

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-624-MA-2013 (O&M)

Date of decision : 29.08.2016

Raj Rani

.....Petitioner(s)

Versus

Mohinder Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. Ranjit Saini, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CRM-37417-2013

There is a delay of 551 days in filing the instant appeal. The explanation given by the appellant is that she had filed an appeal before the Sessions Court but in view of the judgment rendered in *M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & Ors. 2013(2) CCC 623*, the appeal was held to be not maintainable and was dismissed.

The application is allowed as prayed for and delay of 551 days in filing the appeal is condoned.

CRM-A-624-MA-2013

Lower Court record had been requisitioned.

The appellant was married to Mohinder Singh in 1998. The allegations were that she was left at her parent's house on the occasion of

Raksha Bandhan on 04.08.2001 and at that point demand of Rs.1 lac was made from her parents. A Panchayat was convened and the demand was again repeated. The father of the appellant paid Rs.17,000/- on 30.01.2002. Threats were given to the complainant and to her parents. The parents took search warrants for recovery of the complainant and her children and they were produced in the Court of SDM on an application filed under Section 97 Cr.P.C. . The complainant's daughter is now living with her. The son is with the husband. The allegations were that the accused did not return the dowry articles when demanded and she was harassed for bringing less dowry. The complainant had also disclosed in her complaint that she had given a complaint to the police and a FIR was registered but a cancellation report was submitted and she had filed a protest petition.

Along with the cancellation report, the police had collected the record from PGI, Rohtak where Raj Rani was taken for treatment in April, 2002. The record is attached with the lower Court record. The complainant was admitted to the psychiatric ward. The IQ was noted as 48. Some tests were advised and were to be carried out on 04.05.2002. The date of admission in the hospital is 23.04.2002. The discharge was taken on 29.4.2002. It appears that tests were not undertaken. The complainant had alleged that she was admitted in the hospital to declare her as of unsound mind. The husband filed a divorce petition which was dismissed.

The complaint was filed against the husband, the in laws and the mediator. The accused were summoned. Pre-charge evidence was recorded and charge was framed only under Section 498-A & 506 IPC. The trial Court noted that the in-laws were living separately and only the couple was living together. It also noted that there was no demand and the couple

had lived together for 4 – 5 years in the matrimonial home. It observed that the allegations were vague and no date, month or year on which the demand was made was given. It also noted that in the first complaint, the allegations were only against the husband and there were contradictions appearing in the statement of the witnesses. No Panchayat Member was examined. Giving the benefit of doubt, the accused were acquitted.

Before coming into the merits of the appeal, it is necessary to notice the guidelines for the Appellate Courts in dealing with appeals against acquittal. In *Ghurey Lal Vs. State of U.P. Crl. Appeal* No.155 of 2006, decided on 30.07.2008, reference was made to *Sheo Swarup Vs. King Emperor* AIR 1934 Privy Council 227, where the ambit and scope of the powers of the appellate court in dealing with an appeal against acquittal has been aptly elucidated by the Privy Council. Lord Russell writing the judgment has observed as under: (at p. 230):

“..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 law succinctly crystallized in this case has been consistently followed by this Court. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. The appellate court undoubtedly has wide powers of re-appreciating and re-evaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally illfounded or wholly misconceived, based on erroneous analysis of evidence and non-

existent material, demonstrably unsustainable or perverse.

The Apex Court in the case of *Surajpal Singh & Others v. State*, AIR 1952 SC 52, had spelt out the powers of the High Court. The Court has also cautioned the Appellate Courts to follow well established norms while dealing with appeals from acquittal by the trial court. The Court observed as under:

“It is well established that in an appeal under S. 417 Criminal P.C., 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 was 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.”

The Apex Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

In *Tulsiram Kanu v. The State*, AIR 1954 SC 1, the Supreme Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. It observed that it

required good and sufficiently cogent reasons to overcome such reasonable

doubt before the appellate court came to a different conclusion.

In **Atley v. State of U.P.** AIR 1955 SC 807 (at pp. 809-10 para 5), the Court said:

“It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.”

In ***Khem Karan & Others v. State of U.P. & Another*** AIR 1974 SC 1567, the Court observed:

“Neither mere possibilities nor remote possibilities 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.”

In ***Bishan Singh & Others v. The State of Punjab*** (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

“22. It is well settled that the High Court in appeal

under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should 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; & (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.”

In *Ram Kumar v. State of Haryana* 1995 Supp. (1) SCC 248, the Apex Court had another occasion to deal with a case where the court dealt with the powers of the High Court in appeal from acquittal. It was observed:

“.. the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (*sic* 386) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court

with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. We shall, therefore, examine the evidence and the material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are vitiated by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court acting reasonably and judiciously which may in other words be characterized as perverse.”

From the above, it is clear that the appellate Court has power to review the evidence upon which the order of acquittal is founded but it has to bear in mind that the trial Court had the benefit of seeing the witnesses and the presumption of innocence is not weakened by the order of acquittal and if two reasonable conclusions can be reached, the appellate Court should not disturb the finding of the trial Court nor it can substitute its views in place of the trial Court. The order can be set aside when the approach of the trial Court is found to be clearly erroneous on consideration of the evidence while recording conclusions and there must be sufficient and compelling reasons for the appellate Court to alter an order of acquittal

I have carefully gone through the record and the evidence led before the Court below. The complainant had examined herself, her father and Shiv Charan, a cousin. Admittedly there was no demand of dowry at the time of marriage. The father of the complainant is a Pump Operator and his salary at the time of marriage was Rs.5000 – 6000/- per month. No complaint was made to the police in the first 4 – 5 years of marriage. Mangal Singh had admitted that his daughter was admitted in the hospital and he had never gone to meet her there. It has also come on record that the couple was residing separately. No Panchayat Member was examined to support the statement of the complainant. According to the complainant when the husband had gone to leave the complainant at her parent's house on the occasion of Raksha Bandhan, a demand of Rs.1 lac for a tractor was made. The trial Court had dealt with all the issues and had found inherent contradictions in the statement of the witnesses and had rightly rejected them. I find that the trial Court had given reasonable and plausible reasons for rejecting the evidence. I find no manifest illegality in the findings. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

29.08.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No