

**236 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-AD-760-2019.****Date of Decision: 23.01.2020**

KhushbooAppellant
VS.
Ajay Tyagi and anotherRespondents

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mr. G.C. Shahpuri, Advocate,
for the appellant.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 20.08.2019 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri, vide which the accused/respondent No.1 was acquitted of the charge in FIR No.65 dated 31.07.2016 registered under Sections 376, 452 and 506 IPC at Police Station Women, Yamuna Nagar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

*“2. The broad contours of the case as set up by the prosecution in this case are that on 13.07.2016, victim/prosecutrix/complainant 'K' (name of complainant/victim/prosecutrix withheld in view of ratio of law as laid down by Hon'ble Apex Court in case titled as **Om Parkash Vs. State of U.P. 2006(9) SCC 787**) moved an application alleging that she is working as Lab Technician in Civil Hospital, Yamuna Nagar and the accused Ajay Tyagi is working as Supervisor there. She and the accused were having love affair for last one year because the accused has assured her that he will solemnise*

marriage with her. For last one year he has been committing wrong act with her on the pretext of solemnizing marriage with her. On 24.04.2016, she was present at her house and her parents had gone to attend wedding. At around 8.00 pm, accused came to her house and forcefully made physical relations with her against her wishes. Till today, the accused kept assuring that he will solemnise marriage with her but now he has refused to do the same. The accused has committed bad act upon her and now he is criminally intimidating her also. On the basis of this application, FIR under Sections 376, 452, 506 IPC was registered. Investigation began. During investigation, statements of witnesses were recorded. Site plan of the place of occurrence was prepared. Statement of victim/prosecutrix/complainant under Section 164 Cr.P.C was got recorded in which she has reiterated the allegations levelled in the complaint. The medico-legal examination of victim/prosecutrix/complainant was got conducted.... ”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 376 IPC is triable exclusively by Court of Session, the case was committed to the said Court.

Charges under Sections 376(2)(n), 452 and 506 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 victim/prosecutrix/complainant, PW-2 Ram Kumar, Draftsman, PW-3 'A' brother of the victim, PW-4 Dr. Chandan Mago, PW-5 Dr.

Kartik Gondwal, PW-6 L/ASI Menka, PW-7 SI Jasbir Singh and PW-8 L/ASI Sushma and closed the evidence.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence evidence, the accused had examined DW-1 Sandeep Kumar, Store Keeper, DW-2 Dr. Kuljit Singh, DW-3 Farha Nisar and DW-4 Gyan Chand.

After appraisal of evidence, the learned trial court vide impugned judgment dated 20.08.2019, acquitted the accused/respondent of the charges framed against him.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the complainant.

It is contended by the learned counsel for the complainant/appellant that the learned trial Court has failed to appreciate the facts and circumstances of the case. The learned trial Court has not considered the fact that the consent of the prosecutrix was on account of the offer and assurance of marriage. The accused had been raping her for the last one year and refused to marry and extended threat to her life which led to lodging of the instant FIR. The consent stands vitiated in the facts and circumstances of the present case.

We have heard the learned counsel for the appellant and

have gone through the case file very carefully.

The learned trial Court has acquitted the accused on the following grounds:-

- 1. The evidence of the prosecutrix did not inspire the confidence of the Court as the prosecutrix in her initial complaint Ex.P-1 had stated that she and the accused were having love relationship because the accused had assured her to marry her and he was doing wrong act with her for the last one year on the pretext of marriage. However, while appearing in the Court she has deposed that prior to the incident in question, there was no sexual intercourse between them.*
- 2. In her statement recorded under Section 164 Cr.P.C, she had only mentioned that on the specified date, the accused made physical relations with her and the element of force was missing in that statement. While as PW-1 she had improved her version by stating that accused forcibly raped her on 24.04.2016. Thus,it was a case of voluntary participation.*
- 3. The alleged incident of rape was not disclosed by the prosecutrix to her family members.*
- 4. The FIR was registered after a gap of three months from the date of incident.*

We have gone through the case file carefully and find that the judgment of acquittal has been rightly passed in the given set of facts. It has been proved on record that the prosecutrix had a love affair with the accused. When the accused refused to marry her, she lodged the instant FIR. She did not disclose the incident to her parents or brother. Her statement does not inspire the confidence of the Court

because while appearing in the Court as PW-1 she deposed that prior to the incident in question, sexual intercourse between the parties had not taken place whereas in her complaint Ex.P-1 she had mentioned that there was love affair between them and the accused had been committing wrong act with her for the last one year. The prosecutrix was aged 33 years at the time of occurrence. She was not under any misconception of fact and after understanding their conditions, she had consented to be in relationship with the accused. There is no reason to differ from the view taken by the learned trial Court.

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 unless the judgment suffers from any perversity. 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 *Anil Kumar Gupta vs. State of U.P.* 2001(2) RCR (Criminal) 292 SC it was held as under:-

“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 palpably wrong, 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".

(emphasis supplied)

11. 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 reappraising 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".

In the instant case, the findings recorded by the learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

Thus, the appeal is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

23.01.2020.

SN

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No