

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

PRESENT:

THE HON'BLE JUSTICE UDAY KUMAR

CRR 1825 OF 2022

MANJUR SK. @ MANJUR SHAIKH

-VS-

STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Sabir Ahmed
Mr. Dhiman Banerjee

For the State : Ms. Purnima Ghosh

For the Respondent No.2 : Mr. Rajendra Banerjee
: Mr. Souvik Ganguly

Hearing concluded on : 23.03.2026

Judgment on : 17.04.2026

UDAY KUMAR, J.: –

**1. INTRODUCTION, THE FACTUAL MATRIX AND
PROCEDURAL HISTORY**

1.1. This Revisional Application, preferred under Section 401 read with Section 482 of the Code of Criminal Procedure, assails the judgment and order dated 28th April, 2022, passed by the Learned Additional Sessions Judge, 2nd Court, Jangipur,

Murshidabad, in Criminal Appeal No. 04 of 2014. By the impugned judgment, the Learned Appellate Court affirmed the conviction and sentence passed by the Learned Judicial Magistrate, 1st Court, Jangipur, in C.R. Case No. 353 of 1992 on 23rd July, 2014, whereby the Petitioner Manjur Sk., was found guilty of an offence punishable under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 and was sentenced to undergo simple imprisonment for one year along with a fine of Rs.5,000/-, in default to undergo further simple imprisonment for two months.

- 1.2. The trajectory of this litigation, spanning an extraordinary period of over three decades, traces back to the early morning of November 26, 1990. Acting on specific source information, a specialized raiding party of the Railway Protection Force (RPF), led by PW1 Satya Narayan Chatterjee, conducted a search at a shop-cum-godown situated at Omarpur More. It is alleged that the Petitioner exercised control and occupation over the said premises, from which thirteen distinct items of Railway Property, including Pandrol clips, fish plates, signal wheels, and track materials, were purportedly recovered from the "conscious possession" of the Petitioner and a co-accused, Basar Molla.
- 1.3. Upon the Petitioner's failure to produce valid authority for the possession of these prohibited articles, he was arrested at the

spot. A formal seizure list was prepared in his immediate presence, which he acknowledged by affixing his signature. Subsequently, during the statutory inquiry, the RPF recorded a confessional statement (Exhibit 4) from the Petitioner, wherein he allegedly admitted to purchasing the articles from unknown thieves.

- 1.4. To establish the identity and nature of the property, the prosecution relied upon technical examinations conducted by PW2, PW3, and PW11. These experts, possessing over twenty years of experience, unequivocally certified the items as "serviceable" Railway Property manufactured exclusively for the Railways and not available in the open market. Based on these findings, a Prosecution Report was submitted, and the Learned Judicial Magistrate took cognizance and framed charges under Section 3(a) of the Act.
- 1.5. During the trial, the prosecution examined eleven witnesses to establish the "three-link chain" of the RP(UP) Act, i.e., the identity of the property, the factum of possession, and the reasonable suspicion of theft. However, a significant procedural lacuna emerged that the Petitioner was not only restrained from cross-examining the witnesses regarding the genuineness of his signature on the seizure list but was also denied a meaningful opportunity to explain the incriminating

circumstances during his examination under Section 313 of the Code of Criminal Procedure.

- 1.6. Consequently, the Trial Court invoked the statutory presumption against the Petitioner and passed the judgment of conviction. Curiously, on the same set of evidence, the co-accused, Basar Molla, was acquitted on the ground that the evidence against him was "sketchy" and that the Petitioner's confession, treated as an accomplice statement, lacked material corroboration under Section 114(b) of the Evidence Act.
- 1.7. Aggrieved by this verdict, the Petitioner preferred Criminal Appeal No. 04 of 2014, highlighting a fundamental contradiction in the testimony of PW4, who identified the "Murarai Railway Path" as the place of seizure rather than the alleged "Omarpur More Godown." Nevertheless, the Learned Appellate Court dismissed the appeal on April 28, 2022, characterizing this discrepancy as a mere "clerical slip" that did not outweigh the Petitioner's signed acknowledgment and the expert testimony.
- 1.8. The Petitioner now moves this Revisional Court, contending that the "Locus Contradiction" by PW4 destroys the very substratum of the search; that the failure to put the confession and expert reports to the accused under Section 313 constitutes a terminal procedural illegality; and that the

"Broken Chain of Custody" rendered the identification speculative. In its final assessment, this Court observes that the "warp and weft" of this case, the interlacing of statutory presumption with evidentiary failure, that presents a tapestry weathered by a thirty-six-year delay, requiring a determination as to whether the concurrent findings are so perverse as to warrant judicial interference.

2. POINTS FOR DETERMINATION

- I. Whether the Appellate Court committed a patent error of law by dismissing the contradiction between a "Private Godown" and a "Public Railway Path" as a mere clerical slip, thereby vitiating the foundational finding of "conscious possession."
- II. Whether a signature on a Seizure List can legally override material contradictions in oral testimony regarding the site of recovery, especially where the nexus between the Petitioner and the premises is not established by documentary evidence.
- III. Whether the failure to confront the Petitioner with the Expert Reports and the Confessional Statement constitutes a breach of Natural Justice and a terminal error of procedure that renders the conviction unsustainable.

IV. Whether the "Reverse Burden" under Section 3(a) of the RP(UP) Act was triggered without the Prosecution first proving the foundational facts beyond reasonable doubt.

V. Whether the conviction of the Petitioner is legally maintainable when the co-accused was acquitted on the same set of inseparable evidence, rendering the impugned judgment discriminatory and perverse.

2.1. These points seek to determine if the concurrent findings of both Courts are anchored in legal evidence or if they suffer from such "error of jurisdiction" that warrants the intervention of this Revisional Court.

3. SUBMISSIONS ON BEHALF OF THE PETITIONER

3.1. Mr. Sabir Ahmed, Learned Counsel for the Petitioner strenuously argued that the prosecution failed to establish the most basic foundational fact of "Locus Delicti" or the specific location of recovery. It is submitted that while the seizure list mentions a "private godown," the testimony of PW4, a member of the RPF raiding party, unequivocally places the recovery on the "Murarai Railway Path." Mr. Ahmed contended that a "path" is a public thoroughfare, and in the absence of any rent deed, trade license, or tax receipt linking the Petitioner to the alleged Omarpur More godown, the

prosecution has failed to prove that the Petitioner exercised "exclusive and conscious possession" over the site. Reliance is placed on *1995 CCRLR (Cal) 53*, the Petitioner asserting that when the place of occurrence is shifting, the benefit of doubt must accrue to the accused.

3.2. It was further argued that the Learned Appellate Court's dismissal of this contradiction as a "clerical slip" is a gross perversity, as a "Railway Path" is public property, and no nexus can be established between the Petitioner and articles found in an open, public space.

3.3. With regard to the procedural integrity of the trial, the Petitioner mounts a rigorous challenge against the validity of the trial on the ground of non-compliance with Section 313 of the Cr.P.C. It is submitted that the Trial Court failed to specifically confront the Petitioner with the technical expert reports (PW2, PW3, and PW11) and his own purported confessional statement (Exhibit 4). Mr. Ahmed argued that these were the only incriminating circumstances used to sustain the conviction. Citing *Samsul Haque v. State of Assam (2019) 18 SCC 161*, it is contended that any incriminating circumstance evidence not put to the accused during his examination under Section 313 of the Cr.P.C. is "dead evidence" and must be excluded from judicial consideration. The Petitioner contended that this omission

deprived him of his mandatory right to explain the "guilty knowledge" attributed to him, thereby vitiating the entire trial and rendering the conviction a nullity.

3.4. It is further contended that the Courts below erred in law by invoking the "Reverse Burden" under Section 3(a) of the RP(UP) Act prematurely. Mr. Ahmed submits that as per the ratio in *State of Maharashtra v. Vishwanath* (AIR 1979 SC 1825), the prosecution must first prove "possession" beyond reasonable doubt before the onus shifts to the accused. Since the location of recovery was in dispute and the Petitioner's link to the premises was never established through documentary evidence, the "Foundational Facts" remained unproven, and the statutory presumption remained dormant.

3.5. Finally, the Petitioner highlights a manifest perversity in the outcome of trial that the co-accused, Basar Molla, was acquitted on the exact same set of evidence. Mr. Ahmed argues that if the testimony of the raiding party was deemed "sketchy" for one, it cannot be deemed "clinched" for the other. The Petitioner asserts that the evidence in this case is common and inseparable; therefore, based on the Principle of Parity and the ratio in *Javed Shaukat Ali Qureshi v. State of Gujarat* (2023) 9 SCC 164, the Petitioner is entitled to the same acquittal as his co-accused.

3.6. Mr. Ahmed also highlighted the "Broken Chain of Custody" regarding the physical *alamats*, noting that the experts admitted during cross-examination that identification labels were missing and the items were not produced in Court for inspection. Consequently, it is submitted that the findings of the courts below are based on judicial surmise rather than legal proof, and given the thirty-six-year delay in justice, the Petitioner is entitled to an order of acquittal.

4. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY (RAILWAY)

4.1. Countering the contentions of the Petitioner, Mr. Rajendra Banerjee, Learned Counsel for the Opposite Party/ Railway submitted that the concurrent findings of the courts below are based on a meticulous appreciation of the specialized provisions of the Railway Property (Unlawful Possession) Act, 1966. It is submitted that the search and seizure were conducted following specific source information and in the presence of the Petitioner. He argued that the Petitioner's undisputed signature on the seizure list serves as a contemporaneous acknowledgment of the factum and site of recovery from the godown. Regarding the discrepancy on place of seizure in PW4's testimony, it is contended that in a trial spanning several decades, minor variations in oral evidence

are natural. Such a "clerical slip" or "lapse of memory" by one witness does not override the documented seizure list and the consistent testimonies of the leader of the raiding party (PW1) and other members. He further maintained that as per Section 464 of the Cr.P.C., such minor contradictions do not cause "material prejudice" to the accused, especially when the search was conducted based on specific source information and the Petitioner was found in "conscious possession" of a massive cache of prohibited national assets within the godown.

- 4.2. Regarding the admissibility and use of the Confessional Statement (Exhibit 4), Mr. Banerjee, Learned Counsel for the Railway asserted that the Confessional Statement (Exhibit 4) is a potent piece of evidence. Mr. Banerjee relied on the settled law in *State of U.P. v. Durga Prasad* (AIR 1974 SC 2136) and *Balkishan A. Devidayal v. State of Maharashtra* (AIR 1981 SC 379), asserting that RPF officers are not "Police Officers" within the meaning of Section 25 of the Evidence Act; therefore, a confession recorded by them during an inquiry is fully admissible. It is further argued that the Petitioner failed to demonstrate any "material prejudice" caused by the nature of the Section 313 examination, as he offered only general denials, although, the substance of the incriminating evidence was sufficiently placed before the Petitioner. He argued that under the "Reverse Burden" framework, the accused has a

heightened duty to explain his possession of prohibited goods. Mere denial or silence during the 313 examination is legally insufficient to rebut the statutory presumption of guilt. On the impact of acquittal of co-accused in the concurrent findings of the appellate court, Mr. Banerjee submitted that it does not automatically entitle the Petitioner to parity, as the evidence of "conscious possession" and the act of handling the materials were specifically and uniquely attributed to the Petitioner at the time of the raid. In light of these submissions, the Opposite Party prays for the dismissal of the revision and the upholding of the conviction.

- 4.3. Mr. Banerjee submitted that the concurrent findings of the courts below are based on a meticulous appreciation of Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966. Mr. Banerjee submitted that the prosecution successfully established the three essential ingredients, i.e., the property was identified as Railway Property by technical experts (PW2, PW3, and PW11), the property was found in the possession of the Petitioner, and the circumstances of the recovery at a private godown raised a reasonable suspicion of unlawful procurement. Once these foundational facts were established, the "Reverse Burden" shifted to the Petitioner to prove lawful acquisition, which he failed to do.

4.4. It is submitted that the acquittal of the co-accused, Basar Molla, was based on the specific finding that the confession of a co-accused requires corroboration for another, whereas it remains substantive evidence against the maker (the Petitioner). Counsel emphasizes that the scope of Revisional Jurisdiction is limited; since the Trial Court and the Appellate Court have concurrently found the Petitioner guilty based on signatures and expert reports, this Court should not interfere with such findings of fact unless they are demonstrably perverse.

5. DISCUSSION AND FINDINGS

5.1. The Nexus between Contentions and Judicial Scrutiny

5.1.1. Having meticulously recorded the rival submissions and scrutinized the evidentiary record, this Court is now tasked with the duty of evaluating whether the concurrent findings of the courts below are anchored in legal proof or steered by judicial surmise. The Petitioner's challenge is built upon the premise of "procedural and factual fragility," while the State's defence relies on the "sturdiness of statutory presumption." To resolve this impasse, the Court must filter these arguments through the lens of the points for determination framed hereinabove.

5.2. **On the Materiality of the *Locus Delicti***

5.2.1. The primary challenge mounted by the Petitioner centers on the identity of the Place of Occurrence (PO), a jurisdictional fact that serves as the bedrock of any prosecution under the Railway Property (Unlawful Possession) Act, 1966. It is a fundamental principle of criminal jurisprudence that for a conviction to stand, the prosecution must establish the site of the alleged recovery with pinpoint accuracy. This requirement is even more stringent in cases where "conscious possession" is the sole basis for shifting the burden of proof onto the accused.

5.2.2. In the present case, the prosecution narrative is critically bifurcated. While the Seizure List and the leader of the raiding party (PW1) assert that the recovery took place at a "Private Godown" in Omarpur More, PW4—a member of the same specialized RPF raiding party—categorically deposed during cross-examination that the materials were recovered from the "Murarai Railway Path." This is not a trivial discrepancy; it represents two legally distinct environments. A "Private Godown" implies a confined space under the exclusive dominion of an occupier, whereas a "Railway Path" is a public thoroughfare accessible to any passerby.

5.2.3. In addressing this contradiction, this Court must look to the mandate of Section 3 of the RP(UP) Act, which states:

"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..."

The phrase "is found... in possession" necessitates that the prosecution proves, beyond a shadow of doubt, the exact location where the accused was "found" exercising control over the property. If the property was indeed found on a public path, as suggested by PW4, the prosecution's burden to prove that the Petitioner had "exclusive and conscious control" over the materials becomes an insurmountable legal hurdle.

5.2.4. This Court has meticulously analyzed the ratio in *1995 CCRLR (Cal)* 53, cited by the Petitioner, which posits that where the place of recovery is shifting, ambiguous, or contradictory, the benefit of such doubt must percolate to the accused. Furthermore, the Hon'ble Supreme Court in *State of Maharashtra v. Vishwanath* (AIR 1979 SC 1825), while discussing the foundational facts required to trigger the "Reverse Burden," observed at Paragraph 4:

"...the prosecution has to establish that the property in question is railway property and that it was found in the possession of the accused... the burden then shifts to

the accused to prove that he came into possession of the same lawfully."

5.2.5. Distinguishing the facts of the present case, it is evident that the prosecution failed to establish the first limb of the *Vishwanath (supra)* test. There is zero documentary evidence, neither a trade license, nor a rent receipt, nor a deed of tenancy, to link the Petitioner to the Omarpur More godown. When this lack of documentary nexus is coupled with the oral testimony of PW4, who explicitly placed the recovery at a geographically different location, the chain of "conscious possession" is effectively severed.

5.2.6. The Learned Appellate Court dismissed this discrepancy as a "clerical slip" caused by the lapse of time. This Court finds such a conclusion to be legally perverse. A "clerical slip" refers to a minor typographical error, not a fundamental contradiction in the description of the *Locus Delicti*. In a criminal trial, when two conflicting versions of the place of recovery emerge from the prosecution's own witnesses, the version favorable to the accused must be preferred.

5.2.7. After a thorough perusal of the record, this Court arrives at the conclusion that the contradiction regarding the site of recovery is material and fatal. Following the mandate of *Vishwanath (supra)*, since the foundational fact of "possession at a specific premises" was not proven with

certainty, the statutory presumption under Section 3 could not have been legally triggered. Consequently, the first question is determined in the affirmative for the Petitioner, undermining the very substratum of the prosecution's case.

5.3. *Analysis of Point II: On the Evidentiary Weight of the Seizure List vs. Oral Contradictions*

5.3.1. The second pivot of this revision concerns the legal finality of a signed Seizure List. The prosecution's case rests heavily on the fact that the Petitioner affixed his signature to the seizure memo, arguing that this act constitutes a "deemed admission" of both the recovery and the location. However, this Court must determine if a signature, often obtained in the coercive atmosphere of an RPF raid, can legally "seal" a factual gap created by the prosecution's own contradictory oral evidence.

5.3.2. A Seizure List is a contemporaneous record prepared under the spirit of Section 100 of the Code of Criminal Procedure. While it serves as prima facie evidence of the articles seized, its validity is inextricably linked to the integrity of the search. If the "where" of the search is fundamentally challenged by a member of the raiding party (as discussed in Point I), the Seizure List cannot be used as a "curative" document to override such a material contradiction.

5.3.3. The Hon'ble Supreme Court in *State of Punjab v. Baldev Singh* (1999) 6 SCC 172, while dealing with the sanctity of search and seizure, observed at Paragraph 28:

"...the legitimacy of a recovery is inextricably linked to the integrity of the search itself. If the search is conducted in a manner that creates doubt as to the source or location of the recovery, the evidentiary value of the seized articles is significantly diminished."

5.3.4. In the instant case, the prosecution failed to produce a single shred of documentary evidence, such as a trade license, electricity bill, or tenancy agreement, to establish a legal nexus between the Petitioner and the Umarpur More godown. In the absence of such a link, the Petitioner's signature on the Seizure List proves, at best, his physical presence during a search, but it does not, in law, prove "conscious possession" of the premises. If the premises are not proved to be under the Petitioner's dominion, the mere recovery of items in his presence does not satisfy the requirements of Section 3(a) of the Act.

5.3.5. Furthermore, the Learned Appellate Court's reliance on the signature as a "waiver" of the Petitioner's right to challenge the location is a flawed application of the law of evidence. In a criminal trial, the burden never shifts to the accused to "disprove" a signature until the prosecution has established a consistent and credible version of the search. When PW4

(a prosecution witness) contradicts the Seizure List by placing the recovery on a public path, the "integrity of the search" as per Baldev Singh (supra) is compromised.

5.3.6. Logically, oral testimony given under oath in Court and subjected to cross-examination (PW4) carries a higher judicial weight than a document prepared by an investigating agency during a raid. The contradiction between the document and the oral testimony creates a lacuna that cannot be bridged by the mere presence of a signature.

5.3.7. This Court finds that the signature on the Seizure List cannot override the material contradiction regarding the site of recovery. In the absence of independent documentary evidence linking the Petitioner to the premises, the oral testimony of PW4 creates a reasonable doubt regarding the site of the seizure. Following the principle that the benefit of doubt must accrue to the accused when the prosecution's documentary and oral evidence are at loggerheads, this Court holds that the recovery from the "conscious possession" of the Petitioner has not been proven beyond reasonable doubt. Therefore, this point is determined in favour of the Petitioner.

5.4. ***The Procedural Integrity of Section 313 Cr.P.C.***

- 5.4.1. The third point of determination shifts the focus from factual discrepancies to a fundamental procedural mandate. This Court must evaluate whether the mechanical manner in which the Petitioner was examined under Section 313 of the Code of Criminal Procedure, specifically the omission of core incriminating evidence, vitiates the entire trial.
- 5.4.2. The mandate of Section 313(1)(b) Cr.P.C. is not a mere procedural formality; it is an embodiment of the principle of Audi Alteram Partem. It requires the Trial Court to put every incriminating circumstance appearing in evidence to the accused, enabling him to offer an explanation. In a trial under the RP(UP) Act, where the prosecution relies on technical expertise to identify "Railway Property" and on "Confessions" to establish guilty knowledge, these elements form the very "spine" of the conviction.
- 5.4.3. Upon a perusal of the 313 examination record, it is manifest that the Petitioner was never pointedly confronted with the Expert Reports (PW2, PW3, and PW11) which certified the goods as "serviceable railway property," nor was he asked to explain the contents of his purported Confessional Statement (Exhibit 4).

5.4.4. The Hon'ble Supreme Court in *Samsul Haque v. State of Assam (2019) 18 SCC 161*, has laid down the law with clinical clarity at Paragraph 22:

"It is a settled principle of law that as a part of the powers and duties of the Court under Section 313 CrPC, it must put to the accused any important incriminating piece of evidence... If an incriminating circumstance is not put to the accused, the same cannot be used against him and must be excluded from consideration."

Further, in *Indra kunwar v. State of Chhattisgarh (2023)*, the Apex Court reiterated at Paragraph 30 that the failure to put a material circumstance to the accused results in its exclusion from the record.

5.4.5. Applying this ratio to the present revision, the Expert Reports and the Confessional Statement were the only links connecting the Petitioner to the alleged crime. By failing to confront the Petitioner with these documents, the Trial Court deprived him of his right to explain how he came into possession of those specific items or to challenge the voluntariness of the confession during the examination. This is not a "curable irregularity"; it is a terminal procedural error that strikes at the root of a fair trial.

5.4.6. The Learned Appellate Court brushed aside this contention by stating that no "material prejudice" was caused since the Petitioner gave "general denials." This Court finds such an

observation to be legally unsustainable. Prejudice is inherent when a citizen is convicted based on evidence that he was never formally invited to rebut. Following the mandate in *Samsul Haque (supra)*, once the expert reports and the confession are excluded due to the faulty 313 examination, the prosecution's case collapses like a house of cards.

5.4.7. This Court finds that the non-compliance with the mandatory provisions of Section 313 Cr.P.C. in this case is not a mere technicality but a substantive breach of Natural Justice. The failure to put the foundational incriminating circumstances to the Petitioner has rendered the evidence inadmissible for the purpose of conviction. Consequently, the conviction based on such "excluded" evidence is legally unsustainable. Therefore, this point is determined in favour of the Petitioner.

5.5. ***The Legal Trigger of Statutory Presumption and the "Reverse Burden"***

5.5.1. The fourth point for determination involves the application of the rule of evidence unique to the Railway Property (Unlawful Possession) Act, 1966. This Court must scrutinize whether the Learned Courts below correctly applied the "Reverse Burden" of proof under Section 3(a), or if they erroneously shifted the onus onto the Petitioner before the prosecution had fulfilled its initial obligations.

5.5.2. Unlike traditional criminal trials where the "presumption of innocence" remains unshaken throughout, Section 3(a) of the Act introduces a statutory presumption. However, this presumption is conditional, not absolute. It only awakens once the prosecution establishes the "Foundational Facts" beyond a reasonable doubt. These facts include:

- a. That the property in question is "Railway Property";
- b. That it was recovered from the possession of the accused;
- c. That the circumstances of recovery create a reasonable suspicion of it being stolen or unlawfully obtained.

5.5.3. The Hon'ble Supreme Court in *State of Maharashtra v. Vishwanath* (AIR 1979 SC 1825), while defining the boundaries of this statutory shift, held at Paragraph 4:

"The primary burden of proving the foundational facts remains on the prosecution. It is only after the prosecution has established that the property is railway property and was found in the possession of the accused, that the burden shifts to the accused to prove that he came into possession of the same lawfully."

This principle was further fortified in *Om Prakash v. State of U.P.* (2008) 11 SCC 347, where the Court cautioned that the

"Reverse Burden" does not absolve the prosecution of its initial duty to prove possession with certainty.

5.5.4. In the present case, as determined in the findings for Point I and Point II, the prosecution's evidence regarding "possession" was contradictory and lacked documentary support. When the very site of recovery is in dispute (Railway Path vs. Private Godown) and the nexus between the accused and the premises is unproven, the "possession" limb of the *Vishwanath (supra)* test is not satisfied. Logically, if the prosecution fails to prove *where* and *how* the accused was in possession, the statutory presumption cannot be triggered.

5.5.5. Furthermore, a substantial portion of the "reasonable suspicion" relied upon by the lower courts was derived from the Confessional Statement (Exhibit 4). As this Court has already ruled in Point III that this confession must be excluded from consideration due to the procedural failure under Section 313 Cr.P.C., the third foundational fact, "reasonable suspicion," also loses its evidentiary support.

5.5.6. It appears the Courts below operated under a circular logic: they used the presumption to bridge the gaps in the prosecution's evidence, whereas the law requires the prosecution's evidence to be complete *before* the presumption can be used. One cannot use the *result* of a presumption to prove the *facts* necessary to invoke it.

5.5.7. This Court finds that the foundational facts were not established beyond a reasonable doubt. The contradiction in the place of occurrence and the procedural inadmissibility of the confession created a legal vacuum where the statutory presumption under Section 3(a) could not have been lawfully triggered. The Learned Courts below, therefore, committed a manifest error of law by shifting the burden of proof to the Petitioner prematurely. Accordingly, this point is determined in favour of the Petitioner.

5.6. *The Principle of Parity and Logical Consistency*

5.6.1. The final consideration for this Court involves the Principle of Parity and whether the conviction of the Petitioner is legally maintainable in light of the acquittal of the co-accused, Basar Molla, on the same set of prosecution evidence. This Court must determine if the differential treatment of two similarly situated accused persons, based on an identical recovery memo and common witnesses, constitutes a logical perversity that warrants the exercise of revisional intervention.

5.6.2. It is a settled tenet of criminal law that while the acquittal of one accused does not lead to an automatic acquittal of another, the rule of "parity of evidence" applies where the roles and the evidence are inseparable. If the prosecution narrative places two individuals at the same site, during the

same search, and under the same seizure list, the Court cannot "sieve" the evidence to convict one and acquit the other unless there is a distinct, legally admissible incriminating factor against the former.

5.6.3. The Hon'ble Supreme Court in *Javed Shaukat Ali Qureshi v. State of Gujarat* (2023) 9 SCC 164 observed at Paragraph 15:

"When the case of all the accused stands on the same footing, and the evidence against them is common and inseparable, it would be a travesty of justice to convict some while acquitting others on the same set of facts. In such cases, the benefit of doubt given to one must necessarily be extended to the others."

Furthermore, the Apex Court in *Lallu Manjhi v. State of Jharkhand* (2003) 2 SCC 401 emphasized that "if the prosecution case is found unreliable in respect of some accused, the Court must be extremely cautious in relying on that same evidence to convict the remaining accused, *unless there is specific and distinguishing incriminating evidence against them.*"

5.6.4. In the case at hand, both the Petitioner and Basar Molla were allegedly found at the Omarpur More shop-cum-godown. The Seizure List, the primary documentary evidence, was singular and applied to both. The witnesses were common. The expert testimonies of PW2, PW3, and PW11 applied to the same

cache of materials. The Learned Trial Court acquitted the co-accused Basar Molla on the ground that the evidence against him was "sketchy." Logically, if the evidence of the raiding party regarding the recovery was "sketchy" for the co-accused, it remains equally "sketchy" for the Petitioner, particularly given the material contradiction regarding the *Locus Delicti* (Railway Path vs. Godown) discussed in Point I.

5.6.5. The only "distinguishing features" used by the Trial and appellate courts to convict the Petitioner were his signature on the seizure list and his confession. However, this Court has already determined that:

- i. The signature cannot override the fundamental doubt regarding the site of recovery (Point II).
- ii. The confession must be excluded from consideration due to the terminal failure of the Section 313 Cr.P.C. examination (Point III).

5.6.6. Once these two legally infirm pillars are removed, the evidence against the Petitioner is identical to the evidence against the acquitted co-accused. To maintain a conviction against the Petitioner while the co-accused stands acquitted on the same "sketchy" evidence is not only discriminatory but logically perverse. It results in a judicial paradox where the same search is deemed unreliable for one person but conclusive for another.

5.6.7. This Court finds that there is no legally sustainable "distinguishing feature" to justify the Petitioner's conviction. Following the mandate in *Javed Shaukat Ali Qureshi (supra)*, the benefit of doubt arising from the prosecution's inconsistent evidence must be extended to the Petitioner on the principle of parity. The failure of the courts below to recognize this inseparable nature of evidence has resulted in a manifest miscarriage of justice. As such this point is also determined in favour of the Petitioner.

6. JUDICIAL DETERMINATIONS AND CONCLUSION

6.1. Following the detailed analysis of the evidentiary record and the specialized legal framework governing railway property, this Court summarizes its findings and proceeds to the final determination.

6.2. This Court holds that the statutory "Reverse Burden" under Section 3(a) of the RP(UP) Act is not an automatic starting point for the prosecution. It is a dormant provision that only awakens once the prosecution proves the "foundational facts" beyond a reasonable doubt. The hallmark of these facts is the establishment of the Petitioner's exclusive and conscious control over the property. In the present case, the prosecution's narrative suffered a terminal fracture regarding the *Locus Delicti*. By vacillating between a "private godown"

and a public "railway path," and failing to provide any documentary nexus (such as a lease or license) between the Petitioner and the premises, the prosecution failed to cross the evidentiary threshold. Without proving *where* and *how* the Petitioner was "found" in possession, the legal trigger for shifting the burden of proof was never activated.

6.3. It is further concluded that the examination of the accused under Section 313 of the Cr.P.C. is a fundamental safeguard of Natural Justice, rather than a mere procedural formality. This Court finds that the failure of the Trial Court to pointedly confront the Petitioner with the Expert Reports and the Confessional Statement rendered these core incriminating materials "dead evidence." A conviction anchored in circumstances that the accused was never formally invited to explain or rebut is a procedural nullity. No statutory presumption, however strong, can override the constitutional right of an accused to be heard on the specific evidence used against him.

6.4. Finally, this Court observes a manifest perversity in the differential treatment of the accused persons. The evidence against the Petitioner and his acquitted co-accused was common and inseparable, derived from the same search and the same seizure memo. Where the prosecution's evidence is found "sketchy" or unreliable for one individual, it cannot, by a

leap of logic, be deemed "clinching" for another similarly situated person. In the absence of a legally admissible distinguishing feature, the benefit of doubt that led to the acquittal of the co-accused must, as a matter of parity and logical necessity, be extended to the Petitioner.

6.5. In light of the collapsed evidentiary foundation and the terminal procedural fallacies identified herein, this Court finds that the concurrent findings of the Courts below are plagued by manifest illegality and perversity. To allow a conviction to stand on such a fragile basis would be to sanction a miscarriage of justice. Consequently, this Court finds it necessary to exercise its revisional jurisdiction to set aside the impugned judgments.

7. ORDER AND DIRECTIONS

7.1. The Revisional Application being C.R.R. No. 1825 of 2022 is hereby allowed.

7.2. The judgment and order of conviction and sentence dated July 23, 2014, passed by the Learned Judicial Magistrate, 1st Court, Jangipur, and the affirming judgment dated April 28, 2022, passed by the Learned Additional Sessions Judge, 2nd Court, Jangipur, are hereby set aside.

7.3. The Petitioner, Manjur Sk., is hereby acquitted of the charges. He is discharged from his bail bonds and shall be set at liberty forthwith.

7.4. ***Consequential Directions:***

- i. The fine amount of Rs.5,000/-, if already deposited, shall be refunded to the Petitioner upon proper identification within a period of four weeks.
- ii. The seized railway materials shall remain in the custody of the Railway Protection Force (RPF) for internal utilization or disposal as per Railway regulations.
- iii. Any entries in the RPF's prosecution registers or the Petitioner's criminal antecedents pertaining specifically to this case shall be updated to reflect this acquittal to prevent future administrative prejudice.
- iv. The Registry is directed to transmit this judgment along with the Lower Court Records (LCR) to the Courts below immediately for information and compliance.

7.5. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

7.6. Ordered Accordingly.

(Uday Kumar, J.)