

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

CRM-A-650-MA of 2016 (O&M)

Date of Decision: 04.12.2017.

Saroj

... Applicant-Appellant

Versus

Jagdish and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Satbir Gill, Advocate,
for the applicant-appellant.

JITENDRA CHAUHAN.J.(ORAL)

CRM No. 11022 of 2016

For the reasons contained in the application, delay of 12 days in filing the application/appeal is condoned and the application is allowed.

CRM-A-650-MA of 2016

This is application under Section 378(4) of Code of Criminal Procedure seeking special leave to appeal against the judgment of acquittal dated 05.12.2015, passed by Judicial Magistrate First Class, Fatehabad vide which the respondents were acquitted in complaint case filed under Sections 323, 354, 427, 452 and 506 read with Section 34 IPC.

The case of the complainant is that on 03.06.2013, at about 5.30 a.m., accused Sukhwinder, Boda, Suresh and Anil took away the shed of her house. When her husband raised objection,

accused Sukhwinder, Suresh and Anil Kumar physically assaulted her and touched her breast. With an evil intention, they inflicted injury on her head, stomach and arm. They threatened that they would kill the person who obstructed their way. They also threatened that the complainant had to be abducted as she was a good object. It has been further alleged by the complainant that earlier on 01.06.2013 at about 6.00 a.m., accused Jagdish and Daya Ram entered into her house and physically assaulted her with an evil intention. During that incident, her bangles were got broken. The complainant was got admitted in Civil Hospital, Fatehabad where she was medico-legally examined. When the police did not take any action, she was constrained to file a complaint in the Court.

It is contended that the fact that the respondents trespassed into the house of the complainant, took away her shed and on her raising objection, outraged her modesty is fully proved from the evidence on record.

Heard.

A perusal of the impugned judgment reveals that the version of the complainant was found to be false because the factum of tearing the clothes of the complainant was not mentioned in the complaint though the same was alleged in the deposition. It has been further observed that both the husband and wife have attributed the indecent acts to different accused persons. As per the complainant, accused Sukhwinder, Boda, Suresh and Anil misbehaved with her

whereas, as per her husband Amar Singh, CW-3, accused Jagdish and Daya Ram tore her clothes. Not only that, the accused had proved on record the application moved by Amar Singh on 04.06.2013 before I.G. Hisar Range, Hisar Ex.D-6 regarding the incident of 03.06.2013 however, in the said application, the allegations regarding outraging the modesty of the complainant were missing. Similarly, the alleged incident of 01.06.2013 also did not find reference in the said application. Further, as per the report submitted by Superintendent of Police, Fatehabad (Ex.D-5), the shed was not found to be removed by Sukhwinder, Boda, Anil and Suresh on 03.06.2013. The report was supported by statements of independent persons Ex.D-8 to Ex.D-13.

As per the medical report, the nature of injuries suffered by the complainant i.e pain in left tempo-parietal region and lower abdomen and abrasion of 3 cm x 0.1 cm shows that injuries were not inflicted by a group of persons as alleged by the complainant. A civil litigation regarding public street is also pending between the parties. The possibility of exerting pressure by the complainant upon the accused to come to her terms cannot be ruled out. Thus, this Court finds itself in agreement with the view taken by the trial Court. There is no flaw in the impugned judgment. There is no illegality or irregularity calling for interference.

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.”

Consequently, the special leave to appeal is declined.

04.12.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

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