

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

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**CRM-A-976-MA-2017
Date of decision: 04.03.2022**

BALJINDER SINGH AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present :- Ms. Divya Sharma, Advocate,
As amicus curiae for the applicant-appellant(s).

Ms. Tanisha Peshawaria, DAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This appeal has been preferred by the complainant-respondent raising a challenge to the judgment dated 14.02.2017 passed by the Special Court, Fatehabad whereby respondent-accused Nos. 2 and 3 have been acquitted of the charges against them under Sections 450/363/366/506 read with Section 34 and 376 (D) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, Police Station Sadar, District Fatehabad.

2. Learned counsel for the appellants has assailed the judgment of the Judge, Special Court, Fatehabad on the ground that the Court has adopted a rigid and hyper-technical approach in disbelieving the prosecution witnesses and has given undue weight-age to the minor discrepancies while recording a finding in favour of the respondents-accused.

FACTS

3. The facts of the case are that the complainant/applicant-appellant is a Driver by profession and they are six brothers and sisters. His youngest sister i.e. the prosecutrix "K" is aged 15 years and is unmarried. On 23.05.2015, he had gone for his work and his parents as well as his sister-prosecutrix "K" were at home. When he returned home at about 1:30 A.M., he saw that his sister "K" (the prosecutrix) was not on her cot. He woke up his parents and made a search for her and that is when he heard some noise coming from the side of Harijan Chopal. Upon rushing to the Chopal, he saw in the light of the torch, that respondent-accused Gurmeet Singh and Nirmal Singh were running away from there after leaving his sister who told him that while she was asleep, accused Gurmeet Singh gaged her mouth, whereupon, she woke up and saw that Nirmal Singh was also accompanying him. Both the said persons brought her to the Chopal where Gurmeet Singh committed forcible rape upon her and they extended threat to kill her if she disclosed about the incident to anybody.

4. The case in question was registered on the application submitted by the applicant. The prosecutrix was got medically examined, statements of witnesses recorded and spot inspection was conducted. The date of birth of the prosecutrix was obtained from the Government Primary School as per which her date of birth was 18.07.1999. Further, statement of the prosecutrix under Section 164 Cr.P.C. was also recorded. The investigation of the case was verified by the DSP Head Quarter who found accused Nirmal Singh to be innocent and the final report was filed. After examination of witnesses, prosecution moved an application under Section

319 Cr.P.C. for summoning of Nirmal Singh as an additional accused which was allowed vide order dated 06.10.2015 and respondent-Nirmal Singh was ordered to be summoned to face trial in the case.

5. In order to substantiate its case, the prosecution examined as many as 10 witnesses, who are as under:

1. PW-1, the Prosecutrix 'K'.
2. PW-2 Complainant (brother of the prosecutrix).
3. PW-3 Om Parkash, Head Teacher, Government Primary School to prove the Date of Birth Certificate.
4. Renu Bala, Medical Officer, to prove the Medico Legal Examination of the prosecutrix.
5. Dr. Naresh Nagpal, Medical Officer, to prove Medico Legal Examination of Gurmeet Singh.
6. Balwant Singh, Draftsman, D.P.O, Fatehabad to prove the scaled sight plan with correct marginal notes.
7. Head Constable, Sita Ram regarding depositing of case property in the Malkhana.
8. EASI Sarabjit Singh regarding depositing the case property with FSL, Madhuban.
9. SI Jagdish Chander, Police Station City Fatehabad regarding recording statement of prosecutrix under Section 164 Cr.P.C. by the Chief Judicial Magistrate, Fatehabad and other documents.
10. PW-10 Inspector/SHO Bimla Devi, with regard to the investigation.

ARGUMENTS ON BEHALF OF APPLICANT-APPELLANT.

6. Learned counsel has argued that the evidence available on file duly established that the prosecutrix was a minor and less than 16 years of age at the time of the incident. The testimony of the prosecution witnesses

duly brings home the guilt of the respondents. She argues that the Court below has viewed the evidence with suspension for no ostensible reason and has discredited the cogent, convincing and reliable prosecution evidence. The minor variations noticed in the deposition of the prosecution witnesses are only natural and normal considering that the deposition was made after a lapse of time and that the explanation given by the applicant-complainant as regards the delay in reporting the matter has been mis-read to the prejudice of the applicant. It was pointed out that the incident in question had occurred during the intervening night of 23.05.2015/24.05.2015 at about 1:30 A.M. and the FIR was registered on 25.05.2015. The petitioner submits that it was duly pointed out by the prosecution witnesses that they had approached the Police Station to report the matter on 24.05.2015 when they were called upon by the authorities to submit a written complaint. Accordingly, they went to the Court complex on 24.05.2015 but the same was closed on account of being a Sunday. Thereafter, they went to the Court complex on 25.05.2015 and got the complaint typed and the same was moved thereafter. Besides, it is also submitted that a mere failure to mention in the complaint about visiting the Court complex on 24.05.2015 and in the statement of the prosecutrix recorded under Section 164, the omission would not demolish the case of the prosecution. The inaction in recording the FIR on the part of the Police cannot be the foundation to discredit the case of the prosecution. It is pointed out that a mere fact that the age of the prosecutrix was at slight variance in the complaint where it is stated as 15 years; age mentioned as 16 years in the statement of prosecutrix recorded under Section 164 Cr.P.C and her narration that her date of birth was 15 years at the time of her deposition would not have any bearing on the merits of the case. Considering from any

point of view, it does not stand establish that the prosecutrix was major as on the date of occurrence of the incident. Learned counsel also argued that the witnesses examined in defence carry no weight and their testimony ought to have been discarded and not given any credence by the trial Court. The impugned judgment suffers from the vice of mis-appreciation of evidence and non-consideration of the crucial and significant aspects in the evidence led by the prosecution and the testimony of the witnesses rendering the said judgment liable to be set aside.

ARGUMENTS ON BEHALF OF RESPONDENT-STATE

7. Learned State counsel has argued that the judgment has been passed by the Special Court after appreciating the evidence and there is an apparent illegality or perversity in the said judgment.

8. We have considered the submissions made by the counsel for the appellant-applicant and with their able assistance have gone through the evidence on record.

ANALYSIS

9. The Court below has extensively dealt with evidence that has been recorded before it. It has been noticed by the learned trial Court that the version of the prosecution as regards the accused having tress-passed into the house of the prosecutrix; kidnapping her and subjecting her to illicit intercourse does not stand corroborated by cogent, convincing and reliable evidence. The following crucial discrepancies in the evidence of the prosecution were noticed by the trial Court:-

- (i) Even though the prosecution relies upon the statement of the complainant which is Ex.P2, however, the complainant is not an eye-witness to the incident.

- (ii) That the prosecutrix is the only eye-witness of the incident and that her statement deposition before the Court is discrepant.
- (iii) There have been material improvements in her deposition when confronted with her statement under Section 164 Cr.P.C. The discrepancies noticed by the trial Court in the statement of the prosecutrix are summarized as under:
 - (a) Even though the prosecutrix deposed that she was kidnapped while sleeping in the cotyard of her house, it was not so recorded in her statement under Section 164 Cr.P.C. (Ex.P1).
 - (b) The prosecutrix does not mention the time of the alleged occurrence in her statement under Section 164 Cr.P.C.
 - (c) The prosecutrix also does not attribute that Gurmeet Singh had gaged her mouth in her statement under Section 164 Cr.P.C.
 - (d) Even though the prosecutrix submits in her deposition that she had stated before the Magistrate about having visited the police Station on 24.05.2015 and thereafter to the Court complex, however, no such version finds mention in her statement under Section 164 Cr.P.C. or in her statement Ex.D1 recorded on 25.05.2015 or even in the complaint Ex.P-2 moved by the complainant.
 - (e) The prosecutrix has got recorded in her statement under Section 164 Cr.P.C. that after her brother reached the Harijan Chopal, accused Nirmal fled away from the spot while accused Gurmeet Singh was caught hold of and a scuffle had taken place between her brother and Gurmeet Singh. However, no such incident had been mentioned in the complaint Ex.P2 moved by the complainant-brother of the prosecutrix wherein he has only stated that both the accused ran away from the spot leaving behind his sister.

- (iv) The prosecutrix has claimed to made attempt to free herself from the accused and also attempted to bite the hand of Gurmeet Singh. She also claims to have vigorously thrown her legs on the wooden cot in an attempt to rescue herself. It is however noticed by the Court that while acused-Nirmal is alleged to have caught her legs, and her hands were caught by accused Gurmeet Singh, it is not probable that the prosecutrix could not make any noise in order to attract the attention of her family members considering especially the fact that the family comprises of six brothers and sisters apart from the parents. It is also observed by the trial Court that when the parents of the prosecutrix were also sleeping in the Courtyard on the adjacent cots, it is not possible for two persons to enter into the house and to over-power a girl and to carry her out of the house without attracting any attention. It is also noticed that the circumstances had been suggest that any attempt was made by the prosecutrix at all to make an attempt to rescue herself.
- (v) The prosecutrix has alleged to have been taken to Verandah of the chopal where rape is alleged to have been committed on the cemented floor. She had alleged that her hands had been tied towards her back to be freed only by her brother after he reached at the chopal where she claims to have remained for about 2 hours and claims to have been raped by Gurmeet for four times. It was noticed that there would have been some injury marks on the posterior portion of the hands of the

prosecutrix in case the said version would be the correct and truthful account of the event.

- (vi) Learned Court also noticed that as per MLR (Ex.P6) proved by PW-4 Dr. Renu Bala there was no injury over face, lips, breast, thigh or anywhere of her body and there was no pain during separation of thigh and manipulation of genitalia and also there was no injury over labia majora and labia minora. The Doctor have also deposed that she did not notice any external or internal marks of injury or any struggle mark on any part of the body of the prosecutrix at the time of medico –legal examination. Further, no semen could be detected as per the FSL report Ex. P-27 on any of the articles including the vaginal swag and pubic hair of the prosecutrix. There was also no external injury mark on the body of the accused as per the MLR Ex.P10 and testimony of PW-5.
- (vii) It was also noticed that in the event of the repeated act of rape having been committed by accused Gurmeet Ram on a cemented surface, there would have been a strong possibility of certain injuries/bruises on the knee/knee cap of the accused.
- (viii) It was also noticed by the trial Court that as per MLR (Ex.P6) pertaining to the prosecutrix, her hymen was not intact and easily admitted two fingers and further that there was no recent sign of torn hymen. The same would suggest that the prosecutrix was used to sexual intercourse.
- (ix) It was also noticed that even though the incident in question took place on intervening night on 23/05.2015/24.05.2015,

however, the FIR was registered on 25.05.2015 at 5:50 P.M. with a delay of more than 40 hours, without any valid, substantiated and reasonable explanation. The FIR Ex.P17, shows that the complainant had appeared along with his sister (the prosecutrix) on 25.05.2015 itself and at no prior point of time. The explanation offered by the prosecutrix as well as the complainant does not find corroboration in the statement under Section 164 Cr.P.C. and other contemporaneous documents submitted/suffered by the complainant as well as the prosecutrix. The complainant has not stated anything about visit to the Police Station on 24.05.2015 in his deposition as PW-2. It is also admitted by PW-2 in his cross-examination that he did not complain about the incident to anyone in the village or lodge any protest with the family members of the accused on 24.05.2015 or at any time thereafter.

- (x) The complainant and/or the prosecutrix did not tell the name/designation of the Officer at the Police Station whom they had allegedly met when they reached there on 24.05.2012 and who is alleged to have told the complainant and the prosecutrix to submit the complaint in writing.
- (xi) The complainant as well as the prosecutrix have not taken any steps to report the matter to the higher authorities against the police officials not registering the case.
- (xii) The prosecution has merely placed reliance on the certificate issued by the Government Primary School. The witness namely PW-3 Om Parkash has admitted that the entry pertaining to the

date of birth in the admission form has been written with a different pen from the rest of the entries in the said admission form. The said witness also deposed that there is no other supporting document in the shape of an affidavit, entry in the Chowkidar register; school leaving certificate or date of birth certificate issued by the competent authority. Hence, there was absence of authentic documentary proof with regard to the date of birth of the prosecutrix.

- (xiii) That the parents of the complainant and the prosecutrix did not step in the witness box to testify about the age of the prosecutrix.
- (xiv) That the prosecutrix herself had been mentioning her date of birth at variance. While in the complaint dated 25.05.2015 (Ex.P2) age is mentioned to be 15 years, in her statement under Section 164 Cr.P.C. (Ex.P1), she has stated her age to be 16 years while at the time of her deposition on 05.10.2015 and thereafter on 10.02.2016 she has stated her age to be 15 years.
- (xv) That the prosecutrix also said that she did not know the age of her sisters and brothers and feigned ignorance about the year in which she was admitted to school and also about whether the date of her birth or that of any of her brothers and sisters was got recorded by her parents with any authority.
- (xvi) That the examining doctor PW-4 Dr. Renu Bala had advised for conduct of test for age estimation, yet, no test for determining the age of the prosecutrix was undertaken.

(xvii) The parents of the complaint and the prosecutrix who could have been the best witness and have been with-held by the prosecution and they have not stepped into the witness box to corroborate the version of the prosecution.

(xviii) The prosecutrix has also repeatedly changed her stance about her association with accused Gurmeet and Nirmal from being near relatives to distant relatives on the paternal side and ultimately to not mean related at all and only belonging to the same caste.

(xix) The accused Nirmal Singh was initially found innocent during the investigation. Sh. Shamsheer Singh Dahiya, DSP Meham and the then DSP Headquarter deposed in support of the investigation conducted by him to find Nirmal Singh as innocent.

(xx) No reasons have been assigned by the prosecution as to why no record of the village Chowkidar and/or hospital was produced and why the medico-legal examination of the prosecutrix was not conducted for determination of the age of the prosecutrix.

10. That after noticing afore-referred discrepancies/short-comings in the prosecution version and the testimonies of the witnesses to establish the commission of the offence by the respondents in the manner as alleged, the Judge, Special Court, Fatehabad extended the benefit of doubt in favour of the respondent-accused.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

11. The same now leads to the scope of interference by the High Court while hearing appeal against acquittal. The Hon'ble Supreme Court

has held in the matter of ***M. G. Aggarwal versus State of Maharashtra, AIR 1963 SC 200***, as under:

“(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is

emphasised, and the emphasis is expressed in different words or phrases used from time to time. 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. The, King Emperor (1) and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for (1) (1934) L.R. 61 1. A. 398. (2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons": vide Surajpal Singh v. The State (1). Similarly in Ajmer Singh v. State of Punjab (2), 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 Shoo 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 (2) and Harbans Singh v. The State of Punjab (4); 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. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the (1) (1952) S.C.R. 193, 201. (2) (1953) S.C.R 418 (3) (1961) 3 S C. R. 120. (4) (1962) Supp. I.S.C.R 104. prosecution case against the appellants had been proved beyond a reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

12. Further, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan vs. State of Karnataka, (2021) 5 SCC 212***, as under:

“7.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

7.2.1 In the case of Babu v. State of Kerala (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S.Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always 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.”

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) “(1) An appellate court has full power to review, reappreciate 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 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 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.

(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 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.

(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.”

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)“(i) The High Court’s decision is

based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference." (emphasis supplied)

7.2.2 *When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:*

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636).” (emphasis supplied)

7.2.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

7.3 In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while

acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) “10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.”

31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.” (emphasis supplied)

JUDGMENTS ON CRIMINAL TRIAL: Appreciation of evidence.

13. It has been held by the Hon’ble Supreme Court in the matter of **Pandurang Sitaram Bhagwat versus State of Maharashtra reported as 2005 (1) RCR (Criminal) 858 (SC)** that there can be no general and universal rule that a women cannot make false allegations or will not put her character at stake. Such an aspect has to be determined in light of factual matrix of each case.

14. It was also held in the matter of **Suresh N. Bhusare and others versus State of Maharashtra** reported as 1999 (1) SCC 220 that where evidence of the prosecutrix is found to be suffering from serious infirmities

and inconsistencies with other material, prosecutrix making deliberate improvements on material points with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, reliance cannot be placed upon such testimony or witness.

15. The Hon'ble Supreme Court further held in the matter of **"Jai Krishna Mandal and another versus State of Jharkhand," (2010) 14 SCC 534**, as under:

"The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed."

16. It was further observed by the Hon'ble Supreme Court in the matter of **"Rajoo and others versus State of Madhya Pradesh, AIR 2009 Supreme Court 858"** that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of injured witness and if the evidence is reliable, no corroboration is necessary. The court, however, further observed:

"....it cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication..... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

CONCLUSIONS:

17. Upon consideration of the facts and the evidence adduced on record as also the legal position pertaining to the scope of

intervention/interference in a judgment against acquittal, we are of the view that the judgment passed by the Special Judge cannot be held to be illegal, perverse or to be suffering from vice of non-consideration of the evidence in its correct perspective and scope. The burden is upon the prosecution to establish its case beyond the shadows of doubt and no negative burden can be cast upon an accused to prove his innocence. The questions of fact involved in the case were to be established by the prosecution by leading cogent, reliable, trust-worthy and consistent evidence. The discrepancies in the evidence cannot be held to be minor and/or inconsequential. Rather, the said discrepancies are substantial and crucial as they reflect upon the contemporary evidence which is relevant to discern the reaction and behavior of the prosecutrix as well as the complainant after the commission of the alleged offence. A mere delay in registration of a case may not be vital when such delay is suitably explained or a reasonable and satisfactory explanation is offered, however, the explanation tendered in the present case raises more questions than it answers and resulting in doubting the occurrence of the event in the manner suggested.

18. It is also equally well settled that suspicion, how so ever grave, does not partake evidence. The prosecution burden cannot be discharged by referring to circumstances that may create suspicion, rather, the degree of burden to be discharged on the prosecution is much higher than creating a mere suspicion.

19. Having considered the submissions advanced by the learned counsel along with evidence adduced on file as well as the position laid down by the Hon'ble Supreme Court in law for relating to appreciation of evidence and laying down the guidelines in deciding appeals against

acquittal, we are of the opinion that there is no illegality, infirmity, perversity or non-appreciation of the evidence by the Special Judge, Fatehabad. The judgment passed by the Court is accordingly affirmed and the appeal is **dismissed**.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

MARCH 04, 2022
Vishal sharma

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