

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1099 OF 2016

State of Chhattisgarh, through the Incharge, Police Station Lormi, District Mungeli (C.G.)

... Petitioner

Versus

Bhim Bhaskar, S/o Siwan Ram, aged about 21 years, R/o Dharampura Outpost Chilphi, Police Station Lormi, District Mungeli (C.G.)

... Respondent

For Petitioner-State : Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/11/2016

1. Heard on I.A. No.1 of 2016, seeking for condonation of delay in filing the present petition which is barred by limitation of 42 days.
2. Since sufficient cause has been explained in the I.A. No.1 for the delay occurred in the filing of the present petition, the same is allowed and the delay of 42 days in filing the petition is condoned.
3. Heard on admission.
4. The present petition under Section 482 of CrPC has been preferred by the Petitioner-State seeking for leave to appeal against the judgment of acquittal dated 29.4.2016 passed by the Special Additional Sessions Judge, Mungeli in Special Sessions Trial No. 18 of 2015.
5. Case of prosecution in brief is that a written report was lodged by the victim (PW-1) before Police Station Lormi, District Mungeli on 26.6.2015 alleging that on 23.6.2015 at around 10 am in the morning while she was preparing food at her residence the respondent-accused entered into her house from behind and caught hold of her waist and when she protested and objected to the same he tried to outrage her modesty and also choked

her mouth and immediately thereafter the father of the victim reached the house and on seeing him the respondent-accused is said to have fled away from the place of incident.

6. After investigation charge-sheet was filed and the matter was put to trial before the Special Additional Sessions Judge, Mungeli where in the course of evidence the prosecution led as many as 7 witness and no witnesses were examined on behalf of the defence. The Trial Court finally after the conclusion of the trial, vide impugned judgment found that the prosecution has not been able to establish its case beyond reasonable doubt and acquitted the respondent-accused of the charge levelled against him for the offence punishable under Sections 452 & 354 of IPC and Sections 7 & 8 of the Protection of Children from Sexual Offences Act, 2012.

7. Assailing the impugned judgment, Counsel for the Petitioner-State submits that the Court below has not properly appreciated the statement of the victim (PW-1) and her father, Harish (PW-2). According to the State Counsel, the two witnesses (PW-1 and PW-2) have both narrated before the Court the incident as has been stated in the FIR. Thus, the case of the prosecution stood proved and established and the Court below should not have acquitted the respondent-accused as the charges stood proved from the statement of the victim herself. He further submits that the Court below also has not properly appreciated the explanation that has been provided by the victim and her father for the delayed FIR lodged in respect of the incident, and thus prayed for the setting aside of the impugned.

8. Having considered the contentions put forth by the State Counsel and on perusal of the impugned judgment and the documents enclosed along with the petition, what clearly reflects is that at the first instance itself

the Court below found the story of the prosecution to be doubtful on account of the fact that there is a delay of more than two days in lodging of the FIR. According to the Court below there was no proper explanation given by the victim for not promptly lodging the FIR against the respondent-accused when her case itself is that the accused had fled away from the scene committing the offence on seeing her father (PW-2). If the father of the victim would have reached the spot immediately, there was no reason why the two would not have lodged a complaint immediately.

9. Another aspect which the Court below has taken into consideration is the fact that the statement of the victim that she has made before the Court below during the evidence, is much more exaggerated version than the complaint that she has initially lodged and also the statement that she has given to the police authorities during the course of the investigation. In addition, another fact which cannot be brushed aside is the fact that the allegation in the complaint at the first instance was that the respondent-accused after entering the house of the victim after having caught hold of her from behind in the course of outraging her modesty had torn the dress that she was wearing, but the investigating agency has not collected such dress which is said to have been torn by the respondent-accused. All these materials created a heavy doubt in the mind of the Court below.

10. Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a *prima facie* strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference. The law in this regard is by now well settled by a series of judgment of the Supreme Court

wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations. That while re-appreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind. 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 is 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. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The High Court is also required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal. It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court :

- 2007 (4) SCC 415 – Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542– State of Punjab v. Sukhchain Singh
- 2012 (6) SCC 589 – Rohtash v. State of Haryana.

11. Thus, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error of law in reaching to the said conclusion of acquitting the respondent-accused of the charges leveled against him.

12. The petition is accordingly dismissed in *limine*. Consequently, the prayer for leave to appeal also stands rejected. No order as to costs.

Sd/-

(P. Sam Koshy)
Judge

/sharad/