

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CRA-AS-97-2022

Date of Decision: 12.12.2022

Manpreet Kaur

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Surinder Garg, Advocate
for the appellant.

Mr. Digvijay Nagpal, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant appeal under Section 372 of Cr.P.C. is seeking setting aside of judgment dated 23.12.2021 whereby learned Additional Sessions Judge, Faridkot has acquitted the respondents No.2 to 4.

2. The brief facts emerging from the record are that an FIR No.26 dated 17.04.2019 was registered at Police Station Sadiq, under Sections 379-A, 379-B, 452, 411, 120-B IPC. The police, after completing investigation, filed its report under Section 173 Cr.P.C. alleging commission of offence under Sections 379-A, 379-B, 452, 411, 120-B IPC. The police report (challan) was presented against respondents namely Gagandeep Singh @ Gagga, Pippal Singh and Jasmeet Singh @ Jyoti. Learned trial Court framed charges against the respondents and recorded evidence of prosecution witnesses as well as defence witnesses.

3. Learned trial Court taking note of allegations made by

complainant, the fact that inspite of CCTV cameras installed in the house of complainant, no CCTV footage was brought on record, formed an opinion that prosecution has failed to prove the charges against the accused beyond shadow of reasonable doubt.

4. Learned counsel for the appellant would submit that one of the accused was servant of the appellant. There was no question of mistake regarding identity and there was no reason for the appellant to implicate her own servant. The trial Court has miserably failed to appreciate evidence led by the prosecution.

5. I have perused the record and heard arguments of both sides. The present application seeking special leave to appeal is bereft of merit and deserves to be dismissed.

6. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(ii) 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.

(iii) 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.

(iv) **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.**

(v) 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.

7. A three judge bench of the Apex Court in **Ashok Kumar Singh Chandel Vs State of U.P. 2022 Live Law (SC) 915** has adverted with question of jurisdiction of High Court in appeals against acquittal. The Apex Court has held:

I. Jurisdiction of the High Court in Appeals Against Acquittals

73. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are substantial and compelling reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not

justified in reversing the order of acquittal.

74. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in Chandrappa v. State of Karnataka (2007) 4 SCC 415 that:

“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.”

75. It is sufficient to note the principle laid down in the Constitution Bench of this Court in M.G. Agarwal v. State of Maharashtra (1963) 2 SCR 405:

“16. ...But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has

been clarified by the Privy Council in Sheo Swarup v. King Emperor and Nur Mohammad v. Emperor [AIR 1945 PC 151] ...

17. ...Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : 1953 SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a

formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse..."

76. Following the Constitution Bench, this Court in *Ghurey Lal v. State of UP* (2008) 10 SCC 450 has formulated the following principles:

"69. The following principles emerge from cases

1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It

is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i. The trial court's conclusion with regard to the facts is palpably wrong;*
- ii. The trial court's decision was based on an erroneous view of law;*
- iii. The trial court's judgment is likely to result in "grave miscarriage of justice";*
- iv. The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v. The trial court's judgment was manifestly unjust and unreasonable;*
- vi. The trial court has ignored the evidence or misread the material*

evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction-the High Courts/Appellate Courts must rule in favor of the accused.

8. In the case in hand, the trial Court has dismissed complaint on different grounds. FIR was registered on 17.04.2019 whereas alleged incident took place on 11.04.2019 means complaint with police was filed after the expiry of 06 days from the date of alleged incident. There is no plausible explanation for the delay. Every delay is not fatal to the case of prosecution, however, unexplained and long delay is always fatal to the prosecution because complainant gets time to manipulate the facts and figures. The appellant did not examine Sarpanch as witness whereas appellant claimed that they were dependent upon Sarpanch and they have told about the incident to Sarpanch. There was stark contradiction in the statement of complainant. On the one hand, she claimed that snatchers were muffled face and on the other hand, she claimed that their servant had snatched her earring and gold chain. Admittedly, CCTV camera was installed at the residence of appellant but she did not produce footage. Nothing was recovered from respondent No.2-servant of the appellant. No independent witness was made to join at the time of alleged recovery from

two other accused. All these facts collectively indicate that appellant/prosecution miserably failed to prove guilt of the respondents beyond shadow of doubt.

9. Having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case in hand, there is no infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by Tried Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs to interference. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and appeal stand dismissed.

10. All pending miscellaneous applications, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

12.12.2022
anju

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