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101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1438-SBA-2003 (O&M)
DATE OF DECISION : 05.07.2024

SMT. NEELAM @ BABY ... APPELLANT

V/S

STATE OF HARYANA AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: None for the appellant.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

Mr. Bhag Singh, Advocate respondent No. 2.

Mr. Maninderjit Singh, Advocate, for
Mr. Amit Jaiswal, Advocate for respondent No. 5.

* * * *

HARPREET KAUR JEEWAN, J.

1. The present criminal appeal has been filed on behalf of appellant-complainant Neelam @ Baby impugning the order dated 17.07.2002 whereby the appeal filed on behalf of the respondents against the judgment of conviction dated 25.01.2002 and order of sentence dated 04.02.2002 passed by learned Judicial Magistrate First Class, Ambala Cantt. was accepted and respondents were acquitted.

2. As per the factual matrix, on 16.12.1989, appellant-Neelam (for short 'the appellant') filed a criminal complaint against the respondents raising the contentions that the appellant was married to Hira Lal-respondent No.2 in 1976. A son namely Bunty was born out of the said

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wedlock. At the time of filing the complaint, the son was about 10 years' old. Respondent No.2-husband solemnized marriage with Vijay Kumari-respondent No.3. Respondent No.2 concealed the factum of the said marriage and he continued maintaining the appellant and her son Bunty. However, when the appellant came to know about the 2nd marriage of the respondent No.2, the relationship between the appellant and respondent No.2 became strained. Thereafter, respondent No.2 made arrangements for a separate house for the complainant and her son. As such, they are residing in house No. 1926, Mohalla Chhapper Band, Ambala Cantt. For about last 3 years, the respondent No.2 had been neglecting the appellant on advice of respondent No.3 and he even refused to maintain the appellant and her son. On 04.05.1989, the respondent No.2 forcibly tried to kidnap the son of the appellant and gave severe beatings to the appellant, when she raised the objection. Subsequent to that, the appellant and her son were again beaten up. They were threatened to be killed. As a result of the beatings, the appellant became unconscious and when she regained consciousness, she got herself medico-legally examined from Civil Hospital, Ambala Cantt. on 05.05.1989. Despite the complaint moved by the appellant to the Police, no action was taken. As such, she filed a private complaint in the Court of Area Magistrate.

3. After receiving the preliminary evidence, the respondents were summoned by the trial Court on 20.04.1990. After the appearance of the respondents, post charge evidence was recorded and considering the said evidence, the charge-sheet was issued to the respondents under Sections

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323, 354, 452 and 506 IPC on 04.09.2000. The respondents pleaded not guilty and claimed trial.

4. After framing of the charge, the appellant was given an opportunity to lead evidence. No further cross-examination of the appellant-complainant was conducted since she did not opt for her denovo examination. The statement of Constable Hoshiar Singh (PW2) regarding production of police record and the statement of Dr. Rajinder Singh Maan (PW3) regarding conducting medico-legal examination of the appellant was recorded and the prosecution evidence was concluded.

5. The statements of the accused-respondents were recorded under Section 313 Cr.P.C.

6. The respondent No.2-accused No.1 took a plea of *alibi* stating that on the date of occurrence, he was on duty on a train from Kalka to Delhi and back and that he could not have been present at the place of occurrence. The respondents also examined DW2 Baleshwar Ram, who deposed that respondent No.2-Hira Lal was on duty on 04.06.1989 and 24.06.1989 and could not have left the train without permission.

7. After hearing learned counsel for the complainant-appellant and learned counsel for respondents-accused, the Judicial Magistrate held the respondents guilty and convicted them under Sections 323, 354 and 506, 452 read with Section 34 IPC and they were convicted as per the judgment dated 25.01.2002 and sentenced vide order dated 04.02.2002.

8. The respondents assailed the judgment of conviction and order of sentence passed by the Area Magistrate by preferring a criminal appeal

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which was accepted and all the respondents were acquitted of the charges framed against them vide order dated 17.07.2002 passed by the learned Addl. Sessions Judge, Ambala.

9. The present appeal has been filed assailing the order dated 17.07.2002 and challenging the order of acquittal passed by the Appellate Court while reversing the judgment of conviction and order of sentence passed by the trial Court.

10. The learned Addl. Sessions Judge while acquitting the respondents recorded the following reasons:-

a) That the appellant was earlier married to Harbans Lal. The said marriage is still subsisting, the appellant appeared and filed written statement in a divorce petition filed by the said Harbans Lal. However, the said petition was later on dismissed as withdrawn by the said Harbans Lal on the statement of the parties including that of the present appellant on 22.05.1978. However, the appellant had shown ignorance about her marriage with Harbans Lal and regarding dismissal of the divorce petition of the said Harbans Lal, when she was put to cross-examination in a petition which was filed by her under Section 125 Cr.P.C. claiming maintenance from respondent No.2-Hira Lal.

b) The appellant did not state about the date, month or year of her marriage with respondent No.2.

c) The trial Court observed that the cause of action in the complaint has 3 segments which pertain to 3 different dates i.e.

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04.05.1989, 24.06.1989 and 23.07.1989.

(i) With regard to the incident dated 04.05.1989, it was observed that the evidence led by the appellant is not plausible and clinching.

(ii) With regard to the second incident dated 24.06.1989, the learned Addl. Sessions Judge observed that neither any of the locality members nor Bunty, the son of the appellant nor her mother Draupadi Devi had appeared as a witness to support the claim of the appellant and it was observed that there is also a plea of alibi of appellant Hira Lal which has been tried to be established by DW2 Baleshwar Ram.

(iii) With regard to the 3rd incident dated 23.07.1989, the appellate Court observed that appellant had tried to take a version in the complaint. The case is not simply of outraging the modesty of a female. There is an indication that the matrimonial dispute reflected in the petition under Section 125 Cr.P.C. has been given totally a different colour and shape without proper support and strength from the evidence and there is no corroboration to the testimony of the appellant. Even her son and mother have not supported and there is no corroboration from the locality members.

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11. There is no representation on behalf of the appellant for a long time after the leave to appeal was granted vide order dated 29.07.2003. Initially, different counsels have been appearing on behalf of the appellant. The appeal was filed by Mr. D.S. Marwaha, Advocate. On 09.01.2013, the presence of Ms. Ramandeep Kaur, Advocate was marked on behalf of the appellant. On 19.02.2013 the presence of Mr. A.S.Virk, Advocate was marked on behalf of the appellant. On 20.05.2013 and 13.08.2013 none appeared on behalf of the appellant.

12. On 18.02.2015 and 15.07.2015 none appeared on behalf of the appellant and the matter was ordered to be heard along with criminal revision filed on behalf of the appellant against the order of dismissal of an application under Section 125 Cr.P.C. by the Appellate Court i.e. CRR-776-2007.

13. On 27.05.2024, there was no representation on behalf of the appellant and the matter was adjourned to 05.07.2024 and the registry was directed to inform learned counsel for the parties about the next date of hearing. As per the report of the registry, information letter was issued accordingly. Despite that, there is no representation on behalf of the appellant even today.

14. I have perused the paper book and gone through the order passed by learned Judicial Magistrate First Class, Ambala and also gone through the impugned judgment passed by the learned Addl. Sessions Judge, Ambala dated 04.01.2007 in CRR-776-2007.

15. The Hon'ble Supreme Court of India in *Sidhartha Vashisht @*

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Manu vs. State (NCT of Delhi) 2010 AIR (SC) 2352, while laying down the principles for dealing with the appeals particularly against the order of acquittal, held that an order of acquittal is to be interfered only when there are “compelling and substantial reasons” for doing so. In the present case, there is no such evidence or material which has been misread or ignored by the appellate Court.

16. In view of the reasons recorded by the learned Addl. Sessions Judge, Ambala in the impugned order dated 17.07.2002 as well as in view of the ratio of the aforesaid decision, no interference is called for in the findings of the acquittal recorded by the trial Court. Accordingly, the appeal stands dismissed.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.07.2024
Janki

(HARPREET KAUR JEEWAN)
JUDGE

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