

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-A No. 1694-MA of 2018 (O&M)
Date of Decision: 06.11.2019**

Gurpreet Singh

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI**

Present: Mr. Manish Kumar Singla, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

1. Judgment of acquittal dated 20.11.2017 passed by learned Additional Sessions Judge, Fatehgarh Sahib, stands challenged by the applicant-appellant by filing the present application under Section 378 (4) of the Code of Criminal Procedure, by seeking grant of Special leave to appeal, whereby the **accused / respondent No. 2 (*Vijay Kumar*)** stood acquitted of the charges under *Sections 366 and 376 of Indian Penal Code*.

2. **Following facts emerge from the record.**

According to the case of prosecution, the *accused/respondent No.2 (*Vijay Kumar son of Mangli*)* was engaged as domestic helper by *Charanji Lal*, the father of the ***complainant (husband of prosecutrix-PW2)*** for rearing his flock of goat. However, about three years back, complainant sold away his entire flock of goat and also dispensed with the services of *Vijay Kumar* as domestic helper, but *Vijay Kumar* continued to visit off and on in the house of the complainant. On 27.08.2016, the complainant found his wife missing. Complainant suspected that it was *accused/respondent*

(*Vijay Kumar*), who had enticed away his wife/prosecutrix on the pretext of performing marriage with her. *Vijay Kumar* was also found missing. A frantic search was conducted by the complainant to find out the whereabouts of his wife, but all resulted in vain. On the basis of these allegations, an F.I.R. was registered. The investigation was started. During investigation, the statements of material witnesses were recorded by the Investigating Officer. On 11.12.2016, when the police party was present at Railway Station, Sirhind, the prosecutrix was recovered from the custody of accused/respondent (*Vijay Kumar*). *Vijay Kumar* was arrested. She was offered to get her medically examined, but prosecutrix refused to get her medically examined. Her statement under Section 164 of the Cr.P.C. was got recorded from Magistrate.

After completion of necessary formalities of investigation, the report under Section 173 of the Cr.P.C. was presented before the Illaqa Magistrate, who further committed the case to the Court of Sessions, being triable by Court of Sessions.

Finding a *prime facie* case, accused/respondent (*Vijay Kumar*) was charge-sheeted for the commission of offences under **Sections 366 and 376 of Indian Penal Code.**

To prove its case against the respondent-accused, the prosecution has examined the following **six (06) witnesses**, which are as under:-

Prosecutrix/victim* as PW-1, *Complainant (Husband of prosecutrix)* as PW-2, *ASI Jagdish Singh* as PW-3, *ASI Baldev Singh* as PW-4, *Dr. Shaminderpal Kaur, Emergency Medical Officer, Distt. Hospital, Fatehgarh Sahib* as PW-5 and *Dr. Navdeep Singh, Medical

Officer, Civil Hospital, Fatehgarh Sahib as PW-6.

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded by the Sessions Court, in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication. The accused also led defence evidence. He examined **Lahu Suryavansi** as DW1.

3. We have heard learned counsel for the applicant-appellant and have also gone through the paper-book very carefully with his assistance.

We are of the view that prosecutrix/victim in this case was neither kidnapped nor abducted. The story of the prosecution put forward in the trial looks highly improbable. The defence version is probable. The Trial Court has noticed the fact that prosecutrix changed her version again and again, and thus, she is wholly unreliable witness. Prosecutrix remained with accused for about three months at *Nanded (Maharashtra)* and she did not raise any grievance against the accused to anybody during her stay at *Nanded (Maharashtra)*, which goes to show that she was consenting party to the sexual intercourse. Photographs of prosecutrix and accused as observed by the Lower Court in the impugned judgment goes to show that prosecutrix and accused posing comfortably and in happy mood shows that she was not forced to stay at *Nanded (Maharashtra)*.

Moreso, prosecutrix had travelled with accused to *Nanded (Maharashtra)* and in case, she was not in her senses, it was entirely difficult for the accused to take her away with him by commuting such a long distance from *Sirhind to Nanded (Maharashtra)*. The Trial Court has

prosecutrix that she borrowed a phone from the stranger and thereby made a telephonic call with her husband has become falsify in the wake of the contents of **DDR Ex.D1**. As per the contents of **DDR Ex.D1**, she herself came to *Nanded (Maharashtra)* in the company of accused after having been physically maltreated by her husband. The prosecutrix remained in the company of the accused in the rented room at *Nanded (Maharashtra)*, it proves that she was consenting party. She being an adult woman and mother of three children, was having sufficient maturity and wisdom to see the consequences, which were likely to be followed in case she would accompany the accused to *Nanded (Maharashtra)*. Interestingly, the prosecutrix did not subject herself to medical examination. In case, she was forcibly taken away by the accused from the custody of her husband and there was natural some mark of injury or scuffle on her body, but the non-examination of prosecutrix on account of her refusal has also weaken the case of prosecution. The statement of other witnesses of the prosecution has rightly been disbelieved by the Trial Court.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have

been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case for any kind of interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

November 06, 2019
'dk kamra'

(GIRISH AGNIHOTRI)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>