

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 91 of 2012

**Champa Pandit
Vs.
Mantu Pati & Ors.**

The Amicus Curiae

: Ms. Sibangi Chattopadhyay,

: Ms. Sruti Dey, Adv.

For the State

: Mr. N. P. Agarwala,

: Mr. Pratick Bose.

Hearing concluded on: 16/01/2023

Judgment on: 15/03/2023

Rai Chattopadhyay, J.

- 1) This is an appeal to challenge and set aside the judgment and order of acquittal dated January 25, 2011, passed by Judicial Magistrate, 3rd Court, Tamluk at Purba Medinipore, in C. R. Case No. 87 of 2006. The respondents here/accused persons were charged for offences under section 323 IPC and two amongst them were also charged for an offence under section 354 IPC.

2) In this appeal, this Court shall be guided by the principles that, the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the trial Court is a reasonable one and the conclusion reached by it had its grounds well settled on the materials on record, the order of acquittal may not be interfered with. Though there is no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded, an interference by this appeal Court would be warranted only on the finding that the trial Court's decision is based on erroneous views and against the settled position of law.

3) It would be beneficial to mention the findings of the Supreme Court in the case of ***State of Rajasthan versus Shera Ram reported in (2012) 1 SCC 602:***

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the Court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate Court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not call for.”

4) In a recent judgment reported in ***2023 SCC Online SC 225 (Nikhil Chandra Mondol versus State of West Bengal)*** the Hon'ble Supreme Court has been pleased to hold that the scope of interference in an appeal against acquittal is very well crystallised. Unless such a finding

is found to be perverse and illegal/impossible, it is not permissible for the appellate Court to interfere with the same. The Court has relied on a three Judges bench decision in the case of ***Rajesh Prashad versus State of Bihar reported in (2022) 3 SCC 471***, in which it was held that there is a double presumption in favour of the accused on his acquittal. Firstly, the presumption of innocence that 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 Court. There the Hon'ble Court has held further that 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.

- 5) Now on this basic guiding principle to deal with a judgment like the impugned one, that is, the presumption of innocence of the respondents/accused persons have been further fortified by the said judgment of the trial Court, this Court shall proceed to analyse, in this appeal, if the impugned judgment is founded on appropriate appreciation of evidence and cogent reasons to reach to the finding as it has, which may not be a finding utterly impossible or that, if the same suffers from any perversity or palpable illegality, to warrant this Court's interference to it.

6) The trial Court's findings are broadly based on four parameters, firstly that the two other witnesses, who have deposed in this trial, along with the complainant, may be interested witnesses. This, it says, on the basis of the fact revealed, regarding pendency of previous litigation between the parties which prompted the Court to find already existent animosity between them. One of these two, is the husband of the complainant. Secondly, the Court has dwelled upon the ground of suppression of material fact by the complainant, as the complainant did not produce in Court the proof of general diary entry, which she asserts to have lodged with the police. Next, the trial Court has based its fact-finding process, on the inadequacy of evidence, more precisely the medical evidence which according to the trial Court is not revealing sufficiently to find guilt of the accused persons under any of the above stated provisions of law. Lastly, according to the trial Court the delay in filing the complaint has been fatal for the prosecution's case. Thus, the trial Court has proceeded to find that the prosecution has failed to prove charges as above, against the present respondents/accused persons and acquitted them.

7) The complainant has set the system in motion by filing a complaint dated February 1, 2006, in the Court of Chief Judicial Magistrate at Tamluk, Purba Medinipur. The complaint was lodged against all the present respondents. The date of occurrence has been mentioned to be December 5, 2005. And the time of occurrence is said to be at 5 PM in the afternoon. The complainant has said inter alia, that, the

accused persons forcefully entered into her house on the said date and time. They have violently abused her in filthy language. Regarding her allegation of attack on her person and violation of her modesty, the complainant has stated in the said complaint that respondent Mantu Pari pulled tuft of her hair in one hand and forcefully pressed her mouth with bad intention, with his other hand. She has further alleged that respondent Dilip Giri embraced her amorously and torn and pulled out her blouse. Respondent Tarun Guchait disrobed her by removing her saree. Allegedly all the respondents/accused persons were wrenching her continuously and have also subjected her to assault and hurt by slaps and kicks. That, they have outraged her modesty by continuously trying to get her in the buff. It has also been stated that when the husband of the victim/complainant came to her rescue, he has also been subjected to physical assault by the accused persons. Allegedly, as alarm was raised and neighbours rushed into the place, the accused persons fled away from there. Also allegedly, on his way back the accused person namely Babu Dey threatened the complainant with pointed knife, with dire consequences. Trial started by framing of charge against the accused persons under section 323 IPC and against respondent Dilip Giri and Tarun Guchait, under section 354 IPC.

- 8)** The complainant herself (PW. 1), one Gobinda Chandra Ghora (PW. 2) and Subal Pandit (PW. 3 and the husband of the complainant) are the three witnesses for the prosecution, in this trial. All the witnesses

have identified all the respondents on dock. Witnesses including the complainant have duly substantiated the allegations made in the complaint by deposing in Court. To prove an offence punishable under section 323 IPC, the prosecution has to prove the ingredients of offence as laid down under section 321 IPC, beyond all reasonable doubts. Own volition, intention and knowledge of the accused person corresponding to the result of causing hurt to any person would constitute an offence punishable under section 323 IPC.

- 9)** What constitutes an outrage of female modesty is nowhere defined. According to Section 354 IPC, an intentional assault or use of criminal force to any woman intending to outrage her modesty, would be punishable under the said provision of law. The essence of a woman's modesty is her sex. Therefore one may find that assault or criminal force, applied with knowledge and intention to violate a woman sexually, may come within the four corners of the above stated provision of law. The prosecution in a trial has to prove the above beyond the scope of any iota of doubt.
- 10)** In this trial, from the examination-in-chief of all the three prosecution witnesses, one can find coherence and continuity in support of and substantiating the allegations made in the complaint. The trial Court had to find out, if in the cross examination of the witnesses as above, any fact has emerged to cast a reasonable doubt as to the substantive evidence of the prosecution witnesses. The trial

Court had also to look to the corroborative evidences, which would have been necessary, in addition to the ocular evidence of the witnesses as regards the offence alleged against the present appellants. The trial Court appears to have proceeded in the proper direction to assess all these aspects in the case and pointed out to some relevant discrepancies and doubts as regards the credibility of the witnesses.

11) The relevant areas may be mentioned, as hereinbelow:

As regards the witnesses, if are interested witnesses;

- (i) The complainant/PW1, in her cross examination has asserted the fact to have filed other two criminal cases against the present respondents/accused persons, being C.R.No. 465 of 2006 and M.P.Case No. NGR 650 of 2005.
- (ii) She has asserted to be the witness in a criminal case against the respondents, which has been filed by P.W.2.
- (iii) She has stated to have purchased property of Tulsi Paik at plot No. 824 in Mouza- Kalindipur, where allegedly, the respondent Rabi Mishra and his wife have forcefully taken unauthorised possession and are living therein.
- (iv) She has also stated that one Dhananjay Paul has lodged a criminal case against her being CR No. 169 of 2006, in which respondent Bistu Pati is a witness against her; also that, complainant Dhananjay is a close acquaintance of the present respondents/ accused persons.
- (v) PW. 2 has asserted to have filed five cases against the present respondents/ accused persons. So far as possession of the house of Tulsi, by the accused person Rabi Mishra, is concerned, this witness have conceded to the said fact.

12) Therefore, there is long and chequered history of not one but several criminal cases between the parties. It appears that two groups of people are belligerent to each other, filing cases and being witnesses against each other. Thus the possibility of implication of the respondents in a false case, cannot be ruled out. Similarly the shadow of doubt cannot be dispelled as regards the reason of filing the present case to only wreck vengeance against the respondents.

13) However, obviously, pendency of cases from a previous date between the parties would not have been important, if in this trial the prosecution could have brought on record, clinching evidence in order to satisfy the ingredients of offence for which the respondents were charged against.

14) As regards non-availability of medical evidence;

As already stated above, witnesses have deposed in support of the prosecution case to which the complaint duly corroborates. However, in this case excepting the ocular evidence what would have been of utmost necessity, practically unavoidable and obvious, is the appropriate and sufficient medical evidence. Witnesses have stated to have been treated by a homeopathy practitioner, though none of the witnesses could say his name. There is no treatment paper relied on or exhibited by the prosecution in this case. Under such circumstances, when the trial Court has held in the impugned judgment that the fact of injuries sustained by the complainant or her

husband (PW.3), was not established from the evidence in the trial, the same is found to be appropriate.

15) Other shortcomings in the evidence;

The torn and damaged wearing apparels of the complainant have also not been exhibited in this trial, which would have been imperative, more particularly with respect to the offence under Section 354 IPC. In view of the previous animosity between the parties and to eliminate any possibility of false implication of the respondents or malicious prosecution against them, the Court would certainly not bestow unconditional reliance on the statement of the complainant/victim and look for the corroborative material, which the trial Court in this trial has done correctly. However vital pieces of corroborative material like medical document, wearing apparels etc are unavailable in this trial to the prosecution, to support the oral evidence given by the witnesses. PW.2, being also a litigant against the respondents/accused persons, in some other case, cannot be held to be a credible witness free from all doubts as to his intentions of taking revenge against the respondents. Finding of the trial Court in this regard can also not be flawed.

16) As regards suppression of materials by the complainant;

This Court cannot also overlook the fact revealing from the evidence regarding suppression by the complainant of copy of her general diary entry, claimed to have been lodged with police against

the present respondents, before filing of this case. In doing so the complainant has drawn the mistrust of Court and very rightly so. Pertinent to note that the complainant pleaded her unwillingness to produce the said general diary entry as evidence, rather than any other ground like loss of the same etc. Accordingly it was her own volition not to produce the same in Court which should have gone against her and adverse inference should have been drawn, as has rightly been done by the trial Court in this case.

17) As regards delay in filing the complaint;

No less important is to take into consideration the long time gap of about two months from the date of alleged incident till the date of filing the present complaint in the Court. This delay is unexplained in this trial. A long gap in filing the complaint, for which there is no explanation to offer as to the reason thereof, would only add to the misery of the prosecution in failing to substantiate as to the creditworthiness of the complaint itself. Against an offence as serious as outraging her modesty, the complainant would not have unnecessarily sit tight over that. Therefore the moment she is unable to explain with sufficient and cogent reason regarding cause of delay in filing the complaint, the possibility of the same being concocted and untrue, creeps in, which cannot be overruled right away. This delay in filing the complaint, which has remained unexplained, has been fatal to the prosecution case and on this point the trial Court is only correct to hold likewise.

18) Accordingly in this trial, the trial Court is found to have approached rightly in appreciating the evidence on record and absence of the same and has ultimately come to a finding which is just, fair and proper. There is no perversity or palpable illegality in the approach or finding of the trial Court which may be interfered to, in this appeal. This is again apt, to reiterate the principles that in an appeal against the order of acquittal, the Court should be slow in interfering with the same unless the findings of the trial Court are absolutely not in confirmation with the law or perverse or impossible. Hence considering the materials present in this case and following the settled principles of law, this appeal Court would find the judgment of the trial Court impugned in this appeal to be just fair and proper, not warranting any interference to the same at all.

19) Hence the appeal fails. CRA No. 91 of 2012 is dismissed with connected pending applications, if any.

20) Court appreciates the efforts put in by the Ld. Amicus Curiae in this case, to assist the Court in the matter. The Secretary, High Court Legal Services Committee is directed to do the needful to pay fees in this case to Ld. Amicus Curiae, at a rate commensurate to that of a category 'A' lawyer in its panel, preferably within one month from the date of this judgment.

- 21)** Connected application, if any, is also disposed of.
- 22)** Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

RAI

CHATTOPADHYAY

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(Rai Chattopadhyay,J.)