IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 170 of 2008

Sunil Pandey
-Vs-
Upendra Kumar Singh

For the Appellant	: Mr. Dipanjan Dutt Ms. Priyanka Sarkar Ms. Rita Das (Amicus Curiae)
For the Respondent (Amicus Curiae)	: Mr. Souradeep Dutta
Heard on	: 11.10.2023, 03.01.2024, 19.01.2024, 13.02.2024, 16.04.2024, 14.08.2024
Judgment on	: 05.12.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of acquittal dated 17.01.2008 passed by the Learned Judicial Magistrate, 4th Court, Asansol, Burdwan, in Sessions Case No. C-501/2006 arising out of T.R. No. 237/2006 and acquitted the accused person of the charge under Section 138 of the Negotiable Instrument Act.

2. The complaint's case, inter alia, stated the complainant was a businessman carrying on business of sub-contractor concerning construction of road, supply of labour and material (stone chips) to the main contractor from his

residence at Mithani. Complainant was acquainted with the accused person for a couple of years who was a contractor and carried on job contracts under PWD, Jharkhand. Accused occasionally used to meet the complainant whenever he visited Asansol.

Accused had a previous legal liability of sum of Rs.3,00,000/- (Rupees Three Lakhs) only to the complainant towards discharge of such liability. He drew an handed over a postdated cheque being no.59285 dated 03.02.2006 of Rs.3,00,000/- drawn on A/C of accused person in the same of his firm "Upendra Kumar Singh" at Vijaya Bank, Dhanbad Branch.

Complainant maintains all A/C at Asansol Branch of UTI Bank Ltd. and Dhanbad Branch of Vijaya Bank complainant within its validity period on four occasions deposited the same with his banker for encashment of the said cheque and credit of the amount of the cheque with the A/C of complainant lying with UTI Bank Ltd. Asansol Branch and all the times the bank refused the said cheque without encashment on the ground of 'exceeds arrangement'. The said cheque was again deposited for encashment with banker of complainant UTI Bank Ltd., Asansol Branch on 15.05.2006 and on 23.05.2006 the said banker of complainant refused the said cheque due to 'closure of account' and sent a certificate to that effect.

On receipt of such dishonor intimation the complainant through his lawyer, sent a notice dated 29.05.06 by Registered Post with A/D as well as by courier asking the accused to make payment of the amount of dishonoured cheque. Accused received the notice on 01.06.2006 but refused to accept other notice. Accused had not paid the said amount nor had given any reply. As such accused had committed all offence punishable under Section 138 of the Negotiable Instrument Act.

3. Appellant including 3 other witnesses were examined. The relevant documents were filed marked as Exhibits '1' to Exhibit '11/5'.

4. The accused person was examined under Section 251 of the Criminal Procedure Code.

5. Learned Advocate for the appellant submitted as follows:-

   i. The ingredients of the offence under Section 138 of the Negotiable Instrument Act having been well established and/or proved on the evidence as record.

   ii. All the PWs having corroborated the testimony of the commission of offence by the accused person under Section 138 of Negotiable Instrument Act, the evidentiary value of the testimony of all the PWs could not be discarded as a whole.

   iii. If there was no debt or legal liability existing by and between the complaint and accused party then why the cheque in question was given by the accused to the complainant.

   iv. The cheque in question was returned to the complainant on the ground of 'closure of account' but not on the ground that the drawer's signature and seal did not tally or the cheque was a defective one.

   v. From the oral and circumstantial evidence the complainant failed to prove that the accused has committed an offence under Section 138 of the Negotiable Instrument Act.

vi. The instant case was totally based on documentary evidence and all the documents have been exhibited and proved herein with the help of oral evidence adduced by the parties which could not be negated.

vii. The reason for alteration in the cheque/instrument has clearly be stated by the complainant in the complaint as well as through his oral evidence and same has been corroborated by the other witnesses namely PW-2, PW-3 and PW-5, therefore it could not be said that the negotiable instrument renders it 'suspicious'.

viii. The alteration in the cheque had never been challenged by the accused.

ix. The evidence of PW-5, namely Jogendra Kumar Jana, the Branch Manager of Vijaya Bank, Dhanbad, stated that in case of modification/rectification in a cheque it must have signature of the drawer which in that present cheque was available, therefore question of suspicion did not arise at all.

x. The date mentioned in the notice under Section 138 of the Negotiable Instrument Act sent by the complainant's Learned Advocate was nothing but a typographical mistake which after defection by a subsequent rectification letter has been corrected by the Learned Advocate, therefore the notice was not a defective one. Moreover the issuance date of first notice can clearly be proved from the registration slip being 'Exbt.-2/1' by which the said letter was posted.

xi. The complainant's claim from non-depositing the deposit slip by which the cheque in question was submitted for encashment before the bank was rejected but as and when from the oral and documentary evidence it was very much clear that the cheque was bounced, due to insufficient fund for which further production of deposit slip was not at all necessary.

xii. The accused was aware of the issuance of the cheque in question within its validity time, intentionally and purportedly just to deprive the complainant has closed his account in the bank on 10th May, 2006.

13. The Learned Amicus Curiae representing the respondent/opposite party submitted that the prosecution was able to prove its case beyond reasonable doubt and the appeal shall be dismissed.

14. A circumspection of the prosecution witnesses revealed as follows:

i. PW-1 in his deposition stated that he had filed an affidavit-in-chief on 31.01.07. In concurrence to that he proceeded the documents. The cheque being no.059285 dated 03.02.06 of Rs.3,00,000/- drawn on Vijaya Bank, Dhanbad Branch and marked as Exbt.-1.

ii. Further examination-in-chief of PW-1 resumed on 17.04.07 stated that the copy of demand notice sent to accused on letter head of his Learned Advocate Trilochan Mukherjee dated 29.06.2006 was marked as Exbit.-2. Postal receipt showing demand notice had been sent on 30.05.06 at 12:17 p.m. by registered post no. RLADA 2514 and marked as Exbt.-2/1. The A/D card returned to his Learned

Advocate showing accused received the same notice on 01.06.06 and marked as Exbt.-2/2.

iii. PW-1 in his cross-examination stated that he had deposited the cheque five times in Vijaya Bank. He could not state the dates on which he deposited the cheque. He could not tell five dates. He could tell two dates. He had filed cheque return memo of all five dates. Then said he had not filed and witnesses shown Exbt.-2.

iv. Further cross-examination of PW-1 resumed on 08.06.07 and he stated in the A/D card, name of father of accused was not mentioned. It was not mentioned when settlement regarding cost of materials was done as he mentioned in his affidavit-in-chief. He did not feel it necessary to make a document on demand of supplying stone chips to accused. He had no such document. His official challan would show the details of partial payment as he mentioned in his affidavit-in-chief. He could state how many times partial payment had been made by accused after consulting his records. It was not mentioned in his complaint that accused took away records of settlement. It was not mentioned in his affidavit in chief that settlement records had been taken by accused.

v. PW-2 in his deposition stated that he knew both complainant and accused person. He saw accused person in the house of complainant 3 to 4 times, who came for settlement of accounts for supplied materials to accused person. In the month of January 2006 the accused gave the complainant Rs.11,200/- in cash and a cheque of

Rs.3,00,000/- as consideration for materials supplied to the accused.

vi. PW-2 in his cross-examination stated that he did not sign on the document of settlement of accounts. He did not have any knowledge about supply of materials viz., where, when and how much or what quantity of materials were supplied. Complainant was husband of his sister. They both resided under the same roof in separate rooms. He could not state the actual dates when accused came to the house of complainant. On 19.06.07 the complainant told him to depose as a witness on the scheduled day.

vii. PW-3 in his deposition stated that he was posted at UTI Bank Ltd., as Deputy Manager. Sunil Kumar Pandey of Mitham had an A/C with their bank at Asansol Branch. Exbt.-I was produced and identified by witness stating the document/cheque had been deposited in his bank several times. The Exbt.-I had been drawn on Vijaya Bank, Dhanbad branch, A/C No. of drawer was 220216. Last time it was deposited on 15.05.06. It was deposited four times before 15.05.06 with UTI Bank Ltd., Dhanbad branch. The certified copy of statement of A/C of Sunil Kumar Pandey, for the period 01.02.06 to 04.11.06 was marked as Exbt.-3. Intimation regarding honour or dishonor of a cheque was sent to them as because holder was their customer. Exbt.-I returned to their bank due to non-payment. Clearing charge was deducted from A/C of Sunil Pandey for such non-payment clearing. On 03.03.06 Exbt.-I was deposited with their bank. Exbt.-3 revealed his contention. It was refused on 14.03.06 without encashment, clearing charge was deducted from A/C of Sunil Kumar Pandey. On 20.03.06 it was deposited with UTI Bank Ltd., Dhanbad Branch. On 21.03.06 it was refused due to insufficient fund. Clearing charge was deducted from A/C holder. On 22.03.06 it was again deposited. On 23.03.06 it was again dishonoured for insufficient fund. Again it was deposited with UTI Bank Ltd., Asansol Branch on 15.05.06. Exbt.-I bore their seal of deposition bearing no.8550. It was sent to UTI Bank Ltd., Dhanbad branch for encashment and that branch sent the same to Vijaya Bank, Dhanbad Branch. Vijaya Bank intimated UTI Bank Ltd., Dhanbad that drawer had closed his A/C and returned his cheque. UTI Bank Ltd., Dhanbad Branch sent the cheque and intimation that cheque has been dishonoured. Clearing charges Rs.143/- had been deducted from A/C of Sunil Kumar Pandey (marked as Exbt.-4). Account Holder Sunil Kumar Pandey was given copy of intimation and the cheque. 'X' for identification was received by them and returned to Sunil Kumar Pandey.

viii. PW-3 in his cross-examination stated that it was rule of bank of intimate its customer about fate of cheque on it presentation. He could not state how many times it was sent to Vijaya Bank, Dhanbad Branch for clearing. Exbt.-3 was prepared on 04.11.06. On prayer of customer statement of A/C was prepared. He was not asked to produce Exbt.-3. He could not produce the original of

Exbt.-3. He was not having the original of Exbt.-4. He had no idea about Banker's Evidence Act.

ix. PW-5 in his deposition stated he was posted at Vijaya Bank, Dhanbad Branch as a Manager. He had come as summoned by that court. Exbt.-I was identified by witnesss as given to A/C No. OD/220216 in the name of Upendra Kumar Singh, Dhanbad. The said cheque was deposited with UTI Bank Ltd., Dhanbad Branch, Cheque No.059285 marked "X' for identification (Cheque return memo) was shown to witness who identified his signature corresponding to cheque no.059285, dishonoured for A/C closed as written by him.

He produced 3 parges statements of A/C of Upendra Kumar Singh, holding A/C no. OD/220216 which stated that on 03.02.06 balance in the said A/C "was minus" and marked as Exbt.-6.

He produced one statement register of cheques returned unpaid which stated the cheque no.059285 was returned unpaid due to "exceeds arrangement". In his opinion "exceeds arrangement" meant 'insufficient fund' (C/copy marked as Exbt.-7).

Another C/copy of cheque return register showing the cheque in question again returned on 22.03.06 was marked as Exbt.-8.

The C/copy of cheque clearing register showing cheque in question was entered into their said register as deposited for clearance was marked as Exbt.-9.

Another C/copy of clearing registered showing cheque in question entered into their said register as deposited for clearance was marked as Exbt.-10.

Generally a cheque with interpolation, defect in signature was sent to depositor. He had not fetched all documents as mentioned in summon.

x. Further examination-in-chief of PW-5 resumed on 30.08.07 and he stated that the cheque in question was sent to their bank by UTI Bank Ltd., Dhanbad Branch. The register of cheque returned unpaid (extract) showing return of cheque in question on 02.03.06/13.03.06/20.03.06/22.03.06 for 'exceeds arrangement' as ground for return (total five pages extract marked Exbt.-11 series). It also revealed on 17.05.06 the cheque in question was returned to UTI Bank Ltd., Dhanbad Branch for closure of A/C no.OD/220216. They also gave one certificate (cheque return memo) (Exbt.-5) to UTI Bank Ltd., endorsing factum of dishonor.

xi. Further cross-examination of PW-5 resumed on 12.09.07 and stated that drawing bank of accused was Vijaya Bank, Dhanbad Branch. He remembered that five times they issued cheque return memo. Without perusing the cheque return register he could not state what the sequence no. of Exbt.-5 was. Cheque return memo was prepared in single copy. On 10.05.06 A/C was closed as it appeared from Exbt.-6. Cheque return memo was issued on 17.05.06. Exbt.-6 did not show the statements of A/C of accused on 03.02.06. The statement did not show anything about balance/statement of A/C of accused during 03.02.06 to 28.02.06. Cheque was issued on 03.02.06. Cheque in question has interpolation. If their customer was a firm, the firm was asked to give seal with signature. He was not acquainted with pattern of seal, find in Exbt.-1 (cheque). Exbt.-I was found to have 'pen through' in three places it it. He could not state whether at the time of opening A/C of accused, seal of accused's firm was taken or not with his signature as specimen. In respect of difference in word and figure in a cheque, they usually return the cheque to drawer. They required seal of signatory in case of any modification to rectification in a cheque in case of L.I.C.I. Generally they use that principle in all cases without any discrimination. He was not acquainted with Tirupati Balaji Enterprise.

15. The impugned judgment and order dated 17.01.2008 passed by the Learned Judicial Magistrate, 4th Court, Asansol in C-501/2006 (TR-237/2006) stated as follows:-

"*On careful perusal of evidences in the case I do not fine any reliable evidence by which complaint has remorad the suspicion about the cheque and its exception having three different inks and alteration in payee's name. It is hard to believe that a man or a business-man with common human prudence has taken a cheque which has material alteration when the amount is Rs.3,00,000/-.*

There I find no evidence regarding settlement of accounts,. Complainant as PW-1 himself contradicts his case by accounting the cost of materials/stone chips supplied.

Exbt-1 (cheque) in its altered payee's name position has signature of accd. without the seal of his firm.

I do not want to comment on this as because this is a matter between drawer and his banker who may have an agreement to that effect. But it also raises suspicion when PW-5 admits that any rectification, modification in a cheque must have signature of drawer with his seal.

Demeanour of complainant/PW-1 was recorded by this Court u/S. 280 C.P.C. at the time of his cross-examination. It is surprising that a man at a loss of Rs.3,00,000/- is loughing.

Complainant relies on the A/D Card (Exbt-2/2) alleged to have been received by accd. on 1.6.06. But this document has not been proved beyond reasonable doubt. Because it does not state that notice was received on behalf of accd. The person who received it on behalf of accd. has not come before Court – his relation with accd. and his firm was not proved. If this document is taken into consideration as proved then the 'demand notice' has no significance to prove the case of complainant.

Dishonour of a cheque is not only ground to attract penal provision of Sec. 138 NI Act sending of notice is also not the safe ground to punish a person u/S. 138 NI Act. All the ingredients of offence u/S. 138 NI Act have to be proved beyond doubt.

It is rule of evidence that he who assesses something must prove it. Complainant relies on some events prior to drawing of the cheque which attributes the liability of accd. But complainant has not rather could not prove the same by any cogent and reliable evidence either oral or documentary. Mere statement can not take the shape of legal proof.

Ld. Advocate for accd. tries to define 'OD' as inserted in the A'C No. of accd. – means 'over draft'. But there is no evidence to that effect. Procedural law does not permit to define a term by imagination to favour any party. In this context I am varying to the contention of Ld. Advocate for accd.

Complainant has produced certified copies of a case being No.83/07 dtd. 4.7.07 u/S. 420 IPC brought against accd. in which accd. has been charge-sheeted. I do not find any relevance of this to the present case that too under a special statute. Complainant also has not mentioned this fact in his complaint for consideration. Accordingly, I am not inclined to comment on this matter.

Ld. Advocate for complainant has argued that issuance of process u/S. 204 C.P.C. was not challenged by accd. I am not at par with this. It is the liberty of accd. absolutely. This Court has no jurisdiction to comment on this topic as because this Court is a fact finding court and without a trial the commission of any offence can not be considered by this Court.

Ld. Advocate for accd. has cited one decision of Hon'ble Apex Court as reported in (2006) 3 SCC 30 wherein Hon'ble Apex Court has been pleased to interpret the term 'presumption' in concurrence to Sec. 139 and

Sec. 118 of NI Act and Sec 3 & 4 of Evidence Act. I am humble and extremely judicially obliged to take that principle of law of Hon'ble Apex Court to apply in the present case.

There is no provision in Sec 138 NI Act to send a 'Rectification Letter' to the drawers if the original demand notice has any fault. So, sending of any 'Rectification Letter' by whatever mode is not a matter to be considered. Fault in notice was not successfully explained by complainant. Even the complainant contradicts himself in preparing, drafting and typing of the said demand notice.

Complainant could not produce the cheque deposition slips even for the last time. He also could not produce the cheque return memo of previous four times though those are not required in a case u/S 138 NI Act but complainant relies on those documents as reveals from his examination.

Conglomeration of any above discussions on the evidences both oral and documentary leads to the inference that complainant has failed to prove –

(1) Liability of accd. to the extent he alleged

(2) Execution of the cheque stated to have been in order

(3) Demand Notice having a date 29.6.06

(4) A/D Card having no seal of accd's firm and

(5) Content of cheque having material alteration.

Accordingly, I am inclined to hold that complainant has failed to prove his case beyond reasonable doubts – thereby accd. is entitled to get an order of acquittal."

16. 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, 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*

[1](2020) 10 SCC 166

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.'

....

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."***

17. The following was held by the Hon'ble Supreme Court in ***Ballu v. State of M.P.***[2]:-

"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:—

"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 !aw. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of

[2] 2024 SCC OnLine SC 481

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 far 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."

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

18. Accordingly, the instant criminal appeal being CRA 170 of 2008 is dismissed.

19. There is no order as to costs.

20. I appreciate the able assistance rendered by Learned Advocate Ms. Rita Das as Amicus Curiae appear for the appellant and Learned Advocate Mr. Souradeep Dutta as Amicus Curiae appearing for the respondent, in disposing this appeal.

21. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

22. 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.)