

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

212

CRM-A-716-2019 (O&M)
Date of decision: 21.04.2023

JASWINDER KAUR

....Appellant

Versus

NARINDER SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Mandeep S. Sachdev, Advocate for the applicant-appellant.

AMAN CHAUDHARY. J.

1. The present leave to appeal has been filed against the impugned judgment dated 21.09.2017 passed by learned JMIC, Jalandhar whereby the respondents have been acquitted of the charge framed under Sections 452 and 323 IPC against them.

2. Summarily, the facts of the case are that the accused-respondent No.1 who is son of brother-in-law of father of Bahadur Singh forcibly put some luggage in one room of the house where the complainant-appellant, along with her children and servant were residing. The allegations against the accused-respondents are of trespassing into her bedroom and inflicting injuries to her. She filed a criminal complaint on 21.03.2011. The accused-respondents got an FIR bearing No.60 dated 12.03.2011 registered under Sections 323/341/506/427/34 IPC PS Sadar, Jalandhar with allegations that the complainant and her daughter had broken open the door of the room belonging to accused-respondent No.1 on 11.03.2011.

3. The trial Court on the basis of preliminary evidence summoned the accused-respondents and as per the pre-charge evidence adduced by the complainant, charged them under Sections 452 and 323 of IPC and after having meticulously examined the evidence as led by the parties, acquitted the accused-respondents vide judgment dated 21.09.2017.

4. Hence, the present leave to appeal.

5. It would be worthwhile to make a reference to the impugned judgment passed by the lower Court, which reads thus:

“20. Onus to prove this point was upon the complainant. Complainant alleged that on 11.03.2011 accused Narinder Singh and Rajni Kaur inflicted injuries on her person with weapons. Although, CW- 1. CW- 3 and CW-4 in their examination in chief consistently deposed about the factum of accused entering into their house with armed weapon and there upon inflicting injuries on the person of complainant. However, there are material discrepancies in the said testimonies of CW-1 to CW-5 about the number of injuries received by the complainant, about their arrival and departure time at the hospital and about the number of persons taking complainant to hospital. Complainant in her testimony as CW-1 deposed that she has received in total two injuries in the alleged occurrence at 05:30 PM on 11.03.2011 and thereafter she reached the hospital at about 06-06:30 PM, which was at a distance of 30 minutes from their house. Whereas, CW-4 Gurvinder Singh deposed that they have remained in the hospital for about 30 to 60 minutes. Whereas, copy of MLR placed on record as Ex.CW5/1 revealed that complainant was medico legally examined at 05:50 PM. It is highly improbable that a person who has received injuries at 05:30 PM by the accused was taken to the hospital in a car, which is at a distance of 30 minutes, as per the averments of the complainant and there upon she was examined by the doctor at 05:50 PM only i.e. after a gap of merely 10 minutes.

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22. In view of above discussion, the court arrives at conclusion that the complainant has failed to prove her case against the accused under Section 452 and 323 of the IPC. Accordingly, accused Narinder Singh and Rajni Kaur stands acquitted of the charges framed against them under Section 452 and 323 of the IPC. The bail bonds and surety bonds of the accused are kept intact for another six months, in compliance with Section 437-A of Cr.P.C., in order to ensure the presence of the accused in the appeal or revisionary court, as the case may be, in case, any appeal or revision is preferred by the complainant. File be consigned to the record- room, after due compliance. ”

6. Learned counsel for the appellant submits that the trial Court had ignored the testimony of prosecution witnesses, who had proved that the respondents had committed the offence. There was no reason to concoct a false story as had been submitted by the respondents.

7. Heard and perused the file.

8. It would be profitable to refer the judgment of Hon'ble The Supreme Court in the case of **N. Vijayakumar v. State of Tamil Nadu** (2021) 3 SCC 687, wherein it was held thus:

"20.....Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432) "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(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 on the evidence G.A.No.28 of 1994 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."

9. Adverting to the case in hand, it is evident that the allegations of the complainant-applicant relate to trespass by the accused-respondents in a house, which she claimed to have inherited by her husband from her mother-in-law Surjit Kaur, though no document with regard to the same showing ownership was produced. As per the complaint, accused-Narender, who is the brother of her husband, had forcibly put some luggage in one room owned by Bahadur Singh, her husband, in which the complainant and her children are residing. No date of the said incident was found mentioned. Later on, the date of occurrence was specified as 11.03.2011. Ex.D1 a compromise deed entered into between the parties, in respect of which a DDR entry was recorded after a complaint had been lodged by accused-Narender Singh in the year 2010, reveals that he was given a room in the said house. The factum of accused-Narinder Singh being in possession of a room in the house was not categorically denied in the testimonies of the witnesses. It has also come out that in fact accused-Narender Singh and his wife Rajni Kaur, had lodged FIR No.60 of 2011, under Sections 323, 341, 506 427 read with Section 34 IPC against the complainant and her daughter for having inflicted injuries to them and the present FIR was stated to be a counter blast thereto. The accused-respondents being NRI were unable to come and depose in the said FIR, leading to acquittal of the complainant and her daughter. A civil litigation between accused-Narender Singh and his real brother Bahadur Singh-husband of the complainant with regard to the house in question is pending.

10. The Court below has meticulously examined the evidence and arrived at the conclusion as the complainant could not establish the guilt of the

accused-respondents.

11. Leave to appeal could be granted where the view taken by the Court while acquitting the accused is clearly unreasonable.

12. In **Hakeem Khan vs. State of M.P.**, (2017) 5 SCC 719, Hon’ble The Supreme Court considering the powers of the appellate court for interference in cases where acquittal is recorded by the trial Court, held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court.

13. By applying the abovesaid principles to facts and circumstances of the case in hand, the acquittal of the accused-respondents by the trial Court can be said to be a “possible view”.

14. Accordingly, no case for interference in the impugned judgment is made out. Thus, the application for leave to appeal is dismissed.

(AMAN CHAUDHARY)
JUDGE

21.04.2023
S.Sharma(syr)

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