

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

225

CRM-A-2704- MA-2018 (O&M)
Date of Decision : 19.05.2023

State of Haryana

..... Appellant

vs

Amit Kumar @ Shanky

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashish Bishnoi, DAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)**CRM-42975-2018**

For the reasons stated in the application, the same is allowed and delay of 61 days in filing the petition is condoned.

CRM-A-2704- MA-2018

1. The appellant-State through instant appeal is seeking setting aside of judgment of acquittal dated 02.06.2018 whereby Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women and Children), Yamuna Nagar at Jagadhri has acquitted the respondent. The appeal is accompanied with application under Section 378(3) Cr.P.C. seeking leave to appeal against the impugned judgment.

2. The brief facts which are necessary for the adjudication of the present controversy and emerging from the record as well arguments of learned counsel for the appellant are that the complainant lodged a complaint with police alleging that Amit Kumar @ Shanky-accused is

her husband. She has filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 against her husband. Her husband on receipt of summons from Court assured her that he will keep her and her children nicely and will not harass her. She came back to her matrimonial home. On 16.06.2016, Amit Kumar fell ill. On 17.06.2016, he was got admitted in hospital. On 19.06.2016, he was discharged from the hospital. On 19.06.2016, she received a telephonic call and found that she was 2nd wife of Amit Kumar. She left her matrimonial home, however, on the persuasion of Amit Kumar and his parents, she came back. On 20.06.2016, she had gone to market to purchase household articles and when she returned, she found that her husband and his father were trying to commit bad act upon her daughter. On the aforesaid complaint, FIR No.440 dated 16.07.2016 came to be registered under sections 10 of the Protection of Children from Sexual Offences Act, 2012 and 506 of IPC at Police Station City Jagadhrai, District Yamuna Nagar.

3. The police after completing investigation filed its report. The trial Court framed charges. The complainant appeared as prosecution witness, however, she did not support the case of prosecution and she was declared hostile. The trial Court after considering the facts of the case and arguments of both sides came to a conclusion that testimony of victim does not inspire confidence as there are material contradictions as to the matter of incident as alleged which is further not corroborated by evidence of her mother-complainant PW3. By extending benefit of doubt, accused was acquitted from the charges

framed against him.

4. There is no appeal by victim as well as complainant. The State has filed present appeal along with application under Section 5 of limitation Act seeking condonation of delay of 61 days and another application under Section 378(3) seeking leave to appeal against the judgment of acquittal.

5. I have perused the record and heard arguments of the appellant. The present application seeking leave to appeal is bereft of merit and deserves to be dismissed.

6. 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.

7. A three judge bench of the Apex Court in **Ashok Kumar Singh Chandel Vs State of U.P. 2022 SCC Online SC 1525** 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

91. 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.

92. 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.”

93. 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 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...”

94. 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.

8. The appellant is seeking leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of 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.

9. From the perusal of impugned order, it is quite evident that complaint was lodged against accused by his wife. There was matrimonial discord between accused and his wife. She has filed cases against accused. On account of matrimonial discord, it appears as noted by trial Court, the complainant initially lodged complaint against respondent, however, she turned hostile.

10. All the above facts and circumstances make the case of appellant doubtful and it is settled proposition of law that prosecution is bound to prove its case beyond the shadow of reasonable doubt.

11. Having regard to the findings recorded by trial Court including accepted legal position, this Court is of the considered opinion that in the case in hand, there is no infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned judgment being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference. Request of the applicant seeking leave as

well appeal is hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

19.05.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>