

CRA-AS-144-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRA-AS-144-2018

Date of Decision:22.03.2023.

State of Haryana

.....Petitioner

Versus

Gulab Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Surender Singh, A.A.G., Haryana.

VIKRAM AGGARWAL, J. (ORAL)

1. The present appeal is directed against the judgment dated 02.11.2017, passed by Additional Sessions Judge, Fatehabad, vide which the respondent was acquitted in case FIR No.369 dated 21.06.2017, under Sections 379-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station, Ratia.
2. The FIR was registered on a complaint (Ex.P1) having been submitted by one Aanchal wife of Sushil Kumar (PW-6). It was alleged by her that on 21.06.2017 at about 8.15 P.M., when she was returning to her house from the market, two boys came on a motorcycle and snatched her bag. The bag contained ₹ 15,000/-, one mobile phone and some urgent papers. Because of darkness, she could not note down the registration number of the motorcycle. She moved a complaint to the police on the basis of which the FIR was registered.
3. The respondent-accused was arrested and upon interrogation, he is alleged to have suffered a disclosure statement, in pursuance to which one mobile phone and ₹12,000/- in cash were recovered. After the completion of investigation,

final report under Section 173 Cr.P.C, was submitted. The prosecution examined six witnesses to prove its case. No evidence was led in defence.

4. By way of the impugned judgment, the respondent was acquitted.

5. Aggrieved by the said judgment, the present appeal has been preferred.

6. I have heard learned counsel representing the State of Haryana.

7. Learned counsel has submitted that the trial Court did not examine the matter in the correct perspective. He submits that the respondent was acquitted on the ground of a proper test identification parade not having been conducted despite the fact that the complainant-Aanchal had duly supported the case of the prosecution while appearing as PW-6. He further submits that recovery of the mobile phone and ₹ 12,000/- had been made from the respondent. He further submits that the recovery had been made in pursuance to the disclosure statement made by the respondent-accused (Ex.P-7). Learned counsel submits that the trial Court gravely erred in acquitting the accused despite the prosecution having proved its case against the respondent-accused beyond shadow of reasonable doubt.

8. I have considered the submissions made by learned counsel representing the State of Haryana and have gone through the impugned judgment.

9. No doubt, the complainant-Aanchal stepped into the witness box as PW-6. In her examination-in-chief, she identified the accused. However, in the cross examination, she stated that the police had called her to the police station and had told her that her mobile phone had been recovered. She stated that when she and her brother went to the police station, the police asked them to sit and listen to their questions put to the person apprehended by them and at that point of

time, the accused stated about the snatching of the purse. She stated in the cross examination that she had not told the police that the person in the police station was the same who had snatched the purse from her before the questioning of the accused started. It has further come on record that no description of the accused had been given by the complainant at the time of registration of the FIR and even the number of the motorcycle could not be noted down by the complainant. The cross examination of the complainant definitely created a dent in the case of the prosecution which was rightly considered by the trial Court.

10. In so far as the recovery of the mobile phone and ₹ 12,000/- in cash are concerned, the same cannot also be relied upon firstly in view of the untrustworthy statement of the complainant. Secondly in so far as the mobile phone is concerned, no bill was produced on record. It was not proved that the mobile phone which had been released on *Sapurdari* was the same which had been allegedly recovered from the accused. PW-6-Aanchal duly stated in her evidence that the bill of the mobile phone and the details of the Sim had been handed over to the police, but nowhere the IMEI number was mentioned nor the bill of the mobile phone saw the light of the day. On the contrary, the Investigating Officer PW-4-ASI Krishan Lal stated in his evidence that the bill of the mobile phone had not been given by the complainant-Aanchal nor had the ID proof of mobile number had been given to him. Insofar as the amount of ₹12,000/- is concerned, there is nothing to show that these were the same ₹12,000/- rupees which had been snatched from the complainant. Anyone could be in possession of a sum of ₹12,000/- and the mere recovery of the same from the said person would not mean that they had been snatched from someone. It is therefore, clear that even the recovery alleged to have been made in pursuance to the disclosure statement

suffered by the respondent-accused, was not proved. Under the circumstances, no reliance can be placed upon the disclosure statement also.

11. I have perused the judgments passed by the learned trial Court. Each and every aspect has been considered minutely and thereafter, the trial Court has come to the conclusion that the prosecution had not been able to prove its case against the accused.

12. It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of ***Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319***, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of "caution" was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of ***State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01***, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that 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. It was held that 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 view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:-

“9. This Court has laid down parameters for interference against the order of acquittal time and again. 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. 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. 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.”

This view was also taken by the Hon'ble Apex Court in a case State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R. (S.C.) 09. It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of ***Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2)SCC 490.***”

12. In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal, the same is dismissed.

(VIKRAM AGGARWAL)
JUDGE

March 22, 2023
Rekha

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