

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 135 of 2011

N. G. Raman

Vs.

S. Narasingh @ Srinivas Rao & Anr.

For the appellant

: Mr. Partha Chakraborty.

For the OP no.2

: Mr. Soumyajit Das Mahapatra,
: Mr. M. Sinha.

For the State

: Mr. Pravas Bhattacharya,
: Mr. M.F.A. Begg.

Hearing concluded on: 05/04/2023

Judgment on: 29/11/2023

Rai Chattopadhyay, J.

1. The appeal is directed against the judgment dated January 7, 2009 of acquittal passed by the Chief Judicial Magistrate at Paschim Medinipur in U.R. 65/2001 (N. G. Raman vs. S. Narasingh @ Srinivas Rao & Anr.) under Section 3 (a) of the Railways Property (unlawful possession) Act, 1966.
2. Let the penal provision under Section 3 (a) of the Railways Property (Unlawful Possession) Act, 1966, be first extracted as herein below:-

“3. Penalty for unlawful possession of railway property.—

Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;”

3. Prosecution’s case started pursuant to a complaint dated March 7, 2002. The appellant/complainant has alleged therein against the respondent/accused persons in the following manner:-

“That on 22-07-2001 a surprise check and ambush watch was conducted by P. Dubey, OC/RPF/WS/KGP along with K. Pathak, SI/RPF/WS/KGP, N.G. Raman, ASI/RPF/WS/KGP, ASI/V. V. Rao, C/7107 A. N. Rao, C/9248 P. Maharana, C/9251 R. Mahanta & HC/6193 J. Engle inside WS/KGP. It was noticed one person near shop no. 28 at about 19/40 Hrs., who was carrying something in a gunny bag on his right hand and proceeding towards CME gate in suspicious manner. He was detained near old fire station building inside workshop. On checking found (i) 27 nos of guide rings of brass made & (ii) 33 nos pieces of guide ring broken of brass made used in Rly. Bogie trolley of C & W, inside the bag. On demand he failed to produce any legal authority or receipt to prove his lawful possession to these properties. On interrogation he disclosed his name & address as S. Narsingh @ Srinivas Rao, aged about 30 years, S/o Late S. Thathalu working as a Khalasi, Helper under SSE, shop no. 28, T/No. 28273 and also disclosed that on 22.7.2001 he has performed his duty from 7.00 Hrs. 11.00 Hrs. and remained inside workshop and collected these materials from shop no. 28 and kept concealed in the shop. On getting opportunity in darkness he tried to pass out the materials for his personal gain. As per order of OC/RPF/WS/KGP, ASI/N.G. Raman seized & labelled the materials at the spot in presence of RPF witnesses.

No independent witness could be ensured due to workshop was closed at 11.00 Hrs. on Sunday. He was arrested U/S 6 of RP (UP) Act by OC/RPF/WS/KGP for committing an offence punishable U/S 3 (a) RP (UP) Act. Arrested person with seized materials were brought to

RPF/POST/WS/KGP, where a case vide no. 17/2001, Dt. 22.7.01 U/S 3(a) RP (UP) Act has been registered against him.”

4. The property said to have been recovered from the possession of the respondent/accused person are as follows:-

“(i) Guide ring of Brass made – 27 nos.

(ii) Guide ring of Brass broken – 33 pieces kept in gunny bag,”

5. As such a specific case under afore stated provision of law was initiated against the respondent/accused person. Charge was framed by the Court on February 7, 2005 and the trial commenced.
6. The prosecution has examined 12 witnesses and has also exhibited documentary and material evidence. Upon consideration of the same the trial Court has however found that the prosecution has not been able to bring on record the evidence to the standard of beyond scope of all reasonable doubt in order to reach to a finding relating to guilt of the accused person, in its judgment dated January 7, 2009. Hence, in the same the trial Court has directed for acquittal of the respondent/accused person, regarding which the appellant is aggrieved and has preferred the present appeal.
7. Let at the outset be discussed the cardinal principle as to the scope for interference into the appeal challenging the judgments of acquittal.

In the case of **Rajesh Prasad vs. State of Bihar** reported in **(2022) 3 SCC 471**, this Court observed as under :

“31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital

facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai [State of U.P. v. Sahai, (1982) 1 SCC 352 : 1982 SCC (Cri) 223]] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P. S. R. Sadhanantham [Arunachalam v. P.S.R. Sadhanantham, (1979) 2 SCC 297 : 1979 SCC (Cri) 454]] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh [State of Haryana v. Lakhbir Singh, 1991 Supp (1) SCC 35 : 1991 SCC (Cri) 242 : 1990 Cri LJ 2274]]”

In the case of **Chandrappa vs. State of Karnataka** reported in **(2007) 4 SCC 415**, The Court, held as follows:-

“42. *From the above decisions, in our considered view, 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, 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.”

In the case of **Ramesh Babulal Doshi vs. State of Gujrat**, reported in **(1996) 9 SCC 225**, the Court held as follows:-

“7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not.”

8. Having followed the rationale of the judgments which have settled the law in this regard, this Court is of the opinion that to interfere into a judgment of acquittal, the Court has to undertake absolute caution and

circumspection to scrutinize the evidence on record and also to scrutinize if the same has been considered by the trial Court in its right perspective. Also that just because an alternative view is possible on the basis of the evidence on record, than that has been undertaken by the trial Court in reaching to a finding of acquittal, the appeal Court should not embark upon interfering into trial Court's judgment, unless there is palpable infirmity in consideration of the evidence on record or perversity in appreciating the facts emerging from the evidence. Illegality in view of the non application or erroneous application of law can also be a reason sufficient enough for the appeal Court to interfere with a judgment of acquittal but not otherwise.

9. Keeping in mind this cardinal principles of law this Court now considers the evidence on record in the case. P.W 1 is the A.S.I of Railway Police Force and a raiding party member. He say that on July 22, 2002 at about 19:40 hours the respondent was found near shop no. 28, inside the workshop, having unauthorized possession of 27 pieces of guide rings and 33 pieces of broken guiderings in a gunny bag. His movement was suspicious and he failed to produce any documents in support his possessing the above articles. The witness says that the accused person disclosed regarding procuring of the said materials from the workshop godown and also that he was an employee (Khalasi) in the Railways. The witness has indentified the seizure list and his signature there upon, which were marked exhibits. He has also identified the seized materials. However, since the accused person was not present on dock, his identification by P.W. 1 has not been done. P.W 2, P.W 3, P.W 4, P.W 5, P.W 6 are the constables and a raiding party member similar as P.W 1, who has supported the evidence of P.W 1 as mentioned above. It is important to note that neither of these witnesses has indentified the accused person, he being not present in Court.

- 10.** P.W 7, is the expert witness who is by designation a Senior Section Engineer and who has been attached to Kharagpur workshop on the particular date. He has examined the seized articles, labeled the same and subscribed his signature over the same. P.W 8 is the Chemical and Mechanical Analyst with regard to the seized article who says regarding outcome of the chemical examination report that the two guiderings are almost similar in chemical composition. He has identified the report prepared by him and the samples examined by him.
- 11.** P.W 10 is the investigating officer. However, the prosecution could not make the accused person indentified by P.W 10 also during the trial. P.W 11 is the complainant who happens to be a raiding party member and also a witness to the seizure of materials as mentioned above. P.W 11 says that as per the order of the authority he took up the investigation of the case and proceeded to record statement of the accused person. He spear headed the process through the higher official of the department for warrant of the respondent/accused persons and also chemical examination of the seized articles.
- 12.** P.W 12 is the retired railway employee with the rank of Assistant Chemist & Metalogist who received the chemical examination report of the allegedly theft property and forwarded the same to the O.C Railway Police Workshop Post at Kharagpur. He is a formal witness and his examination has been declined.
- 13.** The trial Court has scrutinized the evidence of the witness elaborately in a proper manner the trial Court noted about the vagueness in the finding in chemical examination report of the allegedly seized metals. It has found that the experts have not concluded absolutely as to whether the seized articles actually belong to Indian Railways or not. It has further

noted that at the time of interception and apprehension of the respondent/accused person on July 22, 2001 no independent witness has been cited by the prosecution. The trial Court has also noted that whether at the relevant point of time the accused person was an employee on duty or not, has not been revealed from the evidence of the prosecution.

- 14.** Another peculiar factor revealing from the evidence in this trial is regarding non identification of the accused person during trial. P.W 1, P.W 2, P.W 3, P.W 10 can be mentioned to have stated in their dispositions respectively, that, had the accused person be present in the Court, they would have identified him. Two things emerge from their such depositions. Firstly, that the accused person was not present in the trial and the witnesses have been examined beyond his ears. Secondly, that he was not identified by the witnesses. Both the factors are detrimental for prosecution's case in so far as both the factors as stated above are contrary to fair trial and must to be considered as triggering factors for the trial to be vitiated.
- 15.** On the considerations as mentioned above the trial Court has come to the finding that in the instant case it cannot said that the prosecution has proved the allegations against the respondent beyond scope of all reasonable doubts. This finding of the trial Court can hardly be challenged as the same is founded on the appropriate appreciation of the evidence on record.
- 16.** Prosecution witnesses nos. 1 to 6, who were the raiding party members or the complainant himself (P.W 11) have not disclosed as to whether the accused person was 'on duty', at the time of the alleged offence or not. There is no explanation through the evidence of prosecution as to how the accused person accessed the workshop, if not he was on duty.

Admittedly at the relevant point of time the workshop was vacant implying thereby that the workshop was closed at that point of time. However, there is no evidence to assert the connected facts as above.

- 17.** Secondly, the seized articles have not been proved in this trial. The same though exhibited are not seen to have been properly sealed and labeled, which is an imperative component of valid search and seizure.
- 18.** The chemical examination results are also non-specific, as rightly pointed out by the trial Court in its judgment dated January 7, 2009. The chemical analyst's report or his ocular evidence is not specific about the seized articles to be of railways itself.
- 19.** This Court cannot but note a further fact revealing from the records that in this particular case the complainant being himself a raiding party member has been entrusted with the duty of investigating into the matter who proceeded with the same by recording statement of the accused person as well as taking charge of the seized articles and processing those for chemical examination etc. Unfortunately, this is a glaring example of arbitrariness, biasness, unfairness in the investigation of the case where the complainant has been investigating and finding the truth about his own complaint.
- 20.** Having said so this Court now desires to proceed to analyze the ingredients of offence which the prosecution was duty bound to prove in the trial Court. For this, the relevant provision of law may be resorted to, which is extracted above. A perusal and analysis of the same would reveal the following:-
 - (i) The accused persons should be found in possession of the property;
 - (ii) The property should be the railways property;

- (iii) The property should reasonable be suspected to have been stolen or unlawful obtained.

- 21.** This Court is constrained to find that none of the above ingredients of offence can be said to have been proved by the prosecution in this case through the evidence on record, much less to the standard of beyond scope of all reasonable doubt. That must lead to the finding of the Court regarding no guilt committed by the accused person and his consequential acquittal, which the trial Court has rightly and properly found, in its judgment dated January 7, 2009. So, there is no scope for interference to the same by this Court and the appeal is found to be de hors merits and liable to be dismissed.
- 22.** Therefore, on the premise as above CRA 135 of 2011 is dismissed, along with pending application, if any, without however any order as to costs.
- 23.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

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(Rai Chattopadhyay, J.)

