

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-AD-818-2019 (O&M)

DECIDED ON: 24<sup>th</sup> MAY, 2022

PUSHPA

.....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH  
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vaibhav Jain, Advocate,  
for the applicant/appellant.

**SANDEEP MOUDGIL, J**

**CRM-38779-2019**

Prayer in this application is for condonation of delay of 17 days  
in filing the present appeal.

In view of averments made in this application, duly supported  
by an affidavit, delay of 17 days in filing the present appeal is condoned.

Accordingly the application is allowed.

**CRA-AD-818-2019**

Present appeal under Section 372 Cr.P.C. has been preferred by  
the complainant against the judgment of acquittal dated 17.07.2019 passed  
by the Additional Sessions Judge-cum-Special Judge, Sirsa (for short 'Trial  
Court'), whereby, respondent No.2 has been acquitted of the charges framed  
against him under Sections 376 and 511 IPC.

Briefly the prosecution version is that on 17.04.2018,

complainant filed a complaint in the police station to the effect that on 16.04.2018, she was sleeping on the first floor of her house where suddenly, her father-in-law, aged about 50 years, entered in to her room and put off his clothes, started doing obscene acts and tried to commit rape upon her. At that time he was under the influence of liquor. The complainant raised alarm due to which her mother-in-law reached there and took the accused downstairs. The accused also abused the complainant and with these assertions, FIR No. 172, dated 17.04.2018, under Sections 376 and 511 IPC was got registered at Police Station City Dabwali. The accused was arrested, who made a disclosure statement. The statement of the prosecutrix under Section 164 Cr.P.C. was also got recorded. After investigation, challan was presented and the case was committed by the Sub Divisional Judicial Magistrate, Dabwali, on 04.07.2018 to the Court of Session for trial of offences under Section 376 read with Section 511 IPC.

Respondent No.2 was charge-sheeted for the commission of offence punishable under Section 376 read with Section 511 IPC, to which he pleaded not guilty and claimed trial.

Prosecution, to prove the charge against respondent No.2 examined as many as 7 witnesses including the prosecutrix and the doctors, who had medico-legally examined the prosecutrix, produced medical evidence and other material which were exhibited.

While recording the statement of accused-respondent No.2 under Section 313 Cr.P.C., he denied all the allegations *in toto* and pleaded false implication and claimed innocence.

Learned trial Court after hearing both the sides and appreciating the evidence led by the prosecution and records, found the case of the prosecution to be false and by giving benefit of doubt acquitted the accused-

respondent No.2, vide judgment dated 17.07.2019.

Learned counsel for the appellant contended that the trial Court has failed to appreciate the testimony of the prosecutrix coupled with the statement under Section 164 Cr.P.C. which was sufficient enough to convict the accused. It is further asserted that when the prosecutrix has supported the case of the prosecution duly corroborated by medical evidence, there was no question of giving concession of benefit of doubt to accused-respondent No.2. His assertion is also to the effect that minor discrepancies, benefit of which has been given to accused-respondent No.2 by the trial Court, were not of such a nature which would cast doubt upon the veracity of truthfulness upon the statement of prosecutrix. It has further been submitted on behalf of the appellant that the trial Court ought to have taken note of the fact that over a period of time, with the memory to be fading, there is every possibility of occurring of minor omission(s) in the statement of the witnesses and, therefore, the prosecutrix cannot be an exception thereto. Lastly, it is submitted by him that the leave to appeal may be granted and appeal be accepted.

Having heard learned counsel for the appellant and after going through the record, the assertions so raised cannot be accepted which have also been declined by the trial Court after thoroughly appreciating the evidence as led by the prosecution and also the other aspects, which are relevant for consideration, including the medical evidence as well as statement of the prosecutrix for disposal of present appeal.

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 beyond reasonable doubt before the Court of Law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

One of the aspects, which has been taken into consideration by the trial Court, is that there are material contradictions in the statements of the prosecutrix, as put forth by her from time to time, which are not found to be reliable and trustworthy. She has been shaky, while making statements either before the police or the Magistrate and before the learned trial Court, while stating before police and Magistrate that her mother-in-law came at the spot and brought the accused downstairs, whereas in her cross-examination before the trial Court, she admitted that her mother-in-law was not present at home on the intervening night of 16/17.04.2018. Moreover, in her statement before the Magistrate she had stated that the accused had bitten on her hand and gave scratches on her face but PW-3 Dr. Babita Goyal has denied any such type of injury on the person of the prosecutrix.

In the light of afore-said evidence which lacks confidence of the trial Court, the prosecution has miserably failed to prove its case against the accused-respondent No.2 and the offence under Section 376 IPC could not be established.

The afore-said discussion and the facts as well as evidence on record are in absolute consonance with the findings recorded in the judgment dated 17.07.2019 passed by the trial Court whereby the accused-respondent No.2 has been rightly acquitted of the charges under Section 376 and 511 of

the IPC.

Accordingly, the prayer to grant leave to appeal under Section 372 Cr.P.C. is declined and the application as well as main appeal stands dismissed, being devoid of merits.

Ordered accordingly.

**(SANDEEP MOUDGIL)**

**JUDGE**

**24<sup>th</sup> MAY, 2022**

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**(AUGUSTINE GEORGE MASIH)**

**JUDGE**

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*              *Yes/No*