

CRM-A-1555-MA of 2016

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1555-MA of 2016(O&M)

Date of Decision:30.1.2017

Shakuntala

---Applicant

vs.

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas B.Pakhidey, Advocate
and Mr. B.D.Rana, Advocate
for the applicant

Rekha Mittal, J.

Prayer in this application filed under Section 378 (3) read with Section 482 of the Code of Criminal Procedure (in short “Cr.P.C.”) is for grant of leave to appeal against the judgment dated 17.5.016 passed by the trial court whereby respondent No. 2/accused has been acquitted of the offence charged against him.

The facts relevant for disposal of the present application are that the applicant/complainant lodged FIR No. 87 dated 8.11.2011 on the allegations that the accused committed rape on false assurance to perform marriage. It was alleged that she moved an application on 19.2.2011 to Superintendent of Police, Rewari and the same was sent to Station House

Officer, Jatusaha. The accused admitted his guilt, prayed for pardon and assured to meet all her needs, give her right of wife and live together in Rewari. 4-5 days thereafter, the accused came to her house and threatened that she cannot harm him. On 14.5.2011, accused again came to her, made promise to live with her and committed rape. In the next morning, he threatened that no action can be taken against him as he has purchased all the police officials. She made a complaint to Deputy Commissioner, Rewari which was sent to Superintendent of Police, Rewari, enquiry was conducted, statements of the parties were recorded and eventually case was registered against the accused for offence under Sections 376/420 of the Indian Penal Code (in short "IPC"). It has further been alleged that on 16.7.2009, the accused for the purpose of marriage took her from Kosli but abused her in the Court. Om Parkash assured that he would get married in Delhi, took her to Arya Samaj Mandir, Yamuna Bazar, Delhi and their photographs were also clicked. When they were going back after marriage, she asked for the marriage certificate and photographs upon which the accused abused her and told that he has done this drama to save himself from the case of rape.

On completion of investigation, challan was presented against accused Om Parkash. On finding a prima facie case, charge for committing offence punishable under Section 366 (appears to be wrongly typed in place of 376 IPC) and Section 420 of the Indian Penal Code (in short "IPC") was framed to which the accused pleaded not guilty and claimed trial.

Prosecution examined the prosecutrix PW1, Hoshiyar Singh Sarpanch PW2, Purshotam Shastri PW3, Constable Ajay Kumar PW4, Jagmal Singh, retired SI PW5 and Constable Ajit Singh PW6.

On evidence of the prosecution being closed, statement of the accused under Section 313 Cr.P.C. was recorded wherein he denied incriminating circumstances put to him and pleaded his innocence and false implication. It was pleaded that the complainant was fully aware about his marital status. She was desperate, had an eye on his property, filed civil suit wherein she had shown herself to be his wife and challenged the release deed of land. However, he did not examine any witness in defence.

Counsel for the applicant has submitted that the trial court framed charge under Section 366 IPC in place of under Section 376 IPC, therefore, judgment passed by the trial court cannot be allowed to sustain and liable to be set aside and the matter may be remitted to the trial court for decision afresh after framing proper charge. It is further argued that the prosecutrix in her testimony has reiterated the minute details as to how the respondent/accused committed offence under Section 420 IPC and exploited her body on a false promise to marry.

I have heard counsel for the applicant, perused the paper book particularly the judgment passed by the Additional Sessions Judge, Rewari (Annexure A-1).

The learned trial court in para 7(A) has dealt in detail testimony of the prosecutrix in examination in chief as well as cross examination. On pages 6-8 of the judgment, a relevant extract from her cross examination has been dealt with. The prosecutrix admitted in her cross examination that she and accused had been in living relationship as husband and wife for 7-8 years as per their sweet will and family members of accused had nothing to do with their relationship. She is having four

children namely Raj Kumar, aged 28 years. Sonu 26 years, Balram 23-24 years and Khushi Ram 14-15 years, who because of her relationship with the accused were angry and left her. She is still ready to live with the accused. She accepted that in the civil suit dated 7.10.2011 filed by her, certified copy of which is Ex. DA/1, she did not level any allegations regarding rape, kidnapping or cheating against the accused. She further deposed that her marriage with the accused was performed at Arya Samaj Mandir at her sweet will and at that time, accused's wife, son, daughter and son in law were also present. She further deposed that she has sexual relationship with the accused for the past 7-8 years prior to lodging of the FIR and did not make any complaint for the past 5-7 years of the relationship as the accused was assuring her regarding marriage.

Before advertng to the submissions made by counsel for the applicant, in the light of facts elicited in cross examination of the prosecutrix and taken note hereinbefore, it is appropriate to recapitulate the legal position with regard to scope of intervention in a judgment of acquittal. The entire case law on the subject was discussed by Hon'ble the Apex Court in *Chandrappa vs. State of Karnatka, (2007) 4 SCC 415*, held in para 35 as follows:-

“(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) 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.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

The principles laid down in **Chandrappa’s case (supra)** were reformulated in **Ganpat vs. State of Haryana, (2010)12 SCC 450** in the following terms:-

“(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is

founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

A glance at the principles culled out by Hon'ble the Apex Court makes it evident that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. Similarly, if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the findings of acquittal recorded by the trial court.

Looked at from this perspective, the question that calls for determination is whether the judgment passed by the trial court exonerating the respondent warrants interference by this Court.

No doubt, the Court has not framed charge under Section 376

IPC but the Court in its entire judgment has dealt with the issue of fraud and rape in the context of allegations brought forth by the prosecutrix. As the prosecutrix was having four grown up sons, allowed physical relationship for the past 6-7 years without expressing any grievance qua failure of the accused to perform marriage with her and further allowing the accused to have physical relationship despite knowing that the accused is already married having a family, it is difficult to accept plea of the applicant that it is a fit case where leave to appeal is required to be allowed. Hon'ble the Supreme Court of India in ***Tilak Raj vs. State of Himachal Pradesh 2016(1) RCR(Civil) 802*** dealt with a similar situation raising allegations of rape and cheating on the premise that the accused committed sexual intercourse with the prosecutrix on false promise to marry her. In the said case, accused was aged 30 years whereas the prosecutrix was 40 years old and they were in relation for two years prior to the incident. When the facts and circumstances of the present case are examined in the light of observations recorded in ***Tilak Raj's case (supra)***, I do not find any merit in contention of the applicant for allowing leave to appeal.

For the aforesaid reasons, finding no merit, the application for leave to appeal is dismissed. As a natural corollary, appeal filed by the appellant is ordered to be dismissed.

(Rekha Mittal)
Judge

30.1.2017
paramjit

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