

**214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-1472-MA of 2016 (O&M)

Date of Decision: 11.12.2017.

Kamlesh Rani

... Applicant-Appellant

Versus

State of Punjab and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. B.S. Randhawa, Advocate,
for the applicant-appellant.

JITENDRA CHAUHAN.J.

This is an application under Section 378(4) of Code of Criminal Procedure seeking special leave to appeal against the judgment dated 03.02.2016, passed by Additional Sessions Judge, Rupnagar vide which respondent No2 was acquitted under Sections 366-A and 354-A IPC. However, he was convicted only under Section 363 IPC and sentenced to undergo RI for one year and to pay fine of Rs.2500/- with default stipulation in FIR No.27 dated 10.03.2015 registered under Sections 323, 363, 366-A and 354-B IPC at Police Station Nangal.

Heard.

It is to be noticed that the prosecutrix was recovered from the custody of the accused. PW-5 Shalu Devi and PW-6 Kamlesh Rani have categorically proved that accused came to their house and took away the prosecutrix. As per the medical evidence on record, no sexual intercourse had taken place. PW-5 Shalu has not alleged that respondent No.2 had any intention to assault or outrage her modesty in

order to have illegal intercourse with her. The prosecutrix was not examined by the prosecution as a witness for the reasons best known to it. Non-examination of the most natural witness i.e. the prosecutrix/victim, aged more than 17 years causes a serious dent in the prosecution version qua charges u/S 354-A and 366-A IPC. Her version was necessary to unfold the prosecution story so as to bring out the truth to the surface. The trial Court has rightly acquitted the accused of the charges under Sections 366-A and 354-A IPC. There is neither any flaw in the judgment nor misreading of the evidence.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In *State of Rajasthan vs Shera Ram @ Vishnu Dutta*, (2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the

evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon mis-appreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

Along with the application/appeal, an application

(CRM No.25848 of 2016) has been moved for condonation of delay of 82 days in filing the application/appeal. No ground is made out to condone the unexplained delay. Consequently, both the application for condonation of delay as well as special leave to appeal are dismissed.

11.12.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No