

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CRA-AS-342-2022 (O&M)
Date of Decision: 10.01.2023

Fojiya

...Petitioner

Versus

Nargis and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Nipun Bhardwaj, Advocate for
Mr. Vinod Bhardwaj, Advocate for the appellant

JAGMOHAN BANSAL, J. (Oral)

CRM-44337-2022

Application is for condonation of delay of 44 days in filing
the appeal.

Keeping in view the averments made in the application, the
application is allowed and delay is condoned.

CRM stands disposed of.

CRA-AS-342-2022

1. The appellant through instant appeal is seeking setting aside
of judgment dated 02.04.2022, whereby Chief Judicial Magistrate,
Panipat has acquitted respondent Nos.1 to 4 from the charges framed
under different sections of IPC arising out of FIR No.1161 dated
06.11.2017 registered under Sections 323, 354 & 506 of IPC registered
at Police Station City Panipat.

2. The brief facts emerging from the record are that appellant-complainant lodged an FIR against respondents on 06.11.2017 alleging that she along with her mother came to Court premises in order to mark her presence before the Court and when she was in parking of the Court premises, the respondents caught hold her *burka* and put her in their car and strangled her with a *dupatta* with an intent to kill her. On the basis of statement of the complainant, afore-stated FIR came to be registered. The police after investigation presented its report under Section 173 Cr.P.C which came up for consideration before Chief Judicial Magistrate, Panipat, who vide impugned order dated 02.04.2022 has acquitted all the respondents.

3. Learned counsel for the appellant, *inter alia*, submits that complainant and her mother had deposed in favour of respondents as there was a promise of marriage on the part of brother of respondent Nos.3 & 4. The brother of respondent Nos.3 and 4 has resiled from his commitment to marry the complainant, thus, present appeal deserves to be allowed and respondents need to be punished.

4. Learned Trial Court after considering case of prosecution as well as evidence on record, came to conclusion that prosecution has failed to prove its case beyond shadow of reasonable doubt and benefit of doubt should be given to the respondent. The Trial Court found that it would be neither safe nor in the interest of justice to hold the respondents

guilty as there is no cogent and convincing evidence on record to link the accused with crime. The relevant extract of the judgment reads as under:-

“13. In the present case, the complainant Foziya while deposing as PW2, has failed to support the case of prosecution and resiled from her earlier statement. He was the star witness of the prosecution case but failed to depose anything incriminating against the accused and to connect the accused persons with the alleged offences. Similarly, PW3 Farjana, mother of complainant/ injured/ eye-witness, have also failed to support the prosecution version and failed to depose anything incriminating against the accused persons and to connect the accused persons with the alleged offences. Hence, there is not an iota of evidence against the accused persons in the instant case.

14. Furthermore, prosecution has got examined Constable Ashok Kumar as Ex.PW1, who has proved on record recovery memo Ex. PW1/A vide which CD mark P-1 and photographs Mark P-2 & P-3 were taken into police possession, which bears his signatures at Point-A.

Thereafter, prosecution got examined Dr. Sukhdeep Kaur, Medical Officer as PW4, who have proved on record the MLRs of injured Farzana Ex.PW4/A and MLR of complainant Foziya Ex.PW2/B, which bears her signatures at Point-A.

Further, prosecution got examined Dr.Preeti Bhatia as PW5, who has proved treatment record of complainant Foziya as PW4/A. However, all these witnesses were duly cross-examined at length by the learned defence Counsel, however, nothing fruitful came out during their cross-examination which could favour the case of the prosecution.

*15. No doubt, statement of a hostile witness should not be thrown overboard and so much part of the statement of hostile witness which is consistent with the prosecution story can still be taken help to convict the accused persons. In recent judgment in case titled as **State of Rajasthan Vs. Teg Bahadur, reported as 2004(4) Recent Criminal Reports, page 538**, Hon’ble Supreme Court of India has held that evidence of a hostile witness would not be totally rejected if submitted in favour of the prosecution or accused but it can be subject to close scrutiny and that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted. I have gone through the statement of PW2 & PW3 from that angle also, but I have found them totally worthless.*

16. In view of the above said evidence on the record, when the material witnesses i.e. the complainant PW2 Foziya & PW3 Farjana, mother of complainant/eye-witness/injured, have not supported the prosecution story and turned hostile and there is nothing against the accused persons, this Court have no other option, but to acquit the accused persons. So accordingly, accused persons namely Nargis, Shabina, Farah & Haseen are acquitted of the charges framed against them. Their bail bonds and surety bonds stand discharged. The case property, if any, be disposed of under rules after awaiting the result of appeal/revision, if any. File after due compliance, be consigned to the record room.”

5. I have perused the record and heard arguments of learned counsel for the appellant.

6. The 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 : 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...”

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 reappraise 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. In the case in hand, indisputably, appellant and her mother did not support case of the prosecution. The appellant during trial did not

support case of the prosecution and resiled from her earlier statements. The appellant on the ground that brother of accused has not married her wants to revive her earlier statement made at the time of registration of FIR which cannot be permitted because Courts cannot adjudicate and work as per whims, caprices and convenience of the complainant. It shows conduct of the appellant and makes her unbelievable complainant as well witness.

9. 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 respondents. Accordingly, this Court fully agrees with the finding recorded by Trial Court. The impugned judgment and order being speaking; based upon correct appreciation of facts, applicable law & judicial precedents; and well-reasoned, needs no interference. Therefore, in the result, appeal stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

10.01.2023
Mohit Kumar

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