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

CRR-854-2016 (O&M)
Date of Decision: November 20, 2023

SARLA DEVIPetitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arvindpal Singh, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant revision petition is preferred against judgment dated 23.07.2015 passed by Additional Sessions Judge, Fatehabad whereby judgment of acquittal dated 05.03.2013 passed by Judicial Magistrate First Class, Fatehabad in FIR No. 575 dated 31.10.2007 under Section 365/384/420/467/468/471/506/120-B of IPC and Section 25/27 of Arms Act was upheld.

2. The facts as alleged by the prosecution are that by taking advantage of mental infirmity of husband of complainant, respondents no. 2 to 7-accused forcibly obtained the sale deed dated 09.10.2007 for transfer of 11 acres from Mahender Singh- husband of complainant. Further, the accused abducted complainant-Sarla Devi and obtained her signatures on blank papers to grab 33 acres of land in her name and to prepare her GPA. On 03.11.2007, 0.315 bore pistol

and power of attorney with respect to the 33 acres of land and one Mahendra Scorpio (HR 99 AX(T) 3181) were recovered from Respondent No.2-Hoshiar Singh, sale deed with respect to the 11 acres of land was recovered from Respondent no. 5-Rajesh, one bamboo stick was recovered from Respondent No.6-Rakesh and one 0.12 bore gun and one live cartridge was recovered from Respondent No. 7-Chanan Singh.

3. Learned counsel for the petitioner-complainant assails the judgment of acquittal on the ground that the trial court gravely erred in discounting the fact that forged GPAs allegedly executed by the petitioner were recovered at the instance of Respondent no. 5-Rajesh and Respondent No. 7-Chanan Singh. The said documents have been prepared by placing the thumb impression of the petitioner, satisfying the ingredients of the offence of forgery. He further contends that the accused are relatives of the petitioner's husband and have taken advantage of the fact that the petitioner is an illiterate lady and her husband is mentally challenged. Furthermore, it was argued that the FIR is not to be considered the encyclopaedia of the prosecution case and that due importance must be given to the evidence collected during investigation.

4. I have heard the learned counsel for the parties and perused the record of the case.

5. Evidently, improvements were made by the complainant when she appeared in the witness box. While in the FIR she mentioned that the accused came to her house while her daughter was away to get married and committed the alleged offence, as PW1 she deposed that

the incident took place approximately two years ago and the accused came to her house on a Scorpio car when she and her sister were present at her house along with her husband. Curiously, the date of commission of the alleged offence does not find any mention. Further, names of accused Hoshiair Singha and Ram Phal were missing from the FIR and the same also doesn't mention any weapons (gun, danda) that the accused were allegedly carrying. The version that the couple was taken to Fatehabad on gun point in a Scorpio to sign/ put thumb impression on the said documents also finds no mention in the FIR. Comparing her deposition to her account of events in the FIR show significant improvement. Furthermore, a civil suit was filed by the complainant-petitioner which was duly dismissed by Additional Civil Judge(Senior Division), Fatehabad for default under Order IX Rule 3 of CPC and which does not indicate the current version of the prosecution case. The sale deed allegedly executed by the petitioner's husband is dated 09.10.2007 hence, there is a 20 days delay in registration of FIR. In view of the discrepancies and infirmities in the prosecution case, I am not inclined to grant relief.

6. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses.

(See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

7. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of 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 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 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."

8. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the case of the prosecution and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. Resultantly, the instant revision petition is dismissed.

20.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No