

(2023) 04 GAU CK 0047
In the Gauhati High Court
Case No : Criminal Appeal No. 426 Of 2017

Chittaranjan Patowary

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 24, 25, 26, 34, 363, 464, 468, 471
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 40, 41, 42, 43

Citation : (2023) 04 GAU CK 0047

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : R B Deb, J Sharma

Final Decision : Disposed Of

Judgement

1. Heard Mr. B.M. Choudhury, learned counsel and Mr. D.K. Bhattacharyya, learned counsel appearing for the appellant. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor appearing for the State/respondent No.1 and Mr. J. Sharma, learned counsel appearing for the respondent Nos. 2 and 3.

2. This appeal has been preferred by the complainant as appellant against the judgement and order dated 27/03/2017 passed by the learned Judicial Magistrate, First Class, Kamrup(Metro) in C.R Case no 2866/2009, whereby the respondent Nos. 2 and 3 have been acquitted from the charges u/s 468/471/34 IPC.

3. The case of the complainant is that on 17/07/2009 the appellant as complainant filed a complaint petition before the court of learned CJM, Kamrup (Metro) alleging inter alia that he is the owner of a plot of land measuring 1 Bigha 3 Lechas situated at Manipuri Basti, GS Road, Guwahati and constructed a double storied RCC building in the year 1988 and started running a hotel business in the said premises under the name and style M/s Hotel Pragjyotish. Thereafter, the respondent no 2 and 3 as accused persons who were the partners

of M/s L.M. Commercial House approached the complainant in the year 2007 with a proposal to take lease of the said hotel on condition of payment of monthly rent and construct the remaining floors namely 2nd, 3rd and 4th thereon at their own cost. A tenancy agreement was executed between the parties on 02/11/2007.

4. The accused persons agreed to pay rent at the rate of Rs. 24 per sq feet i.e. Rs.2,88,000/- per month. By the tenancy agreement dated 02/11/2007 the accused persons paid a sum of Rs. 20,00,000/- as security refundable without any interest. And accordingly the complainant acknowledged the same by giving a receipt. It was also agreed that the complainant would allow the accused to use his bar license on condition that the complainant would be paying a sum of Rs. 4,00,000/-. As against the aforesaid amount the accused persons only paid Rs. 2,00,000/- and agreed to pay the rest within a period of 12 months. Both the parties signed the said tenancy agreement in the last page i.e., page no 8 only but not in the preceding pages. However the accused persons failed to pay the remaining Rs. 2,00,000/- and in violation of the tenancy agreement, changed the name of Hotel Pragjyotish to Hotel Fame city, though there was no such clause in the agreement.

5. The accused persons got the possession of the hotel premises on 01/11/2007 and they agreed to make minor repairing and renovation as per the requirement of the accused and during the said period the accused persons agreed to pay an amount of Rs. 1,00,000/-for the month of November and December, 2007 and January, 2008 and for the month of February, March and April, 2008 the accused persons paid the rent at the rate of Rs. 2, 88,000/- per month. It is alleged that the accused persons then failed to pay the monthly rent from the month of June, 2008 and they became defaulter. The complainant thereafter filed a civil suit before the Civil Judge (Senior Division) Kamrup, Guwahati seeking ejectment of the accused persons from the tenanted premises, recovery of rents etc.

6. During the pendency said suit, the accused persons also instituted a money suit against the complainant before the court of Civil Judge (Senior Division) Kamrup, Guwahati, seeking recovery of Rs. 36,15,769/-from the complainant. The accused persons alleged in the money suit that the complainant had taken a loan of Rs. 20,00,000/- from the accused persons which was payable with compound interest at the rate of 18% per month. It is alleged that the tenancy agreement having been executed by the parties on 02/11/2007 but in the money suit, the loan agreement had not been filed by the accused persons who were the plaintiffs. It is stated that the tenancy agreement executed on 02/11/2007 has been forged in as much as page no. '8' of the said agreement has been covered by black ink and a new printed figure '5' has been inserted therein. It transpires that the photocopy of the last page of the tenancy agreement executed on 02/11/2007 has been used to give credence to the alleged loan agreement. It is the case of the complainant that the alleged loan agreement as produced by the accused persons as plaintiff in the aforesaid money suit is a

forged one and therefore, the complainant had filed this complaint case vide C.R. Case No. 2866/2009 u/s 468/471/34 IPC.

7. After recording the initial statement of the complainant and his witnesses, summons were issued to the accused persons. The accused persons thereafter entered appearance and the evidence before charge was recorded. After hearing both the parties, charges were framed against the accused persons u/s 468/471/34 IPC which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

8. During the course of trial, the prosecution examined as many as three witnesses and the defence examined none. After closure of the prosecution witnesses, the statements of the accused persons were recorded u/s 313 Cr.P.C. to which they denied the incriminating materials found against them. Both the accused persons in their statements u/s 313 Cr.P.C., stated that they put their signatures only in the last page of the agreement and which was a loan agreement and not a tenancy agreement. After hearing the arguments advanced by the learned counsel for the parties, the trial court has delivered the judgment of acquittal in favour of the accused persons.

9. Learned counsel for the appellant has argued that the learned trial court has failed to appreciate the fact that all the prosecution witnesses deposed before the trial court that two tenancy agreements were executed between the complainant/ appellant and the accused persons. The first being executed on 02/11/2007 and subsequently on the request of another tenancy agreement was executed on 01/12/2007 for the purpose of saving tax.

10. It is also the submission of the learned counsel for the appellant that P.W. 2 who categorically stated that he had only drafted a tenancy agreement which was executed on 02/11/2007 between the parties which consisted of 8 pages. P.W. 2 denied to have prepared any loan agreement between the parties as alleged by the accused.

11. It is also submitted by the learned counsel for the appellant that the last page of the loan agreement was a forged one which was corrected by black ink and made as page '5' and attached to the forged loan agreement vide exhibit C. Both exhibit 1 and exhibit C had the word 'Landlord' spelt as 'Lanlord' whereas there is no basis of parties being described as landlord and tenant in a loan agreement.

12. Learned counsel for the appellant further submitted that the money suit filed by the accused persons were dismissed by the trial court on the ground that the agreement dated 02/11/2007 is not a loan agreement but a tenancy agreement. Therefore, the only logical conclusion is that Ext.1 tenancy agreement was forged. The accused persons challenged the judgement of dismissal of money suit before this court which was also dismissed with an observation that the trial court was right in its decision. The accused persons did not prefer any appeal against the judgment of this court in dismissing their money suit. According to

learned counsel for the appellant, decisions of a civil suit is binding on criminal court, converse is not true. On the point, learned counsel for the appellant has relied on a case law (1970) 3 SCC 694 (M/s Karam Chand Ganga Prasad and another vs. Union of India and others).

13. Per contra, learned counsel for the accused/respondents has contended that in a criminal case, degree of proof is the dictum than that what is required in a civil proceeding and if there is slightest doubt in the mind of the court regarding involvement of the accused persons, then the court should not go for convicting the accused person with such a doubt, rather it would be proper for the court to pass an order of acquittal in favour of the accused. When the trial court after appreciation of the evidence of the witnesses passed an order of acquittal, it would not be proper for the appellate court to disturb the said order unless the said order of acquittal is unreasonable, even if two views are possible, then also the appellate court should not disturb the said order rather the court should uphold the view favoured the accused.

14. In support of his submissions learned counsel for the accused has placed reliance on the following case laws-

- a. (1997) 7 SCC 110 (Ajit Savant Majagvai vs. State of Karnataka)
- b. (2013) 3 GLT 207 (State of Tripura vs. Riyaz Ullah(Md.))
- c. (1988) 4 SCC 302 (State of UP vs. Krishna Gopal and another)
- d. (1996) 10 SCC 236 (Divakar Neelkantha Hegde and others vs. State of Karnataka)
- e. (2011) 4 GLT 682 (State of Tripura vs. Rahim Miah(Md.))
- f. 1970 (3) SCC 694 (M/s. Karam Chand Ganga Prasad & Anr. Vs Union of India & Ors.)

15. I have heard learned counsel for both the parties and I have also perused the judgement and the documents available on record.

16. It is a settled principle of law that if the trial court after due appreciation of the evidence, comes to the conclusion about the finding of acquittal, then normally if the finding is not perverse, this should not be interfered with by the appellate court.

17. In the case of Chandrappa vs. State of Karnataka reported in AIR 2007 SCW 1850 wherein the Hon'ble Apex court laid down the legal principles to entertain the appeal against acquittal and held as under –

“From the above decisions, in our considered view, the following general principles regarding power of appellate court while dealing with an appeal against an order of acquittal emerged :

(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 question 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 emphasize 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 available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(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".

18. In the case of Gamini Bala Koteswara Rao v. State of Andhra Pradesh AIR 2010 SC 589, wherein it is observed as under:-

"It is open to the High Court to re-appreciate the evidence and conclusions drawn by the trial Court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" to mean "against the weight of evidence".

19. On the basis of the aforesaid principles of law, I have now considered the evidences of the prosecution witnesses and the documents available in the record regarding forgery alleged by the complainant.

20. The complainant was examined in the case as P.W. 1 who has reiterated the same thing whatever he had stated in his complaint petition regarding execution of tenancy agreement (exhibit 1). In his cross examination, P.W.1 replied that on 02/11/2007 the tenancy agreement was executed which was drafted by advocate Mir vide exhibit 1. Subsequently, on 01/12/2007 he had executed another tenancy agreement vide exhibit B with the accused persons for the said suit premises to save the tax. P.W. 1 also replied in his cross examination that exhibit B was executed by him to save the taxes of the accused persons as they insisted him to execute the same.

21. P.W. 2 is Akdas Ali Mir. He deposed before the court that on 02/11/2007 he

had drafted a tenancy agreement between both the parties. The accused persons took the hotel premises of the complainant on lease. Both parties put their signatures on the said agreement in his presence. P.W. 2 also identified the signatures of the complainant and the accused persons who put their signature in his presence. According to P.W. 2, the tenancy agreement which he drafted consisted of '8' pages, he put his signature on the 8th page of the agreement both as a witness and the writer of the agreement. Besides the tenancy agreement he had not drafted any other agreement between the parties.

22. In his cross examination, P.W. 2 replied that two civil suits were pending between the parties out of which one of was for the ejectment from the suit premises and which was filed by the complainant. The other suit was filed by the accused for realization of the loan amount from the complainant. At the request of the complainant, he had prepared the tenancy agreement on 02/11/2007. The said tenancy agreement was executed in his presence and he put his signature as a scribe as well as witness to the said agreement. The other witness to the agreement was Mr. P.R. Majumdar.

23. P.W.3 is Pronai Ranjan Majumdar. From his deposition, it reveals that he was one of the witnesses to the tenancy agreement vide exhibit 1, executed on 02/11/2007. He deposed before the court that the complainant and the accused persons also put their signatures on exhibit 1. He put his signature on two copies of the said document. Apart from the tenancy agreement, he had not put his signature on any other document on the same day.

24. Apparently, it is clear from the evidence of P.W.1, P.W.2 and P.W.3 that on 02.11.2007, one tenancy agreement was executed between the parties which consisted of '8' pages and in the last page i.e. in page no. '8', P.W.1, P.W.2 and P.W.3 and accused/respondent Nos. 2 and 3 had put their signatures. No loan agreement was executed on that day. To prove the loan agreement, the accused persons did not adduce any evidence. In their statements under Section 313 Cr.P.C., in question No.5, both the accused persons answered that the tenancy agreement was executed on 01.12.2007 and after the execution of the said agreement, possession was handed over to them. On question No. 14, both the accused persons also replied that the loan agreement was executed on 02.07.2011 and thereafter the tenancy agreement was executed. They did not remember the total number of pages.

25. The learned trial court has acquitted the accused persons on the ground that the complainant did not produce the rent receipt of the tenanted premises. The learned trial court also took the view that admittedly the parties and attesting witnesses had put their signatures only on the last page of Ext. 1 i.e. alleged tenancy agreement but from perusal of the said page, it cannot be said if the same was a tenancy or a loan agreement.

The order of the learned trial court is reproduced as below-

"Now as the signature of the accused is neither present on each and every pages

of the alleged loan agreement nor on each and every pages of the alleged tenancy agreement (Ext.1) and their signatures are present only on the last pages of the alleged agreements from the perusal of which nothing can be said about the contents of the alleged agreements, hence, the liabilities of the accused cannot be surely and certainly linked up with the alleged agreements and therefore the accused are entitled for the benefit of doubt."

26. In my considered opinion, in this case, improper appreciation of evidence has resulted in perverse finding of facts and injustice. It led to acquittal of the accused persons. If the evidence, if taken as a whole, has clearly proved that accused persons misused tenancy agreement and converted it to a loan agreement.

27. It is pertinent to mention herein regarding two civil suits filed in connection with the tenancy agreement and loan agreement. One Title Suit being No. 01/2009 was filed by the complainant praying for a decree of ejectment of the accused/respondents from the tenanted premises, recovery of rents etc. which was decreed in favour of the complainant including decree of ejectment against the defendant from the tenanted premises and the decree of recovery of arrears of rent @ Rs.2,88,000/- per month with effect from the month the of June, 2008 till ejectment of the defendant in due process of law.

28. One Money Suit being No. M.S./47/2009 had been preferred by the accused/respondents which was dismissed by the trial court with an observation that-

"the agreement dated 02.11.2007 was actually an agreement for tenancy and not an agreement for loan. It, thus, follows that the defendants had not obtained any loan of Rs.20,00,000/- with interest thereon @ 18% compounded monthly from the plaintiff. On the other hand, the said amount of Rs.20,00,000/- was an interest-free refundable security against the tenancy which was paid by the plaintiffs(representing their Firm) to the defendant vide the tenancy agreement dated 02.11.2007."

29. On appeal, the money suit was dismissed by this Court with an observation that the decision of the trial court was right and the accused persons did not prefer any appeal against the verdict of this Court. Hence, decision of this Court became final which belies the existence of any loan agreement.

30. The offence of forgery is defined in Section 463 IPC. Forgery is when someone makes any false documents or false electronic record or part of the document or electronic record, with intent to cause damage or injury, to the public or to any person or to support any claim or title etc. Making of a false document is defined under Section 464 IPC and as per this a person is said to make false document when he dishonestly or fraudulently makes, signs, seals, or execute a document or part of a document etc. with the intention of causing it to be believe that such document or part of document etc. was signed, seal or executed. If one alters a document, then also it may lead to making a false document. Making someone, dishonestly and fraudulently cause any person to

sign or seal a document is again making a false document.

31. The essential ingredients of Section 471 IPC are (i) fraudulent or dishonest use of document as genuine (ii) knowledge or reasonable belief on the part of person using the document that it is a forged one. Section 471 IPC is intended to apply to persons other than forger himself, but the forger himself is not excluded from the operation of the Section. To attract Section 471 IPC, it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must of necessity be convicted, before the person using the forged document, knowing it to be a forged one, can be convicted, as long as the fact that the document used stood established or proved to be a forged one. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. The expression 'fraudulently and dishonestly' are defined in Sections 25 and 24 IPC respectively.

32. For an offence under Section 471 IPC, one of the necessary ingredients is fraudulent and dishonest use of the document as genuine. The act need not be both dishonest and fraudulent. The use of document as contemplated by Section 471 must be voluntary one. For sustaining conviction under Section 471 it is necessary for the prosecution to prove that accused knew or had reason to believe that the document to be a forged one. Whether the accused knew or had reason to believe the document in question to be a forged has to be adjudicated on the basis of materials and the findings recorded in that regard is essentially factual.

33. Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of 'intention' or 'knowledge' or 'reason to believe'. We are now concerned with the expressions 'knowledge' and reason to believe. 'Knowledge' is an awareness on the part of the person concerned indicating his state of mind. 'Reason to believe' is another facet of the state of mind. 'Reason to believe' is not the same thing as 'suspicion' or 'doubt' and mere seeing also cannot be equated to believing. 'Reason to believe' is a higher level of state of mind. Likewise 'knowledge' will be slightly on higher place than 'reason to believe'. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a 'reason to believe' if he has sufficient cause to believe the same.

34. Section 26 IPC explains the meaning of the words 'reason to believe' which reads thus:

"Reason to believe: A person is said to have reason to believe a thing, if he has sufficient cause to believe that thing but not otherwise."

35. In substance, what it means is that a person must have reasoned to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or

inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. 'knowledge' and 'reason to believe' have to be deduced from various circumstances in the case. [See Joti Parshad v. State of Haryana (AIR 1993 SC 1167)]. As noticed the factual position leaves no manner of doubt that the accused appellants had not only the knowledge, but also had reason to believe that the document was a forged one before they used it.

36. Coming to the factum where the judgments of the civil court are binding on the criminal court, it was held in the case of K.G. Premshanker vs Inspector of Police & Anr. reported in (2002) vol. 8 SCC 87, that the decision of the Civil Court, shall be relevant, if conditions of any of Sections 40 to 43 of the Evidence Act, are satisfied, but it cannot be said, that the same would be conclusive, except as provided in Section 41. If the judgement, order or decree of Civil Court, is relevant, as provided, under Sections 40 and 42, then Court has to decide, as to what extent, it is binding, with regard to matters decided therein. Therefore, in each case, it has to be ascertained, whether judgement, decree or order, is relevant, and, if so, its effect.

37. In the instant case, the prosecution was required to prove beyond reasonable doubt, by leading cogent and convincing independent evidence, that the tenancy agreement executed between the parties were the result of fraud and forgery. On the other hand, the civil case was required to be decided on preponderance of evidence. Merely, on the basis of the Civil Court judgments, it could not be conclusively held in the criminal trial that the loan agreement were the result of fraud and forgery. Under these circumstances, the judgment of the Civil Court, cannot be said to be binding, on the Criminal Court, for the purpose of deciding the guilt of the accused, in a criminal case.

38. In the case of B.N. Kashyap Vs. Emperor, AIR 1945, Lahore 23, a Full Bench of the Lahore High Court considered the following question:-

"When there are concurrent proceedings covering the same ground before a criminal court and a civil court, the parties being substantially the same, would the judgment of the civil court, if obtained first, be admissible in evidence before the criminal court in proof or disproof of the fact on which the prosecution is based?"

In that context while deciding the said question the Court observed thus:

"In other words, the short point to decide is whether the finding on certain facts by a civil court is relevant before the criminal court when it is called upon to give a finding on the same facts or vice versa? The Evidence Act being exhaustive, the answer to this question depends upon the correct interpretation of the relevant provisions, contained in that Act regardless of the fact whether the conclusion at which one ultimately arrives is in accordance with what was characterized before us during the arguments at the Bar to a common-sense

view of things or not. In construing a statute like the Evidence Act, where any fact intended to be established has to be in accordance with the scheme of the Act, found to be relevant under a provision contained in the Act before it can be allowed to be proved, any argument based on plausibility can have no effect. I must therefore ignore any other consideration and confine myself strictly to the provisions of the Act. Thereafter, the Court referred to Sections 42 and 43 of the Evidence Act. After considering the said questions, the Court observed as under:

Under Section 40 of the Act, previous judgments are admissible in support of a plea of *res judicata* in civil cases or of *autre fois acquit* or *autre fois convict* in criminal cases. Judgments such as those the relevancy whereof we have been called upon to determine do not fall under this category. Nor can they fall under Section 41 of the Act which only makes a final judgment of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, conferring upon, taking away from or declaring any person to be entitled to any legal character or to be entitled to any specific thing absolutely, relevant when the existence of any such legal character or the title to any such thing is relevant. They do not also fall within the purview of Section 42 of the Act as they do not relate to matters of a public nature. Section 43 of the Act positively declares judgments other than those mentioned in Sections 40, 41 and 42 to be irrelevant unless their existence is a fact in issue or is relevant under some other provision of the Act. It is quite clear that the mere existence of a judgment in the present case is not relevant."

39. In the case of *Kharkan Vs. State of U.P.*, AIR 1965 (SC) 83, the Court observed thus:

"The earlier judgement can only be relevant if it fulfils the conditions laid down by the Indian Evidence Act in Sections 40 to 43. The earlier judgement is no doubt admissible to show the parties and the decision but it is not admissible for the purpose of relying upon the appreciation of evidence. What emerges from the aforesaid discussion is-

(1) the previous judgement which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of *res judicata* may apply; (3) in a criminal case, Section 300 CrPc makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgement of the civil court would be relevant if conditions of any of Section 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgement would be conclusive proof of what is stated therein."

40. In the case of *M.S. Sheriff Vs. State of Madras*, AIR 1954 (SC) 397, a Constitution Bench of the Apex Court, held as under:-

"That no hard-and-fast rule can be laid down and that possibility of conflicting

decision in Civil and Criminal Courts is not a relevant consideration. The law envisages "such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for limited purpose such as sentence or damages."

41. K.G. Premshanker's case (supra), did not lay down the invariable principle of law, that the judgment of a Civil Court, would be binding on a criminal court, in the subsequent criminal trial, relating to the same subject matter. No principle of law, was laid, in the aforesaid case, that the judgments of the Civil Courts, would be a conclusive proof of the facts involved in the criminal trial, relating to the same issue. In this case, the judgments of the Civil Courts do not fall within the purview of Section 41 of the Evidence Act. At the most, the judgments of the Civil Courts, in this case, could be said to be relevant, and not conclusive proof of the factum of forgery or fraud of the loan agreement. However, from the evidence of P.W.1, P.W.2 and P.W.3, it can be said that they were present when the tenancy agreement was executed on 07.11.2007 and they put their signatures in Ext.1(tenancy agreement) which consists of 8 pages. The accused persons though stated that they put their signatures in loan agreement but somehow they admitted that the tenancy agreement was executed after execution of loan agreement in their statements under Section 313 Cr.P.C.

42. It is also to be noted that in the last page of tenancy agreement, the complainant put his signature as first party/landlord and both the accused persons put their signatures as second party/tenant and in witness column P.W.2 and P.W.3 put their signatures. P.W.2 and P.W.3 categorically stated that they put their signatures in tenancy agreement on 02.11.2007 and according to the accused persons, a deed of agreement was executed on 02.11.2007 between the parties and the witnesses put their signatures accordingly which was proved as Ext. C before the Magistrate. Ext. C consisted of '5' pages and in the last page i.e. page no.'5', the complainant put his signature as first party/landlord and the accused persons put their signature as second party/tenant. If it is a loan agreement, there is no question of putting first party and the second party to be called as landlord and tenant. It is true that all the parties should put their signatures in each and every page of the agreement but it is also not mandatory to put signature in each and every page and without taking the signature in each and every page, the document cannot be taken into consideration.

43. It is true that in an appeal against acquittal, the High Court may reappraise for itself the entire evidence and reach its own conclusion, but it is equally well settled that when the said conclusion is contrary to that of the trial court, the High Court has a further duty to satisfy itself that the grounds given by the trial court for acquittal are palpably wrong or manifestly erroneous.

44. I have already discussed the evidence of the witnesses which reveals that the complainant and the accused persons and the witnesses put their signatures in the tenancy agreement on 02.11.2007 regarding tenanted premises and subsequently, the tenancy agreement was converted to deed of agreement.

45. Considering the totality of the facts and circumstances on record discussed above, in the my opinion the learned trial court has not properly considered and appreciated the evidence before it and thus has come to a wrong and perverse conclusion. In the circumstances, this is a fit case wherein appeal from acquittal deserves to be allowed and the order of acquittal passed by the learned trial court dated 27.03.2017 is required to be set aside by holding respondent Nos. 2 and 3(original accused) are guilty in so far as the offence punishable under Section 468/471/34 IPC are concerned.

46. Regarding sentence, after considering the evidence on record, in my opinion, there is no point in sending respondent Nos. 2 and 3 in jail as the offences were committed in the year 2007 and almost 15 years have lapsed since then. At the same time, it also cannot be ignored that the offences are of serious nature and there is increasing tendency of corruption which will have to be put down with heavy hand and therefore, ends of justice would be made by imposing heavy fine upon the respondents, instead of sending them to jail.

47. In the result, the appeal is allowed. The impugned judgment and order passed by the learned JMFC, Kamrup(M) in C.R. Case No. 2866/2009 dated 27.03.2017, whereby the accused/respondent Nos. 2 and 3 as accused persons were acquitted of the offences punishable under Section 468/471/34 IPC stands set aside. The respondent Nos. 2 and 3 are convicted for the offence punishable under Section 468/471/34 IPC. The respondent Nos. 2 and 3 are sentenced for each of the two offences to suffer simple imprisonment till rising of the court and to pay a fine of Rs.50,000/- each on each of the offence, in default, to undergo simple imprisonment for one year each. The amount of fine shall be deposited within 6(six) weeks from today before the learned trial court. In case, the amount is not deposited in the trial court within the stipulated time, the trial court shall take appropriate step for execution of the order.

48. With the above observation, appeal is disposed of accordingly.

49. Send back the LCR.