

(1987) 10 MP CK 0013

Madhya Pradesh High Court (Indore Bench)

Case No: None

Amarnath Pande

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Oct. 14, 1987

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (1988) CriLJ 522 : (1988) JLJ 60

Hon'ble Judges: K.L. Shrivastava, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.L. Shrivastava, J.

This is an application u/s 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for expunging the expression "benefit of doubt" occurring in paragraph 14 of the order of acquittal dated 12-5-1986 passed by the Chief Judicial Magistrate, Indore, in favour of the present petitioner.

2. Facts giving rise to this application are these : The petitioner is employed as an Assistant Engineer in the Madhya Pradesh Electricity Board at Indore. He was prosecuted by the police (vide Criminal Case No. 6005 of 1981 of the Court of Chief Judicial Magistrate, Indore) for having criminally misappropriated fifty bags of cement belonging to the M.P.E.B., Indore.

3. During the trial, no evidence establishing the offence against the petitioner was produced.

4. In acquitting the petitioner and his two co-accused, the learned trial Court has observed as under:

[Matter in Hindi omitted-Ed.]

5. The contention of the learned Counsel for the petitioner is that in the absence of any evidence against the petitioner, there was no question of his being given benefit of doubt. According to him, the petitioner was entitled to a clean acquittal. In support of his submission, he has placed reliance on the decision in *Pratual Bhattacharjee's case* (1987) 2 Cri 816 (Gauh).

6. Looking to the facts and circumstances of the case, the petition deserves to be allowed.

7. In a criminal trial, an accused is presumed to be innocent until the contrary is proved and except in cases, in which the burden is shifted to the accused by law, the unshifting burden of proving the offence in all its ingredients against him beyond reasonable doubt, rests on the prosecution. Therefore, where the proof by the prosecution is not of the requisite standard and there is a reasonable doubt touching the proof of the guilt, the accused is, as of right, entitled to an acquittal. But a remote possibility in favour of the accused cannot be made a ground for holding that there is absence of proof beyond reasonable doubt. As pointed out in the decision in [Himachal Pradesh Administration Vs. Om Prakash](#), the benefit of doubt, to which the accused is entitled, is reasonable doubt, the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind As observed in the decision in [Khem Karan and Others Vs. The State of U.P. and Another](#), neither mere possibilities nor remote probabilities nor mere doubts, which are not reasonable, can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony. It has to be remembered that the phrase "benefit of doubt" is to be used only when there is some evidence towards the proof of the charge but a reasonable doubt lurks in the mind regarding its worth for being accepted as the foundation for the conclusion of the guilt.

8. In the Full Bench decision in *Emperor v. V. Damapala* AIR 1937 Rang 83 : 1937 Cri LJ 524, it has been pointed out that the phrase "the benefit of doubt" is misleading. The accused does not receive a benefit, nor does humanity grant him some boon dictated by the instinct of mercy in opposition to the ends of justice. Where there is an element of genuine doubt, then there must be acquittal as a matter of right and not as a matter of grace or favour. The phrase has, therefore, to be correctly understood.

9. There are decisions, in which the view taken is that in cases of direct evidence, the conclusion of guilt can only be rested on belief or disbelief of the testimony of eyewitnesses and in such cases, the observation that suspicion, however strong, is no proof of guilt, is not proper and that such observation cannot also be applied to cases depending on confessional evidence and is applicable only to cases depending on circumstantial evidence. In this connection, the following observations in the decision in [M.G. Agarwal Vs. State of Maharashtra](#), which is by 5 Judges, may be reproduced with advantage:

If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. But in applying this principle, it is necessary to distinguish between facts, which may be called primary or basic on the one hand, and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. Even if it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

10. Another view is that giving of benefit of doubt is applicable to all criminal cases depending on all types of evidence. The Court may doubt the guilt of the accused resting on direct or circumstantial evidence or on confessional evidence. Reference in this connection may be made to the decisions in [Ram Balak Singh and Others Vs. The State](#), [Rai Singh Vs. The State of Haryana](#), and [Chandubhai Shanabhai Parmar Vs. State of Gujarat](#). Of the aforesaid two Supreme Court decisions, the first is by 3 Judges and the second is by two Judges. In the instant case, there is no evidence of any sort and the divergence of views referred to above poses no problem.

11. In the decision in Pratul Bhattacharjee's case (1987 Cri 816) (Gauh) (supra), regarding the use of the expression "benefit of doubt", it has been observed thus in paragraph 5:

The trial Courts should be very cautious in using that expression in a case where Government servant is involved. It should not be used as a fashion or ornamentally if not warranted, because the expression may be detrimental to the service career of the person getting acquittal. When the trial Court comes to the finding that the prosecution totally fails to prove the charge, then the user of the expression "benefit of doubt" in acquitting the accused is improper and illegal. The present case comes within this category.

12. Turning to the facts of the case, I find that no evidence has been led by the prosecution to prove the initial stock of cement kept in the store in charge of the petitioner and the stock found after the occurrence in question and, therefore, it cannot be held that the stock was found to be short or that the seized bags of cement pertain to that store.

13. From the foregoing discussion, it follows that the learned trial Judge has clearly erred in using the phrase "benefit of doubt" without bearing in mind its real import.

14. In the result, the application is allowed. The expression "[Matter in Hindi omitted - Ed.)" (benefit of doubt) so far as it relates to the petitioner's acquittal, is hereby expunged from the impugned order of acquittal.