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(219)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-113-2022
Date of Decision: 14.10.2024

LAKHWINDER KAUR

... Appellant

Versus

KALA SINGH & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Inderpreet Singh, Amicus Curiae
for the appellant.

None for respondent No.1.

Mr. Kuljit Singh, Addl. A.G., Punjab
for respondent No.2.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 11.08.2021 passed by the Additional Sessions Judge, FTC Amritsar.

2. The FIR was registered on 05.12.2018, the judgment of acquittal passed by the Addl. Session Judge, FTC Amritsar is dated 11.08.2021, the appeal was filed on 17.02.2022 and the matter is being taken up for hearing now after 06 years of the registration of the FIR.

3. The brief facts of the present case are that on 05.12.2018, the prosecutrix recorded her statement before police that her father had expired

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earlier and she was being looked after by her mother. She had two brothers and one sister. Her brothers namely S. Singh and G Singh had left for Malaysia. However, G. Singh had come back from Malaysia. Kala Singh who was working as a travel agent was known to her brothers. He had sent her brothers to Malaysia. He was on visiting terms with them. He had asked her (prosecutrix) also to go to Malaysia and in case, she (victim) wanted to go there, he would send her and for this purpose, she would have to prepare a passport. She was allured by Kala Singh, who asked her to come to the passport office, Amritsar. She disclosed this incident to her mother, who expressed her consent for the purpose of preparation of a passport. On 2.7.2018 Kala Singh, on the pretext of preparing a passport took her to the office of the passport authority, at Amritsar, where he got prepared a file and said that the file was to be deposited in the said office. When she came back after depositing the file, he told her that since they had left the house since 10:00 a.m., he wanted to serve her tea. On the pretext of serving tea, he took her to a Dhaba at Kachehari Chowk, Amritsar, where he kept her in a room for about two hours and raped her. He threatened that in case, she disclosed this incident to any other person, she would be done to death. She narrated this incident to her mother P. Kaur and on the basis of her statement, the case under section 376, 506 IPC was registered against the accused. The police party visited the place of occurrence. The medical examination of the prosecutrix was got conducted at Civil Hospital, Amritsar. Her statement under section 164 Cr.P.C. was also recorded. The accused was arrested on

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17.3.2019. His medical examination was also got conducted from Civil Hospital, Ajnala. Statement of witnesses were also recorded. On completion of investigation, the challan was presented against the accused.

4. After committal, the accused was heard on the question of charge and after finding a prima facie offence charges under Section 376, 341 and 506 of the IPC were framed against accused Kala Singh.

5. In order to prove its case, the prosecution examined Doctor Babica Mohindru, Medical Officer as PW-1, Dr. Sitara Soni as PW-2, Dr. Anmoldeep Singh as PW-3, Victim L.Kaur as PW-4, Inspector Balwinder Kaur as PW-5, ASI Ajit Singh as PW-6, LC Paramjit Kaur as PW-7 and thereafter, the evidence of the prosecution was closed.

6. The accused was examined under Section 313 Cr.PC. He reiterated his innocence and claimed false implication.

7. In defence, the accused examined DW-1 Karnail Singh and thereafter, closed his evidence.

8. The gist of the evidence led by the prosecution is as under:-

Dr. Babica Mohindru Medical Officer PW-1 appeared in the witness box and deposed as under :-

"on 07.12.2018, I was posted as Medical Officer at Civil Hospital, Amritsar. On that day, prosecutrix daughter of 'S' aged about 20 years female, was brought by LC Paramjit Kaur and accompanied by her mother for her medico legal examination. At about 12:30 pm, I conducted medico legal examination of prosecutrix. She was conscious, cooperative, well oriented to time, place and person. Vitals were stable. An alleged history of sexual assault on



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02.07.2018 around 10 am, when, she was taken to passport office, Amritsar by Kala Singh son of Mohinder Singh, resident of Chan Ghoga, where both did some official formalities for the passport issuing of the victim. Afterwards, he took her to some Dhaba in Court Chowk, Amritsar for refreshment around 11 to 12 noon. Then, he took her to a room, where, he did vaginal intercourse with her twice under threat and he kept her in the room till the evening and then, he dropped her in her house in late evening. He threatened her not to disclose this to her parents or anyone. Then, she entered home, took bath, changed clothes and ate food. Her LMP was 21/23.06.2018 (but she was not sure). History of last contact 02.07.2018.

General physical examination:

Normal Gait. Normal vitals. Breast fully developed.

Breast milk can be expressed.

Local examination:

Pubic hair and axillary were present. Per abdomen examination 24 to 26 weeks pregnancy. Foetal moment positive. Per vaginum examination was not done. Advised UPT, x-ray for bone age confirmation, ultrasound for foetal well being and gestational age and gynecological opinion. As per history and clinical examination, in my opinion possibility of sexual intercourse can not be ruled out and final report will be given after the receipt of report of ultrasound and other investigations. I have brought original MLR with me today, which is in my hand and bears my signatures. The correct carbon copy of the same is Ex.P-1, which bears my signature and stamp of the hospital. The advised form for UPT is Ex.P2. I advised x-ray for bone age conformation vide Ex.P-3. Patient was advised for gynecal opinion is Ex.P4. I have seen computer generated copy in the judicial file, which bears my signature and stamp of the hospital and is correct and is Ex.P5.”



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PW-2 Dr. Sitara Soni, Medical Officer, Civil Hospital, Amritsar appeared in the witness box and deposed as under :-

"On 07.12.2018, I was posted as Medical Officer Specialist at Civil Hospital, Amritsar. On that day, gynea opinion was taken regarding the case of MLR No. 4/BM/CH/Asr. On examination, patient was unmarried and had alleged history of sexual assault on 02.07.2018. Patient's LMP was on ? 21.06.2018- question mark means: patient was confused about 21 and 22.

On general examination:

Secondary sexual characters were well developed. Colostrum can be expressed from breast. Pubic and axillary well developed.

On per abdomen examination:

Uterine height was about 24 to 26 weeks of pregnancy. Foetal moments were present. Foetal heart sound were heard by doppler, which were positive.

On per vaginal examination:

NAD. UPT report on 07.12.2018 positive.

USG on 08.12.2018 shows foetal maturity is 24 weeks 05 days +/- two weeks. According to ultrasound, EDOD is 25th March 2019. Foetal heart rate 150 beats per minutes. Placenta was posterior upper. Amniotic fluid was adequate.

Impression:

24 weeks 05 days +/- two weeks on going pregnancy.

I have seen my report dated 07.12.2018 Ex.P4 (already exhibited), which bears my signature and stamp of the hospital.

The requisite form vide which, UPT was advised is Ex.P2 (already exhibited) and report with regard to pregnancy is positive dated 07.12.2018. The same is Ex.P-6.

xxnation by Sh. M.S. Bhatti, Adv. Counsel for accused.

all the documents are objected to on the ground of mode of proof and admissibility)

Objections are not sustainable, so over ruled.



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At the time of her medical examination conducted by me, patient was not carrying any documents of previous history of pregnancy or. treated with her. The patient had not disclosed the name, with whom, she had sexual relations. I did not advise for DNA test/ examination of the accused. Volunteered the doctor who conducted the MLR might have advised for the DNA. It is correct that the ultrasound was not conducted neither in my presence nor by me. It is wrong to suggest that patient was not pregnant. It is wrong to suggest that I have given the wrong report at the instance of prosecution".

PW-3 Dr. Anmoldeep Singh Medical Officer, Civil Hospital,

Ajnala appeared and deposed as under :-

"On 05.04.2019, I was posted at Civil Hospital, Ajnala, as Medical Officer. On that day, I conducted sexual examination of Kala Singh son of Mohinder Singh, 24 years male, resident of VPO Shan Bhoga, P.S. Bhindi Saidan, at about 01:45 pm.

He was brought by ASI Ajit Singh and on examination, I found the following:

Patient was calm, conscious, cooperative, well oriented to time, place and person.

On examination:

Vitals were stable. Penile size adequate. Secondary sexual characters well developed. Pubic hairs. Testicular size normal and equal. In view of above findings, there is nothing to suggest that he can not perform sexual intercourse. I have brought original MLR with me today in the court, which is in my hand and bears my signatures. I have seen computer generated copy in the judicial file, which is correct as per original record and bears my signature and stamp of the hospital. The same is Ex. P7."

PW-4 Victim L. Kaur daughter of S. Singh appeared in the

witness box and deposed as under :-



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"That I am doing domestic work at my home. I am illiterate. About 10 years ago, my father S. Singh was died and my mother P. Kaur used to look after me. I have three brothers. My two brothers are elder to me and one is younger to me. My two brothers S. Singh and G. Singh had gone to Malaysia country and G. Singh came back home. I know accused Kala Singh being an agent, who has sent my two brothers in abroad and accused Kala Singh was having visiting terms in our house. He told me that his sister is going to Malaysia and he also offered me to get the passport of myself as he will arrange to go myself with his sister. On 02.07.2018, accused Kala Singh took me from my house on a motorcycle to the passport office situated in Amritsar. After depositing my passport file in the said office, accused Kala Singh told me to have a tea and he took me in a hotel for this purpose. Accused committed rape with me by threatening that he will kill my brothers and other family members and he committed rape with me against my wishes. He also threatened me not to disclose this occurrence to my family members. I approached the police after about five months of the occurrence to the disclose the occurrence by got recording statement Ex.P8, in which, I narrated the occurrence and I thumb marked the statement at point A after admitting it to be correct. My mother P. Kaur was also with me and she thumb marked the statement at point B. I identify accused Kala Singh present in the court today as the same person, who committed rape upon me. I was medico legally examined by the doctor through the police. My pregnancy test was also got done by the police which was in positive and thereafter, I delivered a female child. During the investigation, I was produced by the police before JMIC, Ajnala where, I got recorded my statement U/s. 164 Cr.P.C. Before recording my statement, the concerned judicial officer put certain questions to me to know my willingness to which, I replied in affirmative and thereafter, my statement was



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recorded as per my deposition, which was read over and explained to me and I signed the statement after admitting it to be correct.

At this stage, Ld. Addl.P.P made a request to allow him to open the sealed Statement of prosecutrix recorded under section 164 Cr.P.C.

Heard. Request allowed.

I have seen my statement dated 13.12.2018, which was got recorded by me before JMIC at Ajnala out of my free Will and it was thumb marked by me at point A after admitting it to be correct. My statement is Ex.P-9. I got recorded my statement dated 13.06.2019 before the police of P.S. Bhindi Saidan, which was thumb marked by me at point A and the same is Ex.P-10, in which, I stated that accused Kala Singh made me pregnant.

xxxnation by Sh.M.S. Bhatti, Adv. Counsel for accused.

It is correct that in my village, there is a body of panchayat and also having inhabitants. I do not know when my brothers went abroad, but they went to Malaysia. My brother returned from Malaysia after the occurrence, but I can not tell the exact date, month and year when he came back. It is correct that near to my village, at the distance of 3-4 km there is a police Station Bhindi Saidan, in Sub Divisional Head Quarter, there is also police station and near to the office of the passport, there is also police station. I have kept the photocopy of the application submitted for obtaining passport. I have not brought the same today in the court. I have also not given the said copy of the said file to the police during the investigation. I can not tell the registration of motorcycle upon which, accused took me to Amritsar. I can not tell the name of hotel, where, I was taken by accused. I can not tell the area where said hotel was situated, nor about its surroundings. The passport office is situated in Court Chowk. I can not tell about the other offices or institution around the passport office. We reached in the passport office at about 10 am. I can not tell which document was got prepared on the said date of occurrence before



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going to the passport office at Amritsar. The statements suffered by me before the police as well as before the magistrate were read over to me by the concerned official. The accused had took me in a hotel for having a tea. It is correct that I got recorded in my statement earlier suffered to the police and JMIC, the reference of hotel is not given in Ex.P-8 and Ex.P-9. However, I got recorded there a room in my said statement. It is correct that in Ex.P-10, I denied DNA test of my female child. I can not tell the location of the office run by accused Kala Singh as agent. Volunteered, he had been working as agent at home. It is wrong to suggest that accused Kala Singh is not working as an agent dealing with passport etc. It is wrong to suggest that he is an agriculturist. It is correct that there are two factions due to panchayat elections. It is wrong to suggest that due to panchayat elections, accused has been falsely implicated in the present case. When, accused committed rape upon me, I raised hue and cry, but accused shut the door of the room, where, he committed rape. I have not protested the accused from committing rape, as he threatened me to kill me and my family members. I did not disclose about the commission of rape upon me by accused even after coming out from the said room in question. We came out from the said room at about 02 pm. The above said time is also included tea time. When, we left our house for passport office Amritsar, my mother, my brother G. Singh were present in our house. We reached back at my home at about 06 pm on the said date of occurrence. At that time, my mother and brother were already present in the house. After the occurrence, I remained present in the village, where, my family is residing. My mother and brother remained with me during the said period. No injury was caused on my person, when, accused committed rape upon me. I do not have any document with me to prove that accused has sent my two brothers abroad earlier to the occurrence. My statement was recorded in the police station Bhindi Saidan, but I can not tell the date, time and month.



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My medico legal examination was done in hospital at Amritsar. I can not tell the name of hospital. I can not tell the name of doctor also who conducted my medico legal examination. I also can not tell where my ultrasound was conducted. It is correct that after recording my statement to the police, I did not meet again to the police. It is wrong to suggest that accused has not committed any offence. It is wrong to suggest that I have deposed falsely".

PW5 Insp. Balwinder Kaur no 3232/ASR, P.S.Jandiala Sub Division, Amritsar appeared and deposed as under :-

"On 05.12.2018 I along with police party was present at P.S. Bhindi Saidan where complainant L Kaur appeared before me along with her mother and got register her statement EX.P8 1 before me and my endorsement at point C on the said statement and conducted police proceeding EX.PW5/A and handed over the ruqa to MHC of P.S. Bhindi Saidan for the registration of the case and on the basis of the said ruqa, FIR EX.PW5/B was registered by me. Thereafter I along with the victim and her mother visited the village of the victim from where the victim took us to the place of occurrence near Kachehari Chowk and I inspected the place of occurrence and prepared site plan EX.PW5/C. Thereafter on 06.12.2018 the victim was taken for her examination at CHC Lopoke but the victim was not medically examined as she has disclosed that she is pregnant so the concerned doctor had referred us to Civil Hospital, Amritsar for her medical examination. On 07.12.2018 the victim was taken to Civil Hospital, Amritsar where she was medically examined in this case. Thereafter on 13.12.2018 I produced the victim before the Ld Magistrate for her statement u/s 164 CR.P.C. and I moved application EX.PW5/D and on the basis of the said application the statement of the victim was recorded by the Ld Magistrate. On 10.01.2019 the Investigation of this case was handed over to special Investigating team. During investigation I recorded the



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statements of the witnesses. Photographs mark A to mark E were presented before me during the investigation.

Xxxx by defence counsel.

I posted as a Sub Inspector at P.S.Bhindi Saidan in the month of November 2017. complainant first time came to police station Bhindi Saidan along with her mother on 05.12.2018 at 4P.M. prior to that no any complaint from complainant side or any other order/letter from Higher authority of our department to our police station. No any medical report or documents received by me or handed over by the complainant. No documents were handed over by the complainant to me which shows that accused were dealing with business of Travel agents. No copy of application for apply to passport handed over to me by the complainant. No independents witnesses were joined to enquire about the business of travel agents of the accused. The complainant had also not handed over any document to me which shows that her two brothers were residing abroad. Complainant also not handed over any documents which shows her two brothers were sent abroad by accused. I did not record statement of any employee of the passport office Amritsar. No independent witness got recorded his statement to me during the investigation just near the place of occurrence. I also not recorded statement of any owner of tea stall or Dhaba voluntarily stated there was no tea stall or Dhaba near the place of occurrence. No any person from Panchayat or witness of the village relating to the victim 's village recorded their statement. It is correct that the place of occurrence is opposite to the District Court premises. It is correct that place of occurrence is situated on Air Port Road and is a thoroughfare. I have not shown the shops opposite to the place of occurrence after crossing the road in the site plan prepared by me. It is incorrect to suggest that there are number of shops to the opposite of place of occurrence after crossing the road. It is correct that office of L.G. of police Border Range Amritsar is at a distance of 100 yards from



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the place of occurrence. It is correct that in front of the alleged place of occurrence there is office of SSP of Vigilance at the distance of 50. yards. I do not know whether near the office of SSP Vigilance there are two offices of Tehsildar and as well as two offices of SDM located there voluntarily stated above said offices situated in the premises of the District Court. I did not recover any alleged motor cycle. I did not receive proof of birth of the complainant from her. I did not record the statement of any authority who prepared the Aadhar card of the complainant. I did not collect the clothes of the complainant regarding her alleged occurrence. It is incorrect to suggest that false case has been registered against the accused due to party faction in the village. It is incorrect to suggest that no any occurrence took place as alleged by the accused. It is incorrect to suggest that I recorded wrong statement of the complainant and her witnesses. It is incorrect to suggest that I deposed falsely in order to prove the case".

PW6:-ASI Ajit Singh No 1104, P.S. Kathunangal, Amritsar

appeared and deposed as under :-

"Stated that on 17.03.2019 I was posted at P.S. Bhindi Sainda and the investigation of this case was with me. On that day I arrested the accused Kala Singh and his arrest and intimation memo was prepared which is Ex.PW6/A which was signed by Billa Singh and HC Baljit Singh and HC Raj Singh, personal search memo of accused is Ex. PW6/B and the same was witnessed by above said witnesses. I also produced the accused for his medical examination and moved application Ex.PW6/C regarding the medical examination of the accused. I recorded the statement of the witnesses. I identify the accused present in the Court today. xxxxx by defence counsel.

I had not joined any independent witness when I arrested the accused. I had not recorded the statement of any witness when I



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had got the medical examination of accused done. It is wrong to suggest that I had conducted one sided investigation. It is wrong to suggest that I had deposed falsely".

PW7 Lady constable Paramjit Kaur No.1728, P.S. Bhindi Saida appeared and deposed as under :-

"Stated that on 07.12.2018 I was present with SI Balwinder Kaur and as per the instructions of SI Balwinder Kaur I accompanied victim and her mother for her medical examination and after the medical examination the concerned doctor handed over the documents to me which I have handed over those documents to the investigating officer on reaching the police station. My statement was recorded.

xxxx by defence counsel.

I have not signed any papers on the present case. The statement of the victim was never recorded in my presence. I cannot tell the exact time when I took the victim to hospital for her medical examination. I cannot tell the name of the doctor who conducted the medical examination of the victim. The medical examination was conducted at Civil Hospital Lopoke. I cannot tell the name and registration number of the vehicle on which the victim was carried for her medical examination. It is wrong to suggest that no medical examination of the victim was conducted in my presence. It is wrong to suggest that I have deposed falsely at the instance of the IO".

9. Based on the evidence led, accused/respondent No.1 was acquitted by the Court of Additional Sessions Judge, FTC, Amritsar vide judgment dated 11.08.2021.

10. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.



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11. The learned Amicus Curiae for the appellant/complainant contends that the medical evidence was totally in consonance with ocular account. The fact that female a child was born to the prosecutrix itself established the commission of the offence. The prosecutrix had denied a DNA test on account of her being an illiterate and rustic person. Minor discrepancies had been given undue importance leading to the judgment of acquittal. He, therefore, contends that the judgment of acquittal of accused/respondents no.1 be set aside and the accused be convicted of the offence for which he has been charge-sheeted.

12. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, judgment of acquittal was liable to be set aside.

13. We have heard the learned counsel for the parties and gone through the record.

14. In order to prove the allegation, the prosecution referred to the examination-in-chief of prosecutrix, who appeared as PW-4 and stated as under:-

“On 02.07.2018, accused Kala Singh took me from my house on a motorcycle to the passport office situated in Amritsar. After depositing my passport file in the said office, accused Kala Singh told me to have a tea and he took me in a hotel for this purpose. Accused committed rape with me by threatening that he will kill my brothers and other family members and he committed rape with me



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against my wishes. He also threatened me not to disclose this occurrence to my family members.”

However, in her cross-examination, she admitted that in Ex.P10 she had denied the DNA test of her child.

15. Since the victim had already delivered a child and it has been proved that the said child was conceived due to sexual intercourse with the victim and the allegations was against the accused so it was for the prosecution to prove that the accused had fathered that child and for that purpose DNA examination was the only test. However, the prosecution failed to prove the same. As per document Ex.P10, which is the statement of the victim recorded by ASI Ajit Singh on 13.06.2019 and thumb marked by the victim at point Mark-A, she specifically stated that she got pregnant and she also stated that the accused had impregnated her but for reasons best known to her she refused to undergo DNA test of the child. In that eventuality, as the prosecutrix herself refused to undergo the DNA test, so an adverse inference is to be drawn against the prosecution for not proving the parentage of the minor child to be that of the accused. It has been so held in **Vipin Aggarwal and another Vs. State of Haryana and another, 2015(1) RCR (Crl), 173** wherein it has been held that the prosecutrix did not come ahead to give her blood test for DNA in order to avoid fair investigation in the matter and in the said case adverse inference was drawn against the prosecutrix in favour of the accused.



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16. Quite apparently, there is a delay of 05 months in the lodging of the FIR. The occurrence took place on 02.07.2018 whereas the FIR came to be registered only on 05.12.2018. This delay is fatal to the prosecution case as the explanation furnished by the prosecutrix of the accused threatening her cannot be accepted. The argument raised by the counsel for the appellant that the prosecutrix had denied the DNA test on account of her illiteracy does not stand to reason given the fact that she had engaged a private counsel during the course of trial who was assisting the prosecution and therefore an application could have been moved for conducting the DNA test instead of denying the same. Further, no witness from the Dhaba/tea stall was ever examined to prove that the occurrence had taken place on their premises. Additionally, the prosecution has not brought on record any documentary evidence that the accused was a travel agent or that he had sent the brothers of the prosecutrix to Malaysia and had also got the prosecutrix to apply for a passport which is the case of the prosecution. In fact, no such passport file of the prosecutrix was ever proved on the record.

17. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be



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interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

18. In view of the aforementioned discussion and keeping in view the law laid down in Kallu @ Masih & Ors. Case (supra), we find no reason to interfere with the well reasoned judgment of acquittal passed by the Court of Additional Sessions Judge, FTC Amritsar. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

14.10.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No