

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-127-MA-2014 (O&M)

Date of decision: 24.04.2015

Smt. Ratni

.... Applicant/Appellant(s)

Versus

Hanuman Singh and ors.

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Narender Yadav, Advocate,
for the applicant/appellant.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 23.12.2010 passed by learned Judicial Magistrate Ist Class, Rewari whereby complaint filed by applicant under Sections 354/341/506/218/323/34 IPC has been dismissed and respondents have been acquitted of the charges framed against them.

Brief facts of the present case are that the present complaint

was filed by the complainant against the respondents for summoning them to face trial for the commission of offence punishable under Sections 354/341/506/218/323/34 IPC. It is alleged by the complainant that on 02.08.2001 at about 1.00 PM she was going for taking medicine from a doctor in village Nimot. When she reached near the well of Jai Narain of Village Jainabad she felt uneasiness and sat under a tree. In the meanwhile Hanuman, Suni, Bharthu and Sombir r/o Village Thatherabad who are known to the complainant on finding her alone caught hold of her with bad intention and torn out her blouse and pulled her saree. The accused persons assaulted her with intention to outrage her modesty. She raised noise which attracted Randhir s/o Jai Narain. On restraining the accused they gave beatings to Randhir Singh. Dharambir had also came there and thereafter, accused persons ran away. She made complaint to the respectable persons of the village in this matter but of no avail. Husband of the complainant was suffering from heart ailment and he was admitted in City Heart Clinic, Rewari from 07.08.2001 to 10.08.2001. She also moved an application before SHO Police Station, Khol upon which FIR No.158 dated 11.08.2001 under Section 354/34 IPC was registered against the accused and the investigation was done by Sh. Laxman Dass, DSP, Rewari but the local police officials were not taking action against the accused persons with an oblique motive. Police of police post, Dahina obtained her thumb impression on blank papers and raised a demand of Rs.2000/- and also misbehaved with her. Therefore,

the complaint was filed.

After considering the preliminary evidence adduced by the complainant the JMFC, Rewari summoned the accused to face trial for the commission of offence punishable under Section 323, 354, 506 of IPC vide order dated 22.08.2003. Accused put their appearance and later on released on bail, complainant was asked to adduce pre charge evidence.

The complainant, in order to prove her case, examined herself as PW1, Dharambir as PW 2, ASI Raj Pal as PW 3, Dayanand EHC as PW 4, Laxman Dass retired DSP as PW 5, Raj Pal ASI as PW 6, Dr. Joginder Tanwar as PW 7, Randhir Singh as PW 8 and close the evidence.

After considering the pre-charge evidence accused were charge sheeted for the commission of offence punishable under Section 323/354/506 read with Section 34 of IPC vide order dated 11.01.2010 to which accused pleaded not guilty and claimed trial.

Statements of accused as envisaged under Section 313 Cr.P.C were recorded. All incriminating evidence was put to them. They denied all the allegations of the prosecution and claimed their false implication. However, accused examined Ran Singh as DW 1 and retired Inspector Vidyanand as DW 2. Thereafter defence evidence was closed by accused.

The trial Court, after appreciating the evidence, acquitted the

respondents of the charges framed against them, vide impugned judgment dated 23.12.2010 . Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“16 In the present case it is alleged by the prosecution that the accused assaulted with intention to out raise her modesty. They torn her blouse and pushed her saree and they also gave beatings to one Randhir Singh who came to rescue her on hearing her noise. Thereafter, Dharambir son of complainant had also came there and accused persons run away thereafter. On the same allegations FIR No.158 dated 11.08.2001 was registered in police station, Khol. After inquiry the case was cancelled by the police. It is alleged by the complainant that the abovesaid case was cancelled by the police without joining her and her witnesses in the enquiry but no such suggestion was given to DW 2 Vidyanand who found the allegation against the accused false in his enquiry and only suggestion was given by the complainant cross examination that it is wrong that he made false report Ex. DA to Ex. DC with the collusion of accused due to extraneous consideration. Perusal of the police zimni dated 27.08.2001 in which on verification alleged allegation was found false in investigation reveals that in respect of the alleged occurrence Randhir

Singh submitted an application in Police Post, Dahina on 03.08.2001 stated therein that on 02.08.2001 he was sitting on his tubewell then suddenly Sunil s/o Mahesh came there and gave injury on his left cheek by sharp edged weapon. Thereafter Sombir s/o Bahadur turned his hand and forcibly brought him in Dhani and stated that he had not done good work with his aunt Ratni. Thereafter, he was rescued by son of Ratni and one Dharambir s/o Om Parkash.

17. Other application on 11.08.2001 submitted by Ratni in respect of same incident upon which a case was registered. Prior to this application on 02.08.2001, Ratni also moved an application in which she had not made any allegation against the accused regarding out raise of her modesty. Randhir who moved an application on 03.08.2001 not stated that Ratni was present there. He only stated that he was sitting on his tubewell then the accused caused injury whereas Ratni made allegation in his application dated 11.08.2001 that the accused with their bad intention torn her blouse and pushed her saree and thereby out raise her modesty. On hearing her noise Randhir reached there then they started beating Randhir. On the application dated 02.08.2001 submitted by Ratni before police allegation of the out raise of her modesty was not mentioned. Keeping in view the discrepancies in three applications filed by the complainant and Randhir Singh the allegations levelled against the accused were found false. Only suggestion put to the DW2 that he submitted his enquiry report with the collusion of accused only. The facts on which enquiry officer reached to the conclusion of concellation of case

facts has not been put to the witness in his cross examination i.e Randhir Singh not made any application before Police on 03.08.2001 and Ratni not made application on 02.08.2001 and the detailed reason in police zimni No.13 dated 27.08.2001 was wrongly mentioned by the DSP. Thus the basis of cancellation of report not challenged by the complainant by putting the same to DW2.

18. Moreover, the prosecution case created a doubt on the truthfulness of the prosecution version by the statement of complainant and her witnesses. Complainant Ratni Devi stated in her cross examination that Randhir is previously known to her. PW 2 Dharambir son of Ratni stated in his cross examination that Randhir is not known to him and Randhir when appeared in the witness box as PW 8 stated that Ratni is not previously known to him. He has no knowledge whether any complaint filed by Ratni or not. He never visited in police station with Ratni. He never gave copy of his MLR to Ratni. DW 2 Vidyanand stated that on 27.12.2001 Ratni Devi came to his office along with Randhir and Sure Bhan. In preliminary evidence complainant placed on file copy of MLR of Randhir Expel. The abovesaid evidence shows that Randhir Singh is previously known to complainant whereas Randhir Singh and Dharambir son of complainant denied this fact when they appeared in the witness box. It is also proved that Radnhir Singh appeared in the witness box as PW 2 in preliminary evidence of the complainant and he has knowledge regarding the complaint filed by the complainant Ratni whereas he denied having knowledge

of the complaint filed by the complainant in his pre charge evidence. It is also approved that MLR of the Randhir Singh duly exhibited by the complainant in her preliminary evidence as Expel whereas Randhir Singh stated that he never gave copy of his MLR to Ratni Devi. It is also proved by DW 2 Vidyanand that Randhir Singh came to his office with Ratni whereas Randhir denied this fact and stated he never went to the police with Ratni. The abovesaid statement of complainant and eye witnesses of the occurrence created a doubt on the truthfulness of the prosecution version.

19. Had such incident taken place with the complainant, she would have certainly mentioned in her complaint submitted in police station on 02.08.2001 and Randhir Singh who gave his statement before police on 03.08.2001 also mentioned the above said facts regarding the incident in his application dated 03.08.2001 regarding beatings to him by the accused and the allegation of out raise of modesty of Smt. Ratni Devi by the accused. Therefore, the statement of prosecutrix and alleged eye witnesses could not be taken as gospel truth to come to the conclusion that such incident took place and accused are entitled for acquittal on this score.

20. Taking into consideration the abovessaid facts and circumstances of the present case, I am of the considered view that prosecution has failed to prove its case against the above named accused beyond shadow of reasonable doubt. Therefore, the above named accused are acquitted of the charge framed against them. Bail bonds and surety bonds of the accused stand discharged. File

after due compliance be consigned to record room.”

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. *The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State**; [AIR 1954 SC 1], **Madan Mohan Singh v. State of U.P.**; [AIR 1954 SC 637], **Atley v. State of U.P.**; [AIR 1955 SC 807], **Aher Raja Khima v. State of Saurashtra**; [AIR 1956 SC 217], **Balbir Singh v. State of Punjab**; [AIR 1957 SC 216], **M.G. Agarwal v. State of Maharashtra**; [AIR 1963 SC 200], **Noor Khan v. State of Rajasthan**; [AIR 1964 SC 286], **Khedu Mohton v. State of Bihar**; [(1970) 2 SCC 450], **Shivaji Sahabrao Bobade v. State of Maharashtra**; [(1973) 2 SCC 793], **Lekha Yadav v. State of Bihar**; [(1973) 2 SCC 424], **Khem Karan v. State of U.P.**; [(1974) 4 SCC 603], **Bishan Singh v. State of Punjab**; [(1974) 3 SCC 288], **Umedbhai Jadavbhai v. State of Gujarat**; [(1978) 1 SCC 228], **K. Gopal Reddy v. State of A.P.** ; [(1979) 1 SCC 355], **Tota Singh v. State of Punjab** [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], **Ram Kumar v. State of Haryana**; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], **Madan Lal v. State of J&K**; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], **Sambasivan v. State of Kerala**; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], **Bhagwan Singh v. State of M.P.**; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], **Harijana Thirupala v. Public Prosecutor, High Court of A.P.**; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], **C. Antony v. K. G. Raghavan Nair**; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], **State of Karnataka v. K. Gopalakrishna**; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], **State of Goa v. Sanjay Thakran**; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and **Chandrappa v. State of Karnataka**;*

[2007(2) R.C.R.(Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference

by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge. There is also a delay of 1065 days in filing the present appeal. No cogent reasons have been mentioned in the application for condoning the delay.

As such, application for leave to appeal is dismissed on merit as well on account of delay.

24.04.2015
prince

(PARAMJEET SINGH)
JUDGE