (PW-8).
11. Kashinath Singh (PW-1) has not stated anything specific against the accused/respondents.
12. D.N. Rathore (PW-2) is the person who was posted as Assistant Engineer in the Electricity Department at the relevant point of time. After inspection of the spot, this witness has given his report of Ex.P-1 according to which the fire incident is not the result of electric short circuit.
13. Balram Tiwari (PW-3) is the witness of seizure effected vide seizure memo Ex.P-2.
14. I.A. Siddique (PW-4) was posted as Senior Scientific Officer in the Forensic Science Laboratory at the relevant time and according to him, the fire incident could have been caused by using magnesium.
15. Kartaram Gupta (PW-5) is the witness of seizure memo Ex.P-4 by which some pieces of plastic pipes, cartoon etc. were seized.
16. Ramchandra (PW-6) is the person who first saw the fire. He is also witness of memorandum (Ex.P-6) and panchnama (Ex.P-5).
17. Rajroop Jain (PW-8), son of deceased complainant, has proved the factum of civil dispute between the parties. He has further stated that he came to know that shop was put on fire by making a hole in the backside wall of the shop.

18. Surendra Jain (PW-9) is the witness of seizure memo Ex.P-4 by which certain articles were seized from the spot.
19. Vindhawasini Prasad Gupta (PW-10) is the witness of search panchnama of the house (Ex.P-14) and seizure memos Ex.P-25 & P-26.
20. Hanuman Singh (PW-11) is the Revenue Inspector who prepared the spot map Ex.P-27.
21. Tolaram Malu (PW-12) is the witness of seizure memos Ex.P-28 & P-29.
22. Devkinandan (PW-13) is an Electrician and also witness of seizure memo Ex.P-5.
23. Anil Rai (PW-14) is the witness of seizure memo Ex.P-28 & P-29.
24. Mukesh Ram (PW-15) is the investigating officer who has duly supported the prosecution case.
25. Kripa Shankar Dwivedi (PW-16) is the Sub Inspector who helped in the investigation.
26. Rajendra Kumar Singh (PW-17) is the person who had seen one of the accused persons near the shop of the complainant.
27. Ramniwas (DW-1), Pradeep Kumar Gupta (DW-2), Murari Prasad Gupta (DW-3) and Arun Kumar Gupta (DW-4) have stated that the accused persons were extinguishing the fire.
28. In order to bring home charge for the offence punishable under Section 436 IPC, the prosecution is required to prove that the accused committed mischief, that he did so by fire or any explosive substance and that he did so with an intention to cause destruction of any building or that such building which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of the property.
29. In the present case, admittedly a fire incident in the shop of complainant took place in the midnight at 2.00 a.m. and on the basis of suspicion expressed by the complainant, FIR has been lodged against the

accused/respondents. However, perusal of the evidence on record makes it clear that none of the witnesses has noticed or seen that the accused/respondents have committed any mischief by fire or any explosive substance, nor is there anything on record to show that any act has been committed by them in regard to causing fire in the shop of complainant. Further, it is the case of prosecution that the shop was put on fire by using magnesium but no expert has not been examined in the Court to establish the use of magnesium for putting the shop in question on fire and being so, the alleged recovery of magnesium rod from the possession of accused/respondent No.4 is of no help to the prosecution. This apart, there is no concrete proof regarding the damage caused to the complainant as damage panchanama is not available on record. In these circumstances, we are of considered opinion the evaluation made by the trial Court of the evidence of the prosecution witnesses does not suffer from any illegality, manifest error or perversity.

30. It is well settled that if two views of the evidence are reasonable possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the trial Court.

31. In the matter of State of Karnataka v. K. Gopalkrishna reported in (2005) 9 SCC 291, the Hon'ble Supreme Court, while dealing with an **appeal** against **acquittal**, observed as under:

"In such an **appeal** the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of **acquittal**. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of **acquittal**."

32. In *Sudershan Kumar v. State of Himachal* reported in (2014) 15 SCC 666

the Hon'ble Supreme Court observed thus:-

“31. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled *Dhanapal v. State* which is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 37, propositions laid down in an earlier case are taken note of as under: -

"37. In *Chandrappa v. State of Karnataka*, this Court held: (SCC p. 432 para 42),

(1) An appellate court has full power to review, reappreciate 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 emphasise 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.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court

should not disturb the finding of acquittal recorded by the trial court.”

32. Thereafter, in para 39, the Court curled out five principles and we would like to reproduce the said para hereunder:

"39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The 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 the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. 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.

5. If two reasonable or possible 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."

33. In *Dilawar Singh v. State of Haryana*, (2015) 1 SCC 737, the Supreme Court reiterated the same in paragraphs 36 and 37 as under :

36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

36. In *Chandrappa v. State of Karnataka*, the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under: (SCC p.432 para 42)

“42....(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.

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

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in State of Rajasthan v. Shera Ram.”

34. Accordingly, the acquittal appeal preferred by the appellant State is bereft of any substance, the same is liable to and is hereby dismissed at the admission stage itself. The judgment and order of the trial Court is maintained.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

roshan/-