

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-AS No.212 of 2017
Date of decision: 16.04.2024
Reserved on: 11.03.2024

Usha Rani ... Appellant

Vs.

Shanti Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rajiv Joshi, Advocate,
for the appellant.

MANISHA BATRA, J.

1. The instant appeal has been filed against the judgment of acquittal dated 29.01.2016 passed in Criminal Complaint bearing No.31058 of 2013 titled as *Usha Rani v. Shanti Devi and others* whereby, the learned Judicial Magistrate 1st Class, Jalandhar had dismissed the complaint as filed by the appellant while acquitting the respondents-accused by giving them benefit of doubt.
2. For the sake of continuity and coherence, parties shall be referred to hereinafter as per the same nomenclature as given before the trial Magistrate.
3. The facts relevant for the purpose of disposal of this appeal are that the aforementioned complaint was filed by the complainant alleging therein that a few years back, the accused Gurbachan Lal had made an

attempt to commit rape upon her minor daughter "J" (name withheld) and an FIR bearing No.131 was lodged as against him on 20.10.2006 at Police Station Division No.1, Jalandhar. The trial against the accused Gurbachan Lal was pending before the Court of Judicial Magistrate, 1st Class, Jalandhar. On 28.03.2011, the complainant had gone to attend the proceedings of that case before the concerned Court and while returning back, she had boarded an autorickshaw and had alighted from the same at Football Chowk, Jalandhar, when the accused who had been following her, intercepted her and by making an exhortation that she should be taught a lesson, they opened an assault upon her and the male accused tried to outrage her modesty. Her shirt was torn off, a purse containing a sum of Rs.850/- was snatched and she was dragged by the accused. She raised alarm on hearing which, witnesses namely, Jeet Singh, Satpal and Amandeep Singh had reached and rescued her from the clutches of the accused. She alleged that she had gone to the Civil Hospital, Jalandhar for her medical examination but the doctors refused to get the same done on the ground that no visible injury was found on her person, that the matter was also reported to the police but no action was taken and that she was constrained to file the aforementioned complaint.

4. The learned trial Magistrate after considering the preliminary evidence produced on record by the complainant in the form of statements of Jeet Singh and Amandeep Singh who appeared as CW-2 and CW-3 respectively and the testimony of the complainant who examined herself as CW-1, issued process as against the accused for

commission of offences punishable under Sections 323, 354, 382, 427, 504 and 506 of IPC.

5. After securing presence of the accused, the case was posted for pre charge evidence. In pre charge evidence, the complainant examined herself as CW-1 and produced CW-2 Jeet Singh. The learned trial Magistrate vide order dated 17.10.2015 framed charges under Sections 323, 354, 382, 504 and 506 of IPC as against the accused and thereafter, the case was posted for producing after charge evidence by the complainant. The accused chose to further cross-examine only one witness, namely, CW-2 Jeet Singh who did not appear and thereafter the after charge evidence was closed vide order dated 17.12.2015. After recording statement of the accused under Section 313 of Cr.P.C. and on considering the contentions raised by both the sides as well as on appraising the evidence produced on record, the learned trial Court observed that the complainant had failed to prove her case against the accused beyond doubt thereby acquitting them of the charges as framed against them. Feeling aggrieved, the present appeal has been filed by the appellant-complainant.

6. It is submitted in the grounds of appeal and learned counsel for the appellant had argued that the impugned judgment of acquittal was liable to be set aside as while passing the same, the learned trial Court failed to properly appreciate the evidence available on record. A cryptic and non-speaking order had been passed. The learned trial Court failed to consider the veracity of the statement of the complainant which alone

was sufficient to prove the allegations as levelled against the accused and which had remained unshattered. The learned trial Court also failed to appreciate the fact that the accused Gurbachan Lal had been held guilty and convicted for commission of offence of rape upon the daughter of the complainant by the concerned Court. He further argued that the proposition of law that conviction of an accused could be recorded on the basis of sole statement of the injured/victim witness had been ignored and, therefore, he has argued that the impugned order is liable to be set aside, the appeal deserves to be accepted and further that the accused are liable to be held guilty and convicted for commission of offences for which they have been chargesheeted.

7. I have heard learned counsel for the appellant at considerable length besides perusing the material placed on record.

8. Since challenge is to the judgment of acquittal of trial Court, therefore, before proceeding further and adverting to the arguments raised by her counsel, it would be useful to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an

acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In **Atley v. State of U.P.**, AIR 1955 SC 807, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In **Aher Raja Khima v. State of Saurashtra**, AIR 1956 SC 217, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (Crl.) 972, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In **Chandrappa's case** (Supra), the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- 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 puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.

iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

iv) 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.

9. Learned counsel for the appellant has placed on record a copy of judgment dated 14.06.2013 passed by the Principal Magistrate, Juvenile Justice Board, Jalandhar showing that the accused Gurbachan Lal had been booked for commission of offence of rape upon the daughter of the present complainant and after facing inquiry had been held guilty for commission of the aforementioned offence and had also been convicted. It has also come on record that he had filed an appeal against the judgment dated 14.06.2013 which had been dismissed vide judgment dated 15.11.2016 as passed by the Court of learned Additional Sessions Judge, Jalandhar. Meaning thereby that it stands proved that on the basis of FIR No.131 dated 20.10.2006 as lodged by the appellant-complainant, the accused Gurbachan Lal who was a juvenile at that time

had faced trial before the Juvenile Justice Board and has been held guilty and convicted and it also stands proved that as on 28.03.2011, the trial against the accused Gurbachan Lal was going on. As per the allegations, on 28.03.2011, while the complainant was returning home after attending the Court proceedings in the abovementioned case and had alighted from autorickshaw at Football Chowk then she was intercepted by the accused who in furtherance of their common intention had opened an assault upon her, outraged her modesty, had insulted her and criminally intimidated her. As per the further allegations, they had also snatched her purse containing a cash amount of Rs.850/-. The learned trial Court had observed that the evidence produced on record by the complainant was not of such nature which could be acted and relied upon beyond probabilities of all reasonable doubt. On a careful assessment of the evidence produced on record by the complainant, this Court is also of the same opinion in view of the fact that the entire version of the complainant as narrated in the complaint as well as the evidence produced by her does not inspire confidence for connecting the accused with the allegations as levelled by her.

10. So far as the allegation that she was intercepted by the accused persons at Football Chowk and was dragged and her clothing was torn off apart from her modesty being outraged is concerned, no medical evidence has been produced on record by her to show that if she had been actually dragged by the accused persons as alleged by her, then she must have received some scratches on her body, even if no injury was

sustained but she stated that she had gone to the hospital for medical examination but the doctor had refused to conduct the same as there was no visible injury on her person. However, she was unable to disclose the name of such doctor nor could bring any material on record to show that any injury had been sustained by her. Not only this, but also that though she stated that she had gone to the hospital as well as the police station alone but CW-2 Jeet Singh contradicted her statement by showing that he had gone along with the complainant.

11. At this juncture, I cannot refrain myself from observing that as per the allegations, after hearing the rescue alarm raised by the complainant, three persons namely, Jeet Singh, Satpal and Amandeep Singh had rescued her from the clutches of the accused. She did not disclose in the complaint or in her statement that this Amandeep Singh was none else than her husband. How he was present at the spot at that time has remained totally unexplained thereby making the allegation qua his presence at the spot doubtful. More so, strangely she stated during cross-examination that she did not want her husband to come into the witness box and examine him. What was the reason for that had also not been explained but an adverse inference can certainly be drawn to the effect that she had lodged a false complaint and that is why her own husband had not come forward to support her claim.

12. Further more, though it was alleged by the complainant that she had gone to the police to report about the incident but no action was taken, she could not produce any evidence in this regard. It was admitted

by her that no written complaint had been lodged by her before the police. It is just after the next day of the alleged occurrence that she is shown to have filed complaint against the respondents. Admittedly, she did not file any complaint with the higher police authorities with regard to the offences allegedly committed by the accused against her as on 28.03.2011 and making prayer for recovery of the amount which was allegedly snatched from her. As such, her statement could not be stated to be of sterling quality and in my opinion, the same alone did not inspire confidence to prove the allegations as levelled in the complaint and the learned trial Court rightly observed so.

13. So far as the statement of CW-2 is concerned, the learned trial Court had observed and it has also been noticed by this Court that though he had appeared during the course of recording pre-charge evidence but despite the fact that the accused had prayed for providing them an opportunity to let them cross-examine this witness during the course of after charge evidence, he was not produced by the complainant due to the reasons best known to her and this circumstance also goes against the complainant. Even otherwise, from a perusal of testimony of this witness as recorded during the course of pre charge evidence, it is revealed that he admitted that he did not know the parties before the occurrence. He has not attributed any specific overt act to the accused persons apart from saying that the accused Shanti Devi had made an exhortation and thereafter who had made her fall on the ground and who had torn her clothing had not been mentioned by him. He also did not take the names

of either of the other accused. The statement recorded by him during the pre charge evidence can also not be considered to be of such nature on the basis of which finding as to guilt of the accused could be recorded.

14. Taking these circumstances into consideration, this Court is of the opinion that the learned trial Court had rightly appreciated the evidence produced on record and committed no error in acquitting the respondents. On reading of entire material, this Court finds that there is no perversity in the findings recorded by learned trial Court and there is no compelling reason to interfere with its judgment. Accordingly, it is held that no ground has been made out to allow the appeal. Finding no merit in the appeal, the same is dismissed.

16.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No