

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 1003 of 2013**

**Radha Rani Manna**

**-Vs-**

**The State of West Bengal & Ors.**

For the Appellant : Mr. Rajib Basu

For the State : Mr. Avishek Sinha

Heard on : 06.03.2024, 12.06.2024

Judgment on : 19.08.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order passed by the Learned Judge, Fast Track 2<sup>nd</sup> Court, Barrackpore in Criminal Appeal No. 10 of 2012 dismissing the above criminal appeal after affirming the judgment and order dated 30.05.2012 passed by the Learned Judicial Magistrate (1<sup>st</sup> Class), 3<sup>rd</sup> Court, Barrackpore, North 24-Parganas in G.R. No. 2179 of 2007 / T.R. No. 243 of 2008 under Sections 323/448/504/506/34 of the Indian Penal Code.
2. The appellant had lodged one complaint under Section 156(3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate,

Barrackpore against respondent no.1 and 2 herein which the Learned Magistrate had admitted and directed the Officer-in-Charge of Local Khardah Police Station to treat the said complaint as F.I.R. and would start investigation. Consequently Khardah Police Station had started one case being Khardah Police Station Case no. 213/2007 dated 27.08.2007 under Sections 323/443/ 379/504/506/34 of the Indian Penal Code was initiated against the respondents no.1 and 2 herein and after the investigation said police authorities had filed charge-sheet.

3. The Learned 3rd Judicial Magistrate had dismissed the case and acquitted the respondents/accused persons herein by an order dated that 30.05.2012. Against that order, the appellant herein had preferred an appeal being appeal no.10 of 2012 before Session Judge and after hearing all sides, said Learned Session Judge, Fast Tract 2nd Court, Barrackpore had affirmed judgment and order of the Learned Magistrate by an order dated 17.08.2013 and acquitted the respondents/accused persons herein. Against that order, this appeal is preferred.

4. The defacto complainant above named being aggrieved by and dissatisfied with the judgment and order dated 17.08.2013 of acquittal being Criminal appeal no.10 of 2012 passed by the Learned Additional Session Judge, Fast Track 2<sup>nd</sup> Court Barrackpore, North 24-Parganas arising out of the judgment and order dated 30.05.2012 passed by the Learned Judicial Magistrate (1<sup>st</sup> Class), 3rd court Barrackpore in G.R. Case no. 2179 of 2007 in T.R. no. 243 of 2008 wherein and whereby the Learned Court below acquitted the opposite parties no.1 and 2 herein for the offence punishable

under Sections 323/379/504/506/34 of the Indian Penal Code on the following amongst other.

5. Learned Advocate for the appellant submitted that:-

- i. The Learned Court below had erred in law by observing that in the GD entry dated 08.05.2006 the appellant did not mention the name of Kali Charan Bera and also incident of snatching of golden ring of the appellant which was totally wrong as it was admitted fact that the F.I.R. or G.D. entry was sum and substance of the incident, there was no need of stating detail of the incident.
- ii. The Learned Court below had failed to consider that it was admitted fact that the appellant was injured corroborated by medical report (Ext. B) also corroborated by the evidence of Doctor P.W.- 8) who had stated that the injuries were fresh, the above incident could not be contradicted in a cross-examination.
- iii. The Learned Court below had failed to consider that there was a total corroboration of the evidences of the independent witnesses, i.e., PW-4, PW-5, PW-8 and PW-7 that all of them had seen that the accused persons /opposite parties herein) were coming out on the date of incident i.e., 08.05.2006 at 12 P. M. from the house of the appellant Radha Rani Manna saying filthy language with threatening of dire consequences upon the appellant and all the said witnesses had identified the accused/ opposite parties in the court, the above evidence could not be contradicted in the cross-examination.

- iv. The Learned Trial Magistrate and also the Sessions Judge or First Appeal Judge both had failed to consider that the points which they had raised did not raises by the accused persons at the time of cross-examination that meant the defence had admitted those points.
- 6. The Learned Advocate for the State in utmost fairness submitted that the prosecution failed to prove its case beyond reasonable doubt.
- 7. The Learned Magistrate in his judgment and order dated 30<sup>th</sup> May of 2012 in G.R. Case No.-2179/07 (T.R. No. 243/08) opined as follows:-

*“A complaint under Section 156(3) of the Code of Criminal Procedure, 1973 was filed before the then Learned Additional Chief Judicial Magistrate, Barrackpore by the de facto complainant namely Smt. Radha Rani Manna against the accused persons named above to the effect that on 08.05.2006, the abovenamed accused persons namely Uttam Bera and Kalicharan Bera visited the house of the de facto complainant and forcibly kicked open the door and entered her house and started hurling filthy and abusive languages towards the complainant and her daughter and on their protest, the accused persons assaulted her with fists and blows and that when her daughter came to rescue her, she was also beaten by them. The complainant after that had to undergo treatment due to the injuries she received on that day and that she along with her son, daughter and grandchild were receiving threatening from them in order to withdraw the case under Section 498A/323/120B IPC pending before the Learned A.C.J.M., Arambagh, lodged by the daughter of the de facto complainant against the accused persons and his family members. The de facto complainant thereafter diarized the matter before the local police station but no action was taken against the accused persons.*

*The accused persons in order to put pressure upon the de facto complainant and her family members to withdraw the case and set the accused person free to lead another conjugal life on 28.05.2001 at about 12:00 noon while the de facto complainant and her daughter were all alone in the house forcibly entered into their house and unlawfully stayed there and tried to convince her daughter to withdraw the pending cases and on her refusal dragged the de-facto complainant out of the house and subjected her to physical assault and dragged her out of her house and at that very moment, the accused person namely Kali Charan Bera with the assistance of Uttam Bera snatched away the golden chain and ear rings of the de-facto complainant and fled away by saying that if the de-facto complainant's daughter does not withdraw the case, they would lose life. Due to the inaction of the police in spite of the matters diarized by the de-facto complainant, this case.*

*The Investigating Officer (hereinafter referred to as I/O) of this case upon completion of the investigation submitted a charge-sheet under sections 323/379/448/504/506 IPC against the accused persons named above in compliance with section 173 (5) of the Cr.P.C.”*

*During the evidence, P.W 1 has stated nothing about the accused persons trying to drag her out of the house nor anyone has deposed anything so as to suggest that P. W. 1 was dragged out of the house. It is also pertinent to note herein that although the other witnesses being P.W. 2,3, 4, 5, 6 and 7 went to the house of the P.W 1 on hearing their crying for help, yet not a single witness has stated anything regarding the dragging of the P.W-1.”*

*Thus from the above discussions, it is evident that there are lapses in the case of the prosecution which gives rise to the serious doubt regarding the incident and the subsequent events that took place thereafter and does not convince this Court to warrant conviction of the accused persons. The General Diary that is Exb. 6*

*does not contain anything about the alleged assault or the theft. It is pertinent to note herein that the same being filed at the earliest instance expels the opportunity of any possible concoction or any falsification. Also the petition of complaint u/s 156 (3) being treated as FiR was filed after a lapse of more than a year which gives rise to the truthfulness of the same in absence of reasons for the delay in lodging of the same and also in view of the corrections being made in the same which the P.W. 1 could not explain. Also in the injury report, there is no mention of the names of the accused though she knew the names of the accused. Besides, though there are some corroborations in the evidence of the other independent witnesses yet the discrepancies and contradictions creeping in the evidence of the Witnesses as discussed above cannot be ignored as the same gives rise to the serious doubt. It is the cardinal principle of criminal jurisprudence that the Prosecution has to prove the case beyond reasonable doubt. Hence the doubts created in this case makes this Court to infer that the benefit of doubt should go in favour of the accused persons as the Court in its humble opinion thinks that it is not safe to convict the accused persons when doubts have crept in its mind and as such the accused persons are liable to be acquitted from the charge leveled against them.*

*Thus the prosecution has failed to prove the case against the accused persons beyond reasonable doubt.”*

8. The Learned Additional District and Sessions Judge, Fast Track Court No.2, Barrackpore, in his judgment and order dated 17<sup>th</sup> Day of August, 2013, opined as follows:-

*“In the case in hand the alleged incident of assault took place on 8.5.2006 at about 12.00 noon and the appellant was taken to Panihati State General Hospital by her son Pankaj Manna at about 2.35 p.m and history of assault by some relative at her residence has been recorded in Exhibit-2 (Medical report), names of the*

accused persons i.e Uttam Bera and Kali Charan Bera have not been mentioned in the Exhibit-2. There is no report of treatment of alleged victim Ketaki Bera as stated by PW3 Pankaj Kumar Manna in his evidence in chief. It transpires from Exhibit-6 (extract of GDE dated 8.5.2006) that accused Uttam Bera threatened Radha Rani Manna and her daughter Ketaki Bera on the date and time of incident to withdraw G.R Case No.30 dated 9.8.2006 of Ld. ACJM Court, Arambag, District. Hooghly. There is no mention of assault to Radha Rani and Ketaki and that not only Uttam Bera but also Kali Charan Bera assaulted them and Kalicharan Bera with the assistance of Uttam Bera snatched away golden chain and ear rings of Radha Rani Manna and fled away after threatening her. So there is gradual development starting from the Exhibit-2 Medical Report, Exhibit-6 GDE (both dated 8.5.2006) and Exhibit-1 Written complaint filed on 2.6.2007. Though the alleged incident took place on 8.5.2006 the complaint u/s.156(3) Cr.P.C has been filed on 2.6.2007 before the Ld. ACJM, Barrackpore, North 24 Parganas after a delay of about 14 months. There is no explanation of such delay in the written complaint. It is a fact that accused Uttam Bera is the son in law (husband of Ketaki Bera, daughter of Radha Rani Manna) of appellant, Radha Rani Manna and Kalicharan Bera is the brother of Uttam Bera and cases u/s.498A IPC and u/s.125 CrPC was filed by Ketaki Bera against the accused persons. There is suspicion in the mind of the court regarding non-mentioning the names of the accused persons before the treating doctor of Panihati State General Hospital by the appellant on 8.5.2006. The appellant very well knew the names of the accused persons when she went for treatment before the doctor at hospital Again in the GD Entry name of Kalicharan Bera has not been mentioned and the fact of snatching away of golden chain and ear rings has not been mentioned, only the allegation of threatening by Uttam Bera has been diarized. There is no allegation of assault by Uttam Bera. More over the written

*complaint u/s.156(3) Cr.P.C has been filed after a delay of 14 months. Evidence of the prosecution witnesses are not convincing and trustworthy and does not inspire confidence upon the mind of the court to come to the conclusion that prosecution could establish the charge u/s. 323/379/504/506/34 of Indian Penal Code beyond the shadow of all reasonable doubt.”*

9. The Hon’ble Supreme Court in **Anwar Ali v. State of H.P.**<sup>1</sup> 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*

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<sup>1</sup>(2020) 10 SCC 166

*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.'*

*16. In Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.*

*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.**

...

‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in *Doshi case* [*Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the

*approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.”*

10. The same was reiterated by the Hon’ble Supreme Court in **Nagabhushan v. State of Karnataka**<sup>2</sup>:-

11. The following was held by the Hon’ble Supreme Court in **Ballu v. State of M.P.**<sup>3</sup>:-

**“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*

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<sup>2</sup>(2021) 5 SCC 222

<sup>3</sup> 2024 SCC OnLine SC 481

*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 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.”*

12. Both the Trial Courts had vividly assessed the evidence on record considering the documents exhibited as well as the oral submissions before the Court. None of the Trial Courts committed an error in the opinion of this Court in assailing the evidence on record to acquit the appellant and this Court is not inclined to interfere with the impugned orders.
13. In view of the above discussions, the instant criminal appeal being CRA 1003 of 2013 is dismissed.
14. There is no order as to costs.
15. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)**