

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

**CRA-AD-594-2019 (O&M)
Date of decision : 07.02.2020**

Usha Rani and another

...Appellants

Versus

State of Punjab and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Gagandeep Singh, Advocate,
for Mr. Amandeep Singh Manaise, Advocate,
for the appellants.

None for the respondents.

JITENDRA CHAUHAN, J.

Assailed in the instant appeal is judgment dated 14.05.2019, passed by learned Additional Sessions Judge, Gurdaspur, (hereinafter referred to as 'the trial Court), thereby, acquitting the accused-respondent No.2 of the charges framed against him in FIR No.137 dated 04.07.2018, registered under Sections 363, 366, 368, 376 of the Indian Penal Code (for short, 'the IPC'), at P.S. Civil Lines Batala.

Brief facts of the present case as noticed in para No.2 of the impugned judgment passed by the trial Court are as under:-

“2. *Briefly stated, the facts of the case are that the*

present case against the accused Darshan Singh was registered on the basis of statement dated 04/07/2018 Ex.P-1 suffered by complainant Usha Rani wife of Ramesh Kumar, resident of Murgi Mohalla, Batala to the effect that she is a household lady and that she is having three children i.e. two sons and one daughter and her daughter/victim.... is aged about 18 years studying in 10+2 class. She stated that on 29/06/2018 at about 10 AM she went to the house of her brother-in-law (Jeth) and when she came back after half an hour, she found that her daughter/victim was missing. She tried to find her daughter but all in vain. She stated that she has suspicion that accused Darshan Singh had enticed away her daughter with an intention to marry her.”

Upon completion of formal investigation and upon presentation of challan, the case was committed by learned Illaqa Magistrate to the court of learned Sessions Judge, Gurdaspur on 15.10.2018.

The accused was charged for commission of offences punishable under Sections 363, 366, 368 and 376 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI Sukhjit Kaur as PW1; Usha Rani, complainant and mother of the prosecutrix as PW2; the prosecutrix as PW3; Dr. Kamal Jeet Kaur as PW4; and Smt. Parveen as PW5.

When examined under Section 313 Cr.P.C., the accused denied all

the incriminating circumstances which appeared against him and pleaded false implication. He pleaded that the prosecutrix wanted to have relationship with him which was objected to by himself and his wife. However, he did not lead any evidence in defence.

After hearing learned counsel for the parties and appreciating the evidence brought on record, learned trial Court vide the impugned judgment, acquitted accused-respondent No.2 from the charges framed against him.

Hence, the instant appeal on behalf of the complainant.

Learned counsel appearing on behalf of the appellants contends that the prosecutrix was under constant threat at the hands of the accused, therefore, she could not raise any hue and cry. From the testimony of the prosecution witnesses, case against the accused-respondent is fully established.

Heard.

In the instant case, the prosecutrix was allegedly enticed away by the accused on 29.06.2018. On 04.07.2018, the complainant, mother of the victim, got registered the FIR. It has come in the evidence of SI Sukhjit Kaur, PW-1, that the victim was produced before her by the complainant on 09.07.2018 and a memo, Ex.P-5 was prepared in this regard.

While appearing as PW-2, Usha Rani, complainant has deposed that the accused, a married person, had stayed in their house as tenant for about two to three months. She further stated that her daughter was found after ten days as the accused had left her at Railway Station, Amritsar. Similarly, it has come in the evidence of the victim while appearing as PW-3

that the date of her birth is 25.06.2000 and at the time of occurrence, she was studying in 10+2 standard. The accused and his wife had stayed in their house as tenants for about eight months. On 29.06.2018, the accused had called her on mobile phone and asked her to accompany him, otherwise her brothers would be done to death. Thereafter, the accused came to their house and forcibly took her along to a hotel and raped her in a room. She further stated that the accused took her to several places in public transport in a bus and continued to commit rape upon her.

A careful perusal of the statements suffered by the complainant and the victim reveal that it was in the knowledge of the victim that the accused was a married person. Further, the victim had already attained the age of majority at the time of the alleged incident.

Now, the question which requires consideration is that whether the victim was subjected to sexual assault or she was a consenting party. In this regard, it is to be noted that the victim stayed with the accused for several days and visited different places. As per the prosecution story, she was first taken to a hotel room, then to Gurudwara Sahib where they stayed for two days and lastly, to Haridwar, where they stayed in an Ashram for four days. The accused used public transport for travelling. However, there is nothing on record to suggest that the victim ever tried to catch attention of any public person or to raise hue and cry, especially, when there is not even an allegation that the accused had been carrying any weapon to intimidate the prosecutrix. Thus, it appears that the prosecutrix was a consenting party. This fact also gathers strength from the love letters written by the

prosecutrix to the accused which have been proved on record as Ex.D-1 to D-4. Even otherwise, 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.

Similarly, in '**Anil Kumar Gupta Vs. State of U.P.**, 2011 AIR(SC) (Criminal) 922, Hon'ble the Supreme Court has held as under:-

*“8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in '**Ramesh Babulal Doshi v. State of Gujarat**, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225' which was followed by this Court in '**Dwarka Das & Ors. v. State of Haryana**, 2002(4) R.C.R.(Criminal) 794 : (2003) 1 SCC 204' The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.*

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the

company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In Ramesh Babulal Doshi, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

11. In Dwarka Das, this Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in

that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.

12. In Chandrappa & Ors. v. State of Karnataka, 2007(2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon

which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.”

Considering the above, we feel that the prosecutrix was a consenting party. The prosecution has failed to prove its case against the accused-respondent beyond shadow of reasonable doubt. The findings returned by learned trial Court are based on correct appreciation of the facts and circumstances pleaded and the material placed before it in support thereof. Hence, this Court is not inclined to interfere in the well-reasoned judgment of acquittal recorded by learned trial Court, which is, hereby, affirmed. Consequently, the instant appeal fails and is thus, dismissed.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

07.02.2020

atulsethi

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No