

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

CRM-A-2456-MA-2018 (O&M)

Reserved on: 09.11.2022

Pronounced on : 16.11.2022

State of Haryana

. . . Applicant

Versus

Shyam Sunder

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. P.P.Chahar, DAG, Haryana.

Kuldeep Tiwari, J.

CRM-38642-2018

This is an application for condonation of delay of 92 days in filing the present appeal.

Heard, sufficient cause has been shown for condoning the delay in filing the appeal. Hence, the application is allowed.

Main case

Instant application, for grant of leave to appeal, is directed against the order of acquittal recorded by Addl. Sessions Judge (Exclusive Court for Heinous Crime against Women and Children), Yamuna Nagar at Jagadhri. The Trial Court acquitted the accused-respondent from the charges framed under Sections 420, 376, 328, 506 IPC, 1860 vide judgment dated 28.03.2018.

The appellant-State has assailed the impugned order on the ground that the statement of complainant/prosecutrix (name of the prosecutrix is withheld in view of provisions of Section 228(A) of IPC) hereinafter,

referred as complainant, was not appreciated by the trial Court in its right perspective. And that the prosecution has proved its case beyond reasonable doubt. It is further submitted that apart from the statement of the complainant, prosecution successfully proved documentary evidence (that are/that were brought) on record, which further corroborate the version of the complainant and that the same is sufficient to bring home the guilt of accused.

Before we examine the legality of the order of acquittal recorded by learned trial court, it would be apt to first deal with the factual matrix of the present case.

The prosecution agency was set into motion on an application Ex.PW-6/A filed by the complainant, who was examined during trial as PW-7. In her complaint, she levelled allegations against respondent-accused that he had induced her to deliver Rs.10 lakhs and her jewellery items to him, under the assurance of providing job to her. Secondly, that on 22.10.2014, accused-respondent called her in his office "Prime Tech International" and gave her juice to drink and thereafter, she became unconscious and in her unconscious state accused raped her and took her obscene photographs. The respondent-accused also gave two affidavits and two cheques amounting to Rs.10 lakhs and Rs.1 lakh respectively. On the basis of aforesaid application Ex.PW-6/A, a formal FIR was registered. Matter was investigated; respondent-accused was arrested and he was subjected to medico-legal examination by Dr. Anoop Goel, Medical Officer, MLGH, Yamuna Nagar, examined as PW-2, during trial. The statement of the complainant was recorded under Section 164 Cr.PC. She was also subjected to medico-legal examination by Dr. Pragati Garg, Medical Officer, MLGH, Yamuna Nagar, examined as PW-3, during

trial. It is apt to mention here that the victim refused to get her medical examination done. After completion of investigation proceedings, final report was filed before the learned trial court.

Trial Court framed charges against the respondent-accused under Sections 420, 376, 328, 506 IPC, 1860 vide order dated 04.02.2016. In order to prove its case, prosecution examined as many as 10 witnesses whereas, Inspector/SHO Rajeev, Smt. Nirmal Kanta and Constable Pardeep were given up as unnecessary witnesses and witness Sanjay Tyagi was given up being won over by respondent-accused.

Apart from the oral evidence, prosecution placed on record various documentary evidence. Learned trial court after considering the ocular and documentary evidence recorded the finding of acquittal. Now the State has filed present application for grant of leave to appeal to challenge the order of acquittal. There is no dispute that the Code does not impose any such restriction upon Appellate Court while dealing with an order of acquittal. High Court has full power to appreciate the entire evidence to reach its own independent conclusion. It is open for High Court to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in *State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475*.

Hon'ble Supreme Court in *Chandrappa vs. State of Karnataka, 2007(2) RCR (Crl.) 92* laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are 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, based 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 emphasize 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 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.

In ***Bishan Singh vs. State of Punjab, 1974 (3) SCC 288***, Hon'ble Supreme Court held as under:

“22. It is well settled that the High Court in appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses.”

Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470***.

In view of the above legal preposition, as laid down by Hon'ble Supreme Court, we have examined the impugned order of acquittal and oral as

well as documentary evidence led by the prosecution. We do not find any perversity or illegality in the order of acquittal recorded by the trial Court.

The case of prosecution mainly revolves around the statement of the prosecutrix, who was examined as PW-7, apart from other documentary evidence. Therefore, it is important for us to examine whether the statement of the complainant is trustworthy and credible enough to bring home the guilt of the accused. It is a settled preposition of law that the testimony of the prosecutrix is sufficient to base conviction of the accused and no corroboration for the same is required. However, to that end, it is required that such testimony shall be credible and inspire enough confidence of the Court for it to be relied upon. The prosecution has to prove its case beyond reasonable doubt and onus cannot be discharged by merely establishing a fact on preponderance of probability.

In the present case, complainant in her application Ex.PW-6/A made the following allegations:

“She (complainant) is resident of 'J' Colony, Camp, District XXX. She has filed a dowry case against her husband and in connection of that case, she used to come to Jagadhri Court. In August, September, 2013, she met with Shyam Sunder s/o Dharam Pal, resident of Buria Road, Jagadhri in the Premises of Jagadhri Court and they started talking each other. He assured her that he will get the decision in her favour as he is having contact with Higher Officers and will manage Government job for her, as he is having contact with Chief Minister, Uttar Pradesh. She came into his assurance because of her tension. Shyam Sunder used to meet her in car with red light. He demanded Rs.10 lacs from her for arranging job for her. From October 2013 to October, 2014, he called her in his

office name and style as 'Prime Tank International' and pressurised her for doing bad act with her, but she shouted on him. He told her to have juice and after taking same, she became unconscious and taking the benefit of her unconsciousness, he raped her. He clicked her obscene photographs. She objected but Shyam Sunder said that if she wanted to get job, she will have to do all this. Thereafter, Shyam Sunder maintained physical relations with her forcibly. She said that she will complain against him before police. He started feeling sorry and said that he will return her money. He gave two affidavits and two cheques of his account to her in January and February, 2015 and he obtained her signatures on blank papers in connection with arranging job. Money and jewellery were given by her to Shyam Sunder in the presence of her relative Sanjay Tyagi s/o Sh. Prem Nath, resident of 'J' Colony, District XXX. Thereafter, Shyam Sunder met her for one/two times in her house and assured that he will return her money, but he did not return the same. Shyam Sunder met her at Pyara Chowk, where she asked about her money and photographs, otherwise, she will make complaint in the police station, on this, he extended threat to injure her life and fled from there. Action be taken against Shyam Sunder and her money, jewellery and photographs be recovered.”

When she was put to cross-examination, she could not stand by that. During her cross-examination, she categorically admitted that in her earlier complaint dated 04.07.2015 she did not allege the fact that on 22.10.2014 the accused called her to his office by the name “Prime Tech International” situated at Lal Dwara, Yamuna Nagar and offered her juice and thereafter she became unconscious and in her unconscious stage, accused

committed rape upon her. It is important to reproduce the relevant extract of cross-examination, which may be read as under:

“I did not get scribe in my complaint, which was got filed in 04.07.2015 that on 22.10.2014, accused called me to his office by the name Prime Tech International situated at Lal Dwara, Yamuna Nagar and accused Shyam Sunder offered me juice as well as I drank the juice and became unconscious or that accused Shyam Sunder committed rape upon me. I never got recorded in my complaint dated 04.07.2015 that when I regained consciousness after some time, accused Shyam Sunder showed my obscene photographs which he had clicked in his mobile or that he threatened me not to disclose about that incident to anybody or that on the pretext, he started blackmailing me. Volunteered stated that I have not got recorded these facts in said complaint due to pendency of my matrimonial litigations and due to social blemish. I never got scribed in my complaint as well as in affidavit that accused also threatened me that he will tell the entire incident to my in-laws. I never got recorded in my complaint dated 04.07.2015 that he used to force me to maintain sexual relations with him under the pretext of showing my obscene photographs to all. No such photographs on file. Volunteered stated that I have not got recorded these facts in said complaint due to pendency of my matrimonial litigations and due to social blemish. Accused Shyam Sunder has also moved complaint against me before S.P., Yamuna Nagar apprehending his false implication at my instance before the present case. Accused had filed another complaint against me on 19.03.2015. The enquiry of my complaint, which was filed in the month of July, 2015 was conducted firstly by DSP, Yamuna Nagar and thereafter, it was enquired by DSP, Bilaspur. I am aware of the fact that DSP, Bilaspur had given the findings on my complaint that this matter is related to money transaction.”

Upon a bare reading of the examination-in-chief and cross

examination of the complainant, it is crystal clear that there are material contradictions in the statements. She is a well educated woman and is M.A. M.Phil. She clearly admitted during her cross-examination that she never got her statement recorded before any authorities or any person regarding commission of rape upon her by the respondent-accused till the time she filed the application on 02.10.2015 upon which present FIR was registered.

From the above facts, it is crystal clear that the complaint dated 02.10.2015 was result of gross vice of pre-mediation and concoction.

As per complainant, she was blackmailed by the respondent-accused on the pretext of her obscene photographs. However, those photographs were not placed on record by the prosecution. In her complaint filed before the police, she did not mention any date when she was subjected to rape. However, when she stepped into the witness box, during trial, she stated for the first time that the incident of rape occurred on 22.10.2014. For a complete year she opted to remain silent. Moreover, she filed a different complaint dated 04.07.2015 against the accused wherein, no allegation of rape was made.

The complainant at the time of cross-examination has duly admitted that she had filed a complaint against the accused under Section 138 of Negotiable Instrument Act, 1883, which was subsequently dismissed vide judgment dated 04.12.2017 Ex.D-3. A perusal of the said judgment clearly depict that she did not level any allegation with regard to commission of rape by the accused person. In that complaint, the complainant alleged that she gave total sum of Rs.6,01,200/- and jewellery weighing 12 tolas to the respondent-accused for the purpose of doing some work/providing government

job. However, when she stepped into the witness box and was subjected to cross-examination, she stated that the amount was taken by the accused for some personal work, which was never disclosed by the accused but she also stated that accused had also assured her to provide some government job. Upon finding a contradictory statement of the prosecutrix, learned Judicial Magistrate, Ist Class dismissed the complaint filed against the respondent-accused under Section 138 of Negotiable Instrument Act.

Prosecution also examined Dr. Pragati Garg, Medical Officer MLGH, Yamuna Nagar as PW-3, who categorically deposed that prosecutrix refused to get herself medico-legally examined. The relevant extract of statement of PW-3 is read as under:

“Stated that on 02.10.2015, L/ASI Menka had brought prosecutrix for medical examination, but she refused for the medical examination and also given in writing to this effect. MLR is Ex.PW-3/A, which bears my signatures. She had specifically stated that she is not under any pressure to refuse her medical examination.”

It is also important to note here that one of the important witnesses, namely, Sanjay Tyagi was not examined by the prosecution. As per the prosecution, Sanjay Tyagi was present at the time when the accused gave two affidavit and two cheques in January and February, 2015 and obtained signatures of the prosecutrix on blank papers in connection with the arranging some job. Hiding of an important witness causes dent in the prosecution story. Moreover, there is no evidence on record to prove that the complainant was administered some stupefying/intoxicating substance.

As per the complainant, the reason for not disclosing the incidence of rape for complete one year was because the accused was in

possession of her obscene photographs, which were taken by him when she was unconscious. However, neither the prosecution agency recovered those photographs specifically when three different disclosure statements of respondent-accused were recorded nor the complainant produced on record those photographs in order to substantiate the reason for delay in lodging the FIR. There is no dispute that in case where there are allegations of rape, delay in general is not fatal to prosecution case. However, in the present circumstances, where the statement of the prosecutrix is not credible, the relevant delay is also but one of the reasons, which was aptly considered by the trial Court in recording the order of acquittal.

We thus, do not find any merit in the application for grant of leave to appeal filed by the applicant-State and therefore, the same is dismissed.

Case property, if any, be dealt with and destroyed after the expiry of the period of limitation. Trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

16.11.2022
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Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No