

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**ACQA No. 235 of 2019**

Kunti Bai, W/o- Rengu Singh, Aged about- 70 years, R/o- Village Batwahi, Police Station and Tahsil- Lundra, District- Surguja (C.G.)  
**---- Appellant**

**Versus**

1. Kamlesh, S/o- Ramvriksh, Aged about- 40 years, R/o- Village Batwahi, Police Station and Tahsil-Lundra, District- Surguja (C.G.)
2. Prem, S/o- Dhani Ram, Aged about- 55 years
3. Arun, S/o- Prem, Aged about- 32 years
4. Lalit, S/o- Prem, Aged about- 30 years
5. Jigan, S/o- Prem, Aged about- 50 years

All R/o- Village – Jarhadih, Police Station and Tahsil – Lundra, District- Surguja (C.G.)

**---- Respondents**

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 For Appellant : Mr. A.N. Pandey, Advocate

For Respondent : Mr. J.A. Lohari, Advocate  
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**Hon'ble Shri Justice Ram Prasanna Sharma**

**Order On Board**

**19/11/2019**

1. Heard on I.A. No.01/2019, which is an application for condonation of delay in filing the instant appeal.
2. On due consideration, the application is allowed and the delay of 32 days in filing the instant appeal is hereby condoned.
3. This appeal is preferred against the judgment dated 12<sup>th</sup> November, 2018 passed by Judicial Magistrate First Class, Ambikapur, District – Sarguja (C.G.) in Complaint Case No. 502/2012 wherein the said Court acquitted the respondents for charge under Section 379 of Indian Penal Code, 1860.

4. In the present case, name of the complainant is Kunti Bai. As per her evidence she purchased land bearing survey No. 1767, 1913, 2078/2, 2079/2, 2086/1, 2080/3, 2232/1 , 2233/1 and 2233/1 total plot 9 and area 1.355 hectare situated at village Batwahi from one Anjani wife of late Guddu and Fitki D/o-Tota Ram vide registered sale deed dated 11<sup>th</sup> July, 2007 for cash consideration of Rs. 70,000/-. She further deposed before the Trial Court that she shown paddy of variety Long Phool in agricultural year 2008-09 and crop was removed by the respondents without her consent on 24<sup>th</sup> November, 2018.
5. For establishing the charge Kunti Bai (PW-1), Dubeyram (PW-2) and Anjani (PW-3) examined. As per version of Kunti Bai(PW-1) Duberam (PW-2) has seen the incident that respondents removed paddy crop. Though Duberam (PW-2) examined before the Trial Court but after framing of charge he was not examined. Therefore, opportunity to examine him after framing of charge was not available to the respondent. The Trial Court opined that Duberam (PW-2) has not been examined after framing of charge. Therefore, his version can not be used against the respondent. View taken by the Trial Court is in the fitness of admissibility of evidence and therefore same cannot be reversed.
6. As per version of Kunti Bai, she purchased land from Anjani and Fitki both person have not been examined before the Trial Court to establish on what date they delivered possession of land in-question to Kunti Bai. No variety of Long

Phool paddy was seized from any of the respondents, which is connecting piece of evidence.

7. The only person who has seen the incident is Duberam (PW-2) but his evidence was incomplete. Therefore, Trial Court after assessing the entire evidence recorded finding of acquittal.
8. The Trial Court elaborately discussed the entire evidence and came to conclusion that the charge leveled against the respondents is not established. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondents should be called for hearing again for full consideration of this appeal.
9. Accordingly, this appeal is liable to be and is hereby dismissed.

**Sd/-**  
**(Ram Prasanna Sharma)**  
Judge