

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 11 of 1986

**The State of West Bengal
-Vs-
Sankar Bose and Ors.**

For the Appellant/State	: Ms. Faria Hossain
For the Respondents	: Mr. Sabir Ahmed Ms. Suman Biswas
Heard on	: 23.02.2024, 16.04.2024, 14.08.2024
Judgment on	: 07.11.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 24.09.85 passed by the Learned Judge, Special Court, E.C. Act, Cooch Behar in Case No. Spl. E.C. G.R. Case No.16/84 finding the accused/opposite parties not guilty of the charge under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of the provisions of West Bengal Declaration of Stocks & Price of Essential Commodities Order, 1977 and West Bengal Pulses Edible Oil Seeds and Edible (Dealers Licensing) Order, 1978 and acquitted them from the said charge.
2. The prosecution case precisely stated on 28.03.84 after 04:30 p.m., the complainant Mr. D.K. Dey, Inspector of Police, attached to D.E.B., along with

other officers and witnesses raided the scrap iron shop of the accused/opposite parties. In an adjoining go-down of the said shop, during search, 15 tins of Rapeseed Oil (S.T.C. marked) were found to be in possession of the accused/opposite parties. The accused/opposite parties could not furnish any adequate satisfactory account for the possession of aforesaid 15 tins of rapeseed oil. The rapeseed oil were seized. Weighment chart was prepared in presence of local witnesses present on spot. On enquiry the complainant came to know that the accused/opposite parties did not maintain any Stock Book and/or Account Book and/or any document whatsoever in support of his business in rapeseed oil. Those 15 tins of rapeseed oil weighed 2 quintals 32 kilograms 500 grams., and were sealed. The alleged go-down was under lock and key. The accused/opposite party no.2 on the plea of bringing the key of the lock of the go-down escaped from that place. Thereafter, the lock of the go-down was broken by the accused/opposite party no.1 in presence of witnesses and the rapeseed oil in tins were found. Thereafter a complaint was lodged in the P.S. and initiating the proceedings.

3. Based on the aforesaid allegations as stated herein above the accused/opposite parties faced trial before the Learned Judge, Special Court, E.C. Act, Cooch Behar to answer the charge under Section 7(1)(a)(ii) of the E.C. Act for violation of the provisions of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977 and West Bengal Pulses Edible Oil Seed and Edible (Dealers Licencing) Order 1978 as levelled against them.

4. In order to substantiate the offence charged against the accused/opposite parties, prosecution examined 5 witnesses and exhibited certain documents.
5. PW-1 the de facto complainant was the Inspector of Police attached to D.E.B., PW-2 was the seizure list witness to the weighment chart, PW-3 was also a seizure list witness, PW-4 was another officer attached to D.E.B. who along with officers, constables and witnesses went to the scrap iron shop of the accused/opposite parties no.1 and 2 and PW-5 was the Investigating Officer of the case who submitted charge sheet against the accused/opposite parties.
6. Learned Advocate for the appellant/State submitted as follows: –
 - i. The substantive clinching, corroborative and convincing evidence in Court of the 5 witnesses and the Analyst's Report (Exbt.-7) were ignored.
 - ii. The factum of failure of prosecution to prove the ownership and possession of the alleged go-down of the accused/opposite parties from where the alleged rapeseed oil was seized by not producing any documents in court whatsoever in spite of categorical legal evidence of prosecution witnesses that the accused/opposite parties were present there at the time of raid and the lock of the go-down door was broken by one of the accused/opposite parties and further in absence of any suggestion to the prosecution witnesses denying that fact completely proved and/or established that the go-down in question was in absolute possession of the accused/opposite parties was sufficient to prove the guilt of the respondents.

- iii. Minor contradictions in the evidence of prosecution witnesses and corroboration of the witnesses and so the Analyst's Report (Exbt.-7) which manifestly reflected that the sample of rapeseed oil was fully adulterated and could not be used for human consumption should have been considered.
7. Considered the submission of the Learned Advocate for the respondents /opposite parties.
 8. PW-2, the seizure list witness, in his cross-examination stated "*no weighment was made in his presence*".
 9. PW-3 could not state the profession or business of the accused Sankar and Shyamal. He further could not state the nature of articles or weight of the same.
 10. Evidently, the prosecution failed to prove the ownership of the go-down belonging to the present opposite parties. The seizure of the disputed articles i.e. 15 tins of rapeseed oil could not be proved to the hilt.
 11. The Analyst's Report was prepared on the basis of rapeseed oil was removed from one tin in exclusion of the others and therefore, it cannot be universally applicable to the rapeseed present in other tins.
 12. Moreover, the seized articles were kept in the custody of a third person without proper direction.
 13. The relevant portion of the order dated 24.09.1985, passed by the Learned Judge, Special Court, E.C. Act, Cooch Behar in Spl. E.C. G. R. Case No. 16/1984 is reproduced here-in-below:-

"PW-5 stated that the accused Sankar broke open the lock in their presence. So this witness gives a different version. The seized commodities

were kept in the jimba of a third person. "The owner of the godown came and disclosed himself as a owner of godown." – this evidence before the I.O. during investigation is of no value and can not be taken into consideration in assessing the evidence. The report of Analyst is marked Exbt.-7. In cross-examination it has been revealed that no paper was seized in respect of the ownership of the godown. Enquiry was made in the Municipality and in Town Committee and it revealed that originally the godown belonged to the mother of the accused Ashit Paul. There is nothing in the evidence as to how the accused Ashit became the subsequent owner of the godown. No enquiry was made either in the land acquisition department or in the Registration Dept. in order to ascertain the ownership of the godown. No paper was seized from the Municipal Office. If the tenants of the godown were really the accused Sankar and Shyamal, then there will be atleast some document to show their tenancy, but no scrap of paper has been filed to show their tenancy to the godown. The accused suggested that they have been falsely implicated due to some altercation ensued over the ownership and possession of the godown in question. Towards the last part of his examination, this witness stated that sample from one tin was taken for the purpose of sending it to the Quality Control Officer for examination. So the evidence of this witness is contradictory to the evidence of the previous PW on this point. This witness categorically stated in his evidence that no adjoining person was examined by him in order to ascertain the ownership of the godown. The accused suggested that they have no concern with the godown and the properties seized from the godown. This suggestion cannot be so lightly brushed aside.

So from the contradictory evidence of the prosecution witnesses and on a perusal of the other evidence, I am of the opinion that the prosecution has failed to prove the ownership of the godown and its actual possessor has not been proved. Unless it is proved that the accused Ashit is the owner of the godown or the accused Sankar and Shyamal are the possessors of the godown. The case of the prosecution can not stand. In

this particular case, the ownership and possession of the godown have not been proved and the accused person can not be held liable for the keeping of the rape seed tins in the godown.”

14. The Hon’ble Supreme Court in **Anwar Ali v. State of H.P.**¹ held the following:-

“14.1.

15. In *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under: (SCC p. 432, para 42)

‘(1) An appellate court has full power to review, reappraise 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.

¹(2020) 10 SCC 166

(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.'

....

17. In State of Rajasthan v. Naresh [State of Rajasthan v. Naresh, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

'20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'

18. In State of U.P. v. Banne [State of U.P. v. Banne, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)

'(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.'

A similar view has been reiterated by this Court in *Dhanapal v. State* [*Dhanapal v. State*, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .

19. 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 in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.”

(emphasis supplied)

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: (*Babu case* [*Babu v. State of Kerala*, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , SCC p. 199)
 “20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn.* [*Rajinder Kumar Kindra v. Delhi Admn.*, (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , *Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [*Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312] , *Triveni Rubber & Plastics v. CCE* [*Triveni Rubber & Plastics v. CCE*, 1994 Supp (3) SCC 665] , *Gaya Din v. Hanuman Prasad* [*Gaya Din v. Hanuman Prasad*, (2001) 1 SCC 501] , *Aruvelu* [*Arulvelu v. State*, (2009) 10

SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])”
(emphasis supplied)

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , **that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.**”

15. The same was reiterated by the Hon’ble Supreme Court in **Nagabhushan v.**

State of Karnataka².

16. The following was held by the Hon’ble Supreme Court in **Ballu v. State of**

M.P.³:-

“9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

“13. In case of Sadhu Saran Singh v. State of U.P. (2016) 4 SCC 357, the Supreme Court has held that:—

²(2021) 5 SCC 222

³ 2024 SCC OnLine SC 481

“In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded.”

14. Similar, In case of *HarljanBhala Teja v. State of Gujarat* (2016) 12 SCC 665, the Supreme Court has held that:—

“No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence. If the charge is proved beyond reasonable doubt on record, and convict the accused.”

20. In view of the above discussions, the Learned Trial Court has rightly passed the impugned order and this Court is not inclined to interfere with the same.

21. Under the facts and circumstances, the instant appeal being GA 11 of 1986 is dismissed.

22. There is no order as to costs.

23. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)