

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.A-550-MA of 2014
Date of Decision : 5.5.2015

Kiranjit Kaur

.....Appellant

Vs.

Sukhvir Singh and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Inderjit Sharma, Advocate for the applicant-appellant.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Applicant, by way of instant application under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks leave of this court for filing the appeal against the impugned judgement of acquittal dated 15.1.2013, passed by the learned Judicial Magistrate, Ist Class, Phul, whereby complaint of the applicant under Sections 420, 498-A, 406, 34 of the Indian Penal Code ('IPC' for short), was dismissed and the accused-respondents were acquitted of the charges framed against them.

Briefly put, facts of the case, as recorded by the learned trial court in para 2 of the impugned judgement, are that as per the complainant, her marriage was solemnised with accused Sukhvir Singh, as per the village rites and customs by way of Anand Karaj. Accused No.2 is her father-in-law and accused no.3 is her mother-in-law. The complainant has further alleged that her

father had spent about Rs.7-8 lacs on her marriage out of which Rs. 3 lacs were given as Shagan to the accused No.1 Sukhvir Singh at the time of marriage. The complainant has further alleged that the accused had conveyed to them before the marriage that accused Sukhvir Singh had been employed in Bahreen and earning handsomely. On believing the version of the accused, her marriage was solemnised with Sukhvir Singh. It has further been alleged by the complainant that after her marriage she came to know that the accused persons had not disclosed their caste correctly to them and further her mother-in-law and sister-in-law used to taunt and maltreat her regarding her colour and the dowry articles brought by her. The complainant has further alleged that the accused no.1 Sukhvir Singh was a drug addict and was compelling her to bring Rs.3 lacs from her parents, which were delivered to all the accused persons. However, they continued to maltreat her and further when the complainant gave birth to one daughter, the accused persons again harassed her and locked her in a room after giving her beatings. Further, the complainant alleged that the accused persons again made a demand of Rs.2 lacs before her father and that when her father expressed his inability, the accused persons threw her out of the matrimonial house.

Complainant-applicant led her preliminary evidence by examining herself as CW-1, her father Gurwant Singh as CW-2 and also placed on record list of dowry articles as Ex.CA. The preliminary evidence led by the complainant having been found sufficient for summoning, accused nos.1 to 3 were summoned, whereas the complaint was dismissed qua the remaining accused. On notice having been received, accused appeared before the learned trial court and cross-examined the complainant witnesses. Thereafter, charges against the accused persons were framed for the offences under Sections 498-A,

420 and 34 IPC. However, accused pleaded not guilty and claimed trial.

With a view to substantiate her allegations levelled against the accused in her complaint, after charge evidence was produced by the complainant-applicant Kiranjit Kaur. She appeared as CW-1, her father Gurwant Singh appeared as CW-2, Satbir Singh Ex. M.C. appeared as CW-3, besides producing the list of dowry articles as Ex.P1. After closing the complainant evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating evidence brought on record by the complainant was put to the accused. The accused denied the allegations and pleaded innocence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the evidence brought on record by the complainant was not sufficient to record conviction of the accused persons. Giving benefit of doubt to the accused, they were acquitted of the charges framed against them by the judgement of acquittal dated 15.1.2013 passed by the learned J.M.I.C., Phul. Hence, the instant application under Section 378(4) Cr.P.C., seeking leave of this court for filing an appeal against the impugned judgement of acquittal.

Learned counsel for the applicant submits that the learned trial court misdirected itself, while not appreciating the evidence brought on the record in the correct perspective. He further submits that the evidence brought on the record by the applicant-complainant was sufficient to record the conviction of the accused persons-respondents. He concluded by submitting that since the learned trial court failed to record sufficient reasons for acquittal, the impugned judgement has resulted in miscarriage of justice. He prays for allowing the present application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar fact situation of the present case noticed herein above, instant one has not been found to be a fit case, warranting interference at the hands of this court, for the following more than one reasons.

A bare perusal of the impugned judgement of acquittal would show that the learned trial court has appreciated the true facts of the case as well as the evidence brought on the record in the correct perspective. The evidence brought on the record by the complainant was rightly not found sufficient to record conviction. It has also been found that the learned trial court has considered each and every relevant aspect of the matter before arriving at judicious conclusion. Having said that, this court feels no hesitation to conclude that the learned trial court committed no error of law, while passing the impugned judgement of acquittal and the same deserves to be upheld.

Before acquitting the accused persons of the charges framed against them, the learned trial court recorded its cogent and well convincing findings in para 10 of the impugned judgement, which deserve to be noticed here and the same read as under :-

“ After carefully perusing the oral and documentary evidence on record, I have observed that the complainant Kiranjit Kaur has raised allegations against the accused persons that they have given beatings to her and further used to taunt her regarding her ugliness. However, apart from the testimony of the complainant, there is no other testimony to support her version since her father CW2 Gurwant Singh is

neither an eye witness nor he has himself fully supported the allegations raised by the complainant. Also, even in her own testimony, the complainant has not raised specific allegations revealing details as to when and how cruelty has been meted out to her person. Further, the testimony of CW3 only goes to show that he had made some effort to reconcile the matter with complainant and the accused no.1, but it does not go to support the allegations of cruelty and cheating raised by the complainant against the accused persons. Furthermore the fact of cheating remains fully unproved since there is nothing substantial on the record in the form of oral and documentary evidence, so as to support the vague allegations raised by the complainant without any specific detail.”

It is the settled principle of law that wherever two views are possible, the view which goes in favour of acquittal is to be adopted by the courts. Once the view taken by the learned trial court, has been found, as a matter of fact, to be one of the possible views and the findings recorded have not been found to be perverse, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgement does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court Court in **Arulvelu & anr. vs.**

State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.)

638. The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been reiterated by the Hon'ble Supreme Court in its numerous later judgments including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015)**. The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of

acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court. Xxx xxx xxx xxx xxx

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on Page 15 15 the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of

the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16 16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court’s revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, “that in absence of any manifest illegality, perversity and miscarriage

of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.” This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that since the impugned judgement has not been found to be suffering from any illegality, the same deserves to be upheld.

During the course of hearing, learned counsel for the applicant failed to point out any jurisdictional error or patent illegality apparent on the record of the case in the impugned judgement of acquittal, so as to convince this court to take a different view than the one taken by the learned trial court, therefore, no interference is warranted at the hands of this court. Thus, the impugned judgement deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, instant application stands dismissed, however, with no order as to costs.

5.5.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE