

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 626 of 2018**

State Of Chhattisgarh, Through : Police Station- Kotra Road, District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

Sitaram Garg, S/o. Shri Gulab Chand, Aged About 56 Years, Occupation- Private Service, R/o. Zindal Colony, P.S. Kotra Road, District Raigarh, Chhattisgarh.

---- Respondent

For Petitioner/State	:	Mr. S.K.Mishra, Panel Lawyer
For Respondent	:	Mr. Ashish Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06.08.2018**

Heard on Application for Leave to Appeal.

1. The leave to appeal is against the acquittal order dated 14.11.2017 passed in Criminal Case No.1761/2010 in Crime No.153/2010 by the Judicial Magistrate First Class, Raigarh.
2. As per the prosecution case, the respondent Sitaram was working in Jindal Power Oxygen Plant in the capacity of the Manager wherein he flouted the directions for safety and security of the workers and because of the negligence Ramkhilawan & Ramkripal Singh had suffered injuries. The prosecution case was that in an Oxygen Plant JSPL Patrapali, Cooling Pipe was jammed and in order to clear the same, the deceased Ramkripal Singh & Ramkhilawan went inside the Pipe wherein they lost their conscious and fell down and sustained injuries. The factory Manager was the respondent Sitaram Garg and after investigation, the charge was framed under Section 304(A), 285

& 338 of I.P.C. The prosecution examined two witnesses PW-1 Bhola Thakur and PW-2 Manoj Mahto.

3. The learned Court below after evaluating the evidence came to a finding that the prosecution was not able to prove the commission of offence and as such dismissed the case against which the leave to appeal has been preferred.
4. Learned counsel for the State/ Appellant submits that the learned Court below has failed to appreciate the facts in proper perspective and thereby has arrived into a wrong finding.
5. Per contra, learned counsel for the Respondent vehemently opposes the same and submits that the order of the learned Court below is well merited, which do not call for any interference.
6. Perused the documents, order and the statement filed alongwith the petition.
7. The witness Bhola Thakur (PW-1) has deposed that in the year 2010, the deceased were clearing the Oxygen Plant Filter and he was working on the other part and when he heard the noise, he went there and when he saw inside, he suffered shock due to which he also fell down and sustained injuries. In the cross-examination, he stated that the Oxygen Plants whenever malfunctions, the clearance was being done by the Contractor who was deployed for the purpose and Sitaram was not responsible to clean the said Plant on behalf of the Plant.
8. The other witness Manoj Mahto (PW-2) has stated that he was working in JSPL Patrapali under the Contractor Babu Construction as Welder. He stated that at the relevant time while he was doing their duties, he heard the sound that some person fell down in Oxygen Plant and when he went to the Filter Plant, he saw that Ramkhilawan was lying inside

the Tank and Ramkripal was lying outside in it. With respect to the responsibility of the respondent, he clearly stated that it was the responsibility of Babu Contractor, the Contractor deployed for the purpose and was not the duty of the respondent Sitaram. Therefore, the prosecution witnesses clearly exonerated the accused from his responsibility that he was not in charge to take care of any responsibility of safety measures of workers. So whether this Court can re-appreciate those statements by other inference ?

9. The Supreme Court in case of ***Brahm Swaroop & Anr. v. State of Uttar Pradesh***¹ held as under :

“33. It is well established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law.

38. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference.”

1 (2011) 6 SCC 288

10. Considering the statements at this point no second opinion is possible as both the witnesses have not supported the case of the prosecution. Furthermore, the leave to appeal is filed with a delay of 29 days. The reasons stated in the application is that the order was passed on 14.11.2017 thereafter the proposal was moved on 24.01.2018 to file the acquittal appeal and thereafter the appeal appears to have been filed on 28.03.2018, therefore, what was the reason for the delay caused despite the fact the order of acquittal was passed on 14.11.2017, no plausible reasons have been explained. Considering the same and taking into totality of the facts, I am not inclined to interfere with the order of the Court below as no plausible reasons exists to allow the leave to appeal.
11. In a result, the petition is devoid of merit and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
Judge