

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

214

CRM-A-2095-MA-2016

Date of decision: 07.04.2022

Sarita

....Applicant/appellant

Versus

State of Haryana and another

...Respondents

**CORAM : HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present : Mr. Sandeep Verma, Advocate
for the applicant/appellant.

Mr. Saurabh Mago, A.A.G., Haryana
for respondent No.1-State.

ASHOK KUMAR VERMA, J.

1. The applicant/appellant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 19.08.2016 passed by the learned Additional Sessions Judge, Special Court, Sonapat in Sessions Case No.164/60 of 2015 titled as 'State Vs. Dinesh @ Jassu' whereby accused/respondent No.2 was acquitted by giving benefit of doubt from the charges framed against him under Sections 354, 452, 376 and 506 of the Indian Penal Code, 1860 (for short 'the IPC').

2. Briefly stated the factual matrix of the case referred to in the impugned judgment is that on 29.04.2014, the prosecutrix along with her family members came to the Police Post Mundlana and moved a complaint alleging that on the intervening night of 28/29.04.2014 when she was

sleeping on a cot, at about 2:50 a.m. accused-respondent No.2 Dinesh @ Jassu entered her house with bad-intention and started molesting her. When she raised objection, the accused started tearing her clothes and on her raising alarm, her parents-in-law came down. The accused tried to flee away but could not succeed in scaling the wall and sustained head injury. The prosecutrix along with her parents-in-law caught the accused and informed the police.

3. On her complaint dated 29.04.2014, a case under Sections 452 and 354 of the IPC was registered. The police investigated the case and arrested the accused on 01.05.2014. Challan for the offences under Sections 452 and 354 of the IPC was presented on 03.05.2014 and accused was granted bail. On 07.05.2014, she moved another application to the police alleging that the accused-Dinesh @ Jassu had forcibly committed rape upon her on the said night. The statement of prosecutrix under Section 164 of the Cr.P.C. was recorded on 30.05.2014 and offences under Sections 376 and 506 of the IPC were added. On 27.10.2014, the accused was granted interim bail by Hon'ble Supreme Court. The accused joined the investigation on 17.01.2015 and after investigation challan under Section 173 of the Cr.P.C. was presented in the Court for trial of the accused.

4. On commitment of the case, charges under Sections 452, 354, 376 and 506 of the IPC were framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as 18 witnesses, produced material documents and objects which were exhibited.

6. On consideration of the material on record and submissions made by learned Public Prosecutor for the State and learned defence Counsel, the learned Additional Sessions Judge, Special Court, Sonipat vide impugned judgment dated 19.08.2016 held that the prosecution has failed to prove its case beyond reasonable doubt and acquitted the accused from the charges framed against him by giving benefit of doubt.

7. Being aggrieved by and dissatisfied with the aforesaid judgment of acquittal, present application for grant of leave to appeal has been filed by the applicant/appellant.

8. Learned counsel for the applicant/appellant has argued that the trial court did not properly appreciate the prosecution evidence and acquitted the accused. The testimony of the prosecutrix coupled with the statement under Section 164 of the Cr.P.C. was sufficient enough to convict the accused. The trial court did not consider the fact that the accused has been apprehended at the spot by the prosecutrix and her parents-in-law at the house of the prosecutrix. Even the medical evidence also does not rule out possibility of sexual intercourse. Learned counsel for the applicant/appellant has also submitted that the accused has been wrongly acquitted by the trial court on minor discrepancies and contradictions as the prosecutrix being a married woman would not falsely implicated the accused by ruining her reputation. Therefore, leave to appeal against the impugned judgment may be granted.

9. Learned State counsel has also supported the version of learned counsel for the applicant/appellant.

10. We have heard learned counsel for the applicant/appellant as well as learned State counsel.

11. Before advertng to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice 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 reaffirmed and strengthened by the Trial Court.

12. In the present case, there are several discrepancies and material contradictions in the statements of the prosecutrix which render her version doubtful. On 29.04.2014 at the time of moving her initial complaint, the prosecutrix did not level any allegation of rape upon the accused but after presentation of challan dated 03.05.2014 under Sections 452 and 354 of the IPC, the prosecutrix moved applications dated 05.05.2014 and 19.05.2014 before the S.P., Sonipat alleging that the accused committed rape upon her and tore her clothing on a knife point. However, neither in her statement recorded under Section 164 of the Cr.P.C. nor in her testimony before the Trial Court as PW-1 the prosecutrix deposed that the accused committed rape upon her on a knife point. Even in her statement the prosecutrix resiled from her earlier version made in her applications dated 05.05.2014 and 19.05.2014 and deposed that the accused committed rape upon her after gagging her mouth. The statement of the prosecutrix is also contradictory from the version of her husband (PW-4). As per prosecutrix she did not

know the accused prior to the occurrence whereas as per her husband (PW-4), he knew the accused being co-villagers since more than 12 years.

13. The prosecutrix during her cross-examination deposed that on the night of occurrence, her in-laws were sleeping on the ground floor whereas she along with her husband and children were sleeping on the first floor. She was sleeping outside the room and her husband and children were sleeping inside the room. It is very hard to believe that the accused dared to commit rape upon the prosecutrix in her matrimonial house where her in-laws as well as her husband and children were already present with her. In her cross-examination, the prosecutrix categorically deposed that the police had reached at the spot at 3:30/4.00 a.m. However, the complainant has moved the application before the police at 10.20 a.m. i.e. after a delay of about 07 hours of the occurrence. The statement of the prosecutrix under Section 164 of the Cr.P.C. has also been recorded on 30.05.2014 i.e. after a considerable delay of more than one month of the occurrence. There are also several discrepancies and contradictions in the version of prosecution witnesses with regard to the place of occurrence and arrest of the accused which caused a serious dent in the prosecution story.

14. It is also relevant to mention here that despite being a case of sexual molestation, the prosecutrix was neither medico-legally examined by the police on 29.04.2014 nor her statement under Section 164 of the Cr.P.C. was got recorded before the Magistrate. Even on 29.04.2014 the clothing of prosecutrix were handed over to the police not by any doctor but by her husband and on 30.05.2014 at the time of her medico-legal examination, the prosecutrix again handed over her clothing to the concerned doctor.

Furthermore, the clothing of the prosecutrix were taken into possession by

the police on 29.04.2014 and 30.05.2014 but the same were sent to the FSL on 01.05.2015 i.e. after a delay of about one year. In the MLR also no marks of injury were present on the body as well as private part of the prosecutrix. Hymen was absent. However, as per opinion given by Dr. Abhilasha Chaudhary, the possibility of sexual intercourse with the prosecutrix could not be ruled out.

15. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of **State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463** be made in this regard. In the said case, it has been observed as under:-

“6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :

“8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:

"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

"9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference with the order of acquittal

where it is indeed only a case of taking a view different from the one taken by the High Court."

8. In Arulvelu and another versus State reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

16. In view of above, no case is made out for interference in the impugned judgment dated 19.08.2016 of acquittal passed by learned Additional Sessions Judge, Special Court, Panipat. Accordingly, the present application filed under Section 378(4) of the Cr.P.C., being devoid of merits, is hereby dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

07.04.2022

Kothiyal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No