

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CRM-A-969-2019 (O&M)
Date of Decision: 05.12.2022

Neelam Manhas

..... Appellant

Versus

Rashpal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Munish Puri, Advocate
for the appellant.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 22.01.2019 whereby learned Judicial Magistrate First Class, Pathankot has dismissed the complaint of the appellant filed under Sections 323, 324, 325, 326, 341, 354, 452, 148, 149 and 506 of IPC and further acquitted the accused/respondent.

2. The brief facts which are necessary for the adjudication of the present controversy and emerging from the record as well arguments of learned counsel for the appellant are that the appellant filed a complaint under different sections of IPC alleging that respondents after hatching a criminal conspiracy, trespassed into the house of the complainant and attacked the complainant and her family members. The respondents were armed with deadly weapons. The respondents gave arms blow on the person of the complainant and when family members of the complainant tried to save the complainant from cruel clutches of the respondent, the

respondents started beating them with their weapons.

3. The complaint came for consideration before JMIC, Pathankot who vide impugned order dated 22.01.2019 dismissed the complaint of the appellant and acquitted the respondent from the charges of 323, 324, 325, 326, 341, 354, 452, 148, 149 and 506 of IPC

4. Learned counsel for the appellant would submit that the trial Court has dismissed the complaint in a mechanical manner. The appellant had proved her case beyond shadow of doubt. The medico-legal report supported her case and learned trial Court has ignored the MLR.

5. I have perused the record and heard arguments of the appellant. 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. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.

9. In the case in hand, the trial Court has dismissed complaint on different grounds. The complaint was filed on 02.03.2013 whereas alleged incident took place on 20.05.2012 means complaint was filed after the expiry of almost 10 months 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 doctor even though medico-legal report was placed on record. In the absence of examination of doctor who prepared medico-legal report, the MLR could not be relied upon. The

appellant did not examine its witnesses whereas witnesses were cross-examined without being subjected to examination-in-chief. The appellant and her other family members had been convicted under Sections 148, 452, 323 read with Section 149 IPC and in the criminal proceedings initiated against appellant, the present respondents were complainant on whose instance FIR was registered. It shows that complainant-appellant had filed complaint as counter-blow to FIR registered against complainant and her family members. All these facts collectively indicate that appellant miserably failed to prove guilt of the respondents beyond shadow of doubt.

10. 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 Trial 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.

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

(JAGMOHAN BANSAL)
JUDGE

05.12.2022
anju

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