

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1744-MA of 2017 (O&M)

Date of Decision: 17.02.2023

Meenu Rani

---Petitioner

versus

State of Punjab and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Loveinder Kaur, Advocate
for the petitioner

Mr. Amish Sharma, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

CRM-24895 of 2017

The applicant is seeking condonation of delay of 29 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, the application is allowed and delay of 29 days in filing the appeal is condoned.

CRM-A-1744-MA of 2017 (O&M)

1. The appellant, through the instant appeal, is seeking setting aside of judgment dated 11.04.2017 whereby Additional Sessions Judge, Sangrur has accepted appeal of the respondent.

2. The brief facts arising from the record are that appellant moved an application to Senior Superintendent of Police, Sangrur alleging that she was married to Gurpreet Singh on 27.06.2010. Her parents gave sufficient dowry at the time of marriage. It was second marriage of Gurpreet Singh. His first wife had passed away and he has two children from the earlier wedlock. She before marriage disclosed to Gurpreet Singh that she is unable to give birth to a child. Gurpreet Singh on 5.10.2010, under the influence of intoxicant, made intercourse with her to the extent that it resulted into bleeding. She became unconscious and was admitted in hospital where she was operated. Her husband was demanding Innova car. On 5.12.2010, she alongwith her uncle went to her matrimonial home but they did not allow her to enter and turned her out of the house. The police conducted investigation and found that it is not a case of demand of dowry whereas it is a case of dispute between the parties on account of medical condition of the wife. The police after completing investigation filed challan alleging commission of offence by respondent punishable under Section 498-A IPC. The trial court framed charges. The prosecution led its evidences. After considering arguments of both sides, the trial court held the respondent guilty of offence punishable under Section 498-A IPC and accordingly awarded sentence of one year.

3. The respondent herein preferred an appeal before Sessions Court which came up for consideration before learned Additional Sessions Judge who vide impugned order dated 11.04.2017 allowed appeal of the respondent herein. The appellant is assailing

judgment passed by Appellate Court.

4. Learned counsel for the appellant inter alia contends that respondent was duly informed about medical condition of the appellant. The respondent was already having two children, thus, there was no need of child. The respondent knowing medical condition of the appellant opted for intercourse with her which resulted into bleeding. The judgment of conviction passed by trial court was well reasoned and speaking still Appellate Court set aside the same.

5. I have heard learned counsel for the appellant and scrutinized the record. The present appeal is devoid of merit.

6. The relevant extracts of findings recorded by the Appellate Court read as:-

“16. *The perusal of the testimony of Inspector Parsin Kaur, examined as PW-4 reveals that she has admitted that the allegations of demand of dowry were raised by the complainant M, but the same were not found correct. The material dispute between them was a medical issue. The police did not find the appellant guilty of the misappropriation of dowry articles or demand of dowry. This fact is also supported by the enquiry report Ex. PW-4/A. Thus, it is clear that the complainant had filed the complaint before the police on false allegations against the appellant- accused. It has come in the evidence that the appellant was already married and was having two sons from the marriage. His first wife ha died. As per the*

claim of the claimant, she has disclosed of the defect in her vaginal canal. She has even deposed that she is not ready for her medical examination. Ex. PW-4/A is the report dated 25.12.2010, which reveals that the only dispute between the parties was that the complainant M was found to be not a complete woman. The prosecution has laid emphasis on the fact that the doctor had declared him a woman. But, there has not been any evidence that she has disclosed any fact qua her physical problem to the appellant-accused.

17. *The careful scrutiny of evidence on record reveals that there has been conduct of concealment of material fact of her physical problem from her husband, the appellant-accused. She has admitted the contents of prescription slip dated 19.08.2010 Ex. R-1 in the case of domestic violence, wherein it is mentioned that there is no uterus, only small depth of vagina. The appellant-accused had produced the record of treatment exhibited in the evidence of Dr. Renu Singla in case under Section 12 of Hindu Marriage Act filed in the Court of learned Additional District Judge, Sangrur, which reveals that the complainant and her family members did not disclose the physical problem of complainant to the appellant-accused.*

18. *The very basis of the matrimony is to permit the enjoyment of physical pleasure with the marital*

partner and the concealment of the material facts as has been done by the complainant herself in this case amounts to cruelty to the appellant-accused and not to the complainant. The prosecution had laid emphasis that there were allegations from the appellant-accused that the wife is not fit for conjugal pleasure, but it does not amount to cruelty especially when the medical report brought on record, does not strictly supports the case of the prosecution and rather raises the point of favour in favour of appellant-accused.

19, 20 and 21

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22. It is an admitted case of the complainant that she had married with the appellant-accused on 27.06.2010 and was kept in a nice manner for three months. Before the marriage, she has disclosed to the appellant-accused that the depth of vagina is only three inch and she can not give birth to the child. But, she can give some enjoyment of matrimonial life. In such circumstances, committing of cruelty during sexual pleasure with her, on 5.10.2010, under intoxicated condition is not believable. It is admitted that the physical union was made by the appellant-accused in the early morning and as such, this Court is of the opinion that while appreciating the evidence, the Court must arrive at a appropriate conclusion to find that the allegations, if accepted, disclose the commission of offence or not. In the present

case, the evidence is wholly insufficient to prove the charge of the offence under Section 498-A of IPC.”

7. 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.

8. 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.

9. The applicant is seeking special leave to appeal against judgment and order whereby Appellate 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.

10. From the perusal of impugned judgment, it is quite evident that there was no dispute qua dowry between the parties. The dispute was on account of medical condition of the appellant. The appellant was not in a position to have intercourse with her husband. The investigating officer during trial had deposed that there was no demand of dowry and dispute between the parties was on account of medical condition of the appellant. It appears that appellant with intent to implicate the respondent has attempted to make allegations of dowry. It was second marriage of the respondent which supports case of the respondent because demand of dowry in case of second marriage is abysmally negligent.

The present appeal being devoid of merit, deserves to be dismissed. Accordingly, application, seeking special appeal to leave and appeal are hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

17.02.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No