

CRM-A-634-MA of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-634-MA of 2018

DATE OF DECISION:04.04.2019

Neetu Yadav

.....Petitioner

Versus

State of Haryana and another

.....Respondents

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mrs. Sheenu Sura, Advocate
for the applicant.

DAYA CHAUDHARY, J.

The present application has been filed under Section 378 (4) read with Section 482 Cr.P.C. for grant of leave to appeal against judgment of acquittal dated 9.1.2018 passed by Additional Sessions Judge-cum-Special Court for the cases of Heinous Crime against Women, Faridabad.

Briefly, the facts of the case are that on 9.12.2016 FIR No. 189 under Sections 323,328,376 and 506 IPC was registered at Police Station Women, Sector 16-A, Faridabad on the basis of statement made by prosecutrix (applicant) alleging that respondent No.2-Chandan Kumar Upadhyay came to her house along with her cousin. She became friend with respondent No.2 on facebook. Respondent No.2 collected her personal information and obtained her mobile number as well. He used to tell her that

he was in love with her and called her to meet. On 11.7.2016, respondent No.2 took her to the house of his friend, namely, Shahid Khan and asked her to have physical relations with him but she refused. On 12.7.2016, respondent No.2 offered cold drink, due to which she became unconscious and rape was committed upon her. She regained consciousness on the next morning and she was told to go to her home. Respondent No.2 promised her to marry and developed physical relations on various occasions. After some time, she came to know that he was already married and refused to marry as she belongs to lower caste. He even made her MMS and snatched her mobile.

On completion of investigation by the police, report under Section 173 Cr.P.C. was submitted before the Court. Thereafter charges were framed for commission of offence punishable under Sections 323,328,376 (2) (n) and 506 IPC.

In order to prove its case, prosecution examined as many as nine witnesses. Thereafter statement of accused under Section 313 Cr.P.C. was recorded, wherein, he denied the allegations of the prosecution and pleaded false implication.

On appreciation of evidence and after hearing arguments advanced by counsel for both the parties, trial Court acquitted respondent No.2 vide its judgment dated 9.1.2018. The present application for grant of leave to appeal against aforesaid judgment has been filed by raising various grounds.

Learned counsel for the applicant submits that the applicant while appearing as PW-2 has fully supported the case of the prosecution by giving specific dates and events but still her statement/testimony has not

been relied upon and the same has been disbelieved. Learned counsel further submits that even the statement of Shahid-PW-5 has also been disbelieved on the ground that he had connived with the applicant in order to falsely implicate respondent No.2, whereas, there was no enmity between Shahid (PW-5) and respondent No.2. Learned counsel also submits that respondent No.2 has wrongly been acquitted on the ground that even a single word has not been narrated about her company with him from 15.7.2016 to 17.7.2016, whereas, learned trial Court has failed to appreciate that the applicant had specifically deposed in her cross-examination that she had mentioned wrong dates by mistake and specifically deposed about the dates on which she was in company of respondent No.2 and rape was committed. It is also the argument of learned counsel that the impugned judgment of acquittal has been passed by relying upon the arguments of defence as well as the fact that wrong dates have been mentioned by the prosecutrix and factum of commission of offence has not been discussed, whereas, from the statements of PW-5 and PW-6, one thing has been proved on record that respondent No.2 was present with the applicant. Shahid (PW-5) has proved on record that respondent No.2 and prosecutrix stayed in a single bedroom and his statement has further been corroborated by the statement of Ravinder Kumar (PW-6), Manager of Ashirwad Guest House. It came in the statement of PW-6 that respondent No.2 introduced the applicant as his wife, which clearly shows that the applicant was deceived by respondent No.2 with a promise to marry. At the end, learned counsel for the applicant submits that the trial Court has wrongly taken into consideration Ex. D2, whereas, it was not proved on record by respondent No.2 as per provisions of Section 65B of Indian Evidence Act and it,

therefore, cannot be relied upon.

Heard the arguments advanced by learned counsel for the applicant and have also gone through the judgment passed by the trial Court and other documents available on the file.

As per version of the prosecutrix while appearing before the trial Court as PW-2 and her mother as PW-3, there are three incidents of rape. The first incident has been stated to be happened from 11.7.2016 to 13.7.2016 (as per Ex. PB and Ex. PC), whereas, the prosecutrix has improved her version by stating the dates from 26.6.2016 to 27.6.2016. The second incident has been stated to be happened on 22.9.2016 and third on 27.9.2016. The first incident of rape has been falsified by respondent No.2 with the help of document Ex. D-1, which clearly shows that he was on Government duty in West Bengal on those dates. Presence of respondent No.2 on duty from 11.7.2016 to 13.7.2016 has also been admitted by prosecutrix in her cross-examination. Subsequently the prosecutrix improved her version by stating other three dates i.e. 25.6.2016 to 27.6.2016 and stated that earlier dates were mentioned because of confusion. So, on account of these three dates showing rape with the prosecutrix by respondent No.2, site plan Ex. PA prepared by Sharwan Kumar, draftsman-PW-1 also becomes a false document, meaning, thereby the first incident of rape stated to be happened from 11.7.2016 to 13.7.2016 could not be proved on record. The prosecutrix improved her version by stating three dates from 25.6.2017 to 27.6.2017 instead of 11.7.2016 to 13.7.2016 and also stated that accused took her at the room of Shahid on 25.6.2017 and committed rape upon her and thereafter on 27.6.2016, respondent No.2 asked her to go to her house and promised to marry her. In the cross-examination, she

deposed that it is correct that she had not mentioned any incident pertaining to dates 25.6.2017 to 27.6.2016 either in her statement Ex. PB or Ex. PC. Similarly Shahid while appearing as PW-5 stated that he was owner of House No. 1810 at NH4, Faridabad. On 25.6.2016, accused came to his house after working hours in the late night alongwith a girl and introduced her as his wife and both of them slept in his bedroom and stayed at his house till 27.6.2016. In his examination in chief, he further deposed that the prosecutrix did not narrate before him regarding rape committed upon her by respondent No.2 during that time. In the cross-examination, he deposed that he did not mention in his statement before the police regarding dates 25,26 and 27th June, 2016 and admitted regarding correctness of his statement recorded before police regarding the date of incident as 11.7.2016 to 13.7.2016.

The mother of the prosecutrix while appearing as PW-3 and stated that she used to ask her daughter (prosecutrix) the purpose of leaving the house after return her home. The prosecutrix used to say that she was going with her friend. She further stated that she used to attend the call of her daughter and she used to call her daughter to ask her whereabouts during day time. Meaning thereby, she was having knowledge that her daughter was away from the house. A specific finding has been recorded by the trial Court that the prosecutrix did not report the matter to her parents or to the police or even to the Manager of the Guest House or even family friend. Respondent No.2 while appearing as DW-1 stated that he received a friend's request from the prosecutrix on his facebook account and accepted the same by disclosing his all background including his family life, wife and children. He has proved photograph and chatting of facebook account as

Ex. D2. It has also been proved on record that respondent No.2 was having two daughters, one of 4 years and second of 2 months. Not only he posted photographs of marriage on 13.12.2015 but also posted photograph with his daughter. Meaning, thereby the prosecutrix was having knowledge about his marital status.

As per Ex. PN, the prosecutrix denied for her medico-legal examination on 9.12.2016 and vide MLR Ex. PM dated 23.12.2016, she again denied for her medico-legal examination. Said act and conduct of the prosecutrix cast doubt on her behaviour. On appreciation of evidence, by giving a categoric finding that the prosecution has failed to prove its case against accused-respondent No.2 and he was acquitted of the charges framed against him by the trial Court.

It has been held in Division Bench judgment of this Court in the case of **Ranjit Kaur Vs. State of Punjab and others** 2008 (22) RCR (Criminal) 848 that in case two views are possible, the view taken by trial Court in favour of accused persons while recording acquittal, be taken as possible view.

Hon'ble the Apex Court in a recent judgment titled as **Munishamappa and others Vs. State of Karnataka** 2019 (1) Scale 721 has held that the High Court should not interfere with the order of acquittal merely on the ground that two views are possible. The interference of High Court should only be in such cases where appreciation of evidence by trial Court is capricious or its conclusions are without evidence or acquittal is not in accordance with law or the approach of the trial Court has led to miscarriage of justice.

In Division Bench judgment of Delhi High Court, it has been

held that in case there are contradictions and improvements in the statement of the prosecutrix, both in respect of the incident and surrounding circumstances, the Court should not rely upon the testimony of the prosecutrix.

Even though there is no quarrel with the proposition that the conviction can be based on the sole testimony of the prosecutrix but at the same time it must be unimpeachable and beyond reproach precluding any shadow of doubt over her veracity.

Hon'ble Apex Court in a case reported as *2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr.* held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in the case of *Arulvelu v. State rep. by the Public Prosecutor.*

In the case of *Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand)*, this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. *Rathinam @ Rathinam v. State of Tamil Nadu* and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra.*”

A Division Bench of this Court, in a case reported as *2016(2) Law Herald 1603 Mithlesh vs. State of Haryana and another*, while upholding acquittal of an accused charged with committing rape, noticed the

following facts which are identical to the present case :-

“It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant.”

Hon'ble the Apex Court in the case of **Murugesan and others Vs. State through Inspector of Police** 2013 AIR (SC) (Cri) 126 has laid down certain principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal and the same are reproduced as under:-

- (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.”
(emphasis is ours)

In view of the facts and law position as discussed above, we are

of the view that there is no merit in the arguments advanced by learned counsel for the applicant and application for grant of leave to appeal against judgment of acquittal is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

April 04, 2019
pooja

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes