

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-280-2023

Reserved on : 24.01.2023

Date of Pronouncement: 13.03.2024

Mxxxxxx

....Appellant

V/s

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. G.S. Jagpal, Advocate, for the appellant.
Mr. V.G. Jauhar, Addl. Advocate General, Punjab.

VIKRAM AGGARWAL, J.

1. The instant appeal has been filed by the victim “M” assailing the judgment dated 20.03.2023 passed by the Court of Additional Sessions Judge (Fast Track Court), Ludhiana vide which respondent No.2 was acquitted of the charge framed against him.

2. FIR No.196 dated 07.11.2020 was registered against respondent No.2 under Section 376 of the Indian Penal Code, 1860 (for short “the IPC”) at Police Station Jamalpur, District Ludhiana, on the statement of one Amarjit Singh. It was stated by the complainant that on 06.11.2020 at about 12/12.30 p.m., respondent No.2 who was his nephew took his wife (M) to the house of his aunt and committed a wrong act with her. The statement of the victim was then recorded, who stated that her marriage was solemnized with Amarjit Singh 8 years prior to date of the incident. Out of the wedlock, two children i.e. a daughter and a son were born. The son, however,

expired. Respondent No.2 was the nephew of her husband Amarjit Singh

and used to visit their house. She developed intimacy with him, as a result of which physical relations were also developed. Her husband came to know about their intimacy and got annoyed with her, as a result of which she started living separately. On 06.11.2020, respondent No.2 came to the house in which she was residing separately and took her to the house of his aunt on the pretext that he would solemnize marriage with her. However, there he forcibly developed physical relations with her. Subsequently when she asked respondent No.2 to solemnize marriage with him, he refused stating that he would not solemnize marriage with her.

2(ii) Respondent No.2 was apprehended on 10.11.2020. Investigation commenced and after the completion of investigation, final report under Section 173 Cr.P.C was submitted. Trial commenced, during which, the prosecution examined 13 witnesses. In defence, respondent No.2 examined one witness and tendered into evidence certain documents.

3. Vide judgment dated 20.03.2023, respondent No.2 was acquitted of the charge framed against him. Aggrieved by the same, the present appeal has been preferred.

4. Learned counsel for the appellant was heard.

4(ii) It was submitted by learned counsel for the appellant that the trial Court had erred in acquitting respondent No.2. Reference was made to various portions of the judgment and efforts were made to convince the Court that the judgment is not sustainable. It was submitted that the appellant had given a convincing statement against respondent No.2 but the trial Court, without considering the matter from the correct perspective, acquitted respondent No.2.

4(iii) It was submitted that she had been threatened by respondent

which she had suffered a statement in his favour, but subsequently she had moved an application under Section 311 Cr.P.C for her re-examination, which was erroneously dismissed.

4(iv) Learned counsel for the appellant submitted that under the circumstances, the appeal deserves to be allowed and the judgment passed by the trial Court deserves to be reversed, thereby convicting respondent No.2.

5. We have considered the submissions made by learned counsel for the appellant and have perused the case file.

6. Before advertng to the merits of the case, it would be appropriate to discuss the legal position in so far appeals against judgments of acquittal are concerned. It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of ***Sadhu Saran Singh Vs. State of U.P. and others*, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of “caution” was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the

on facts or law. Still further, in the case of State of ***Maharashtra Vs. Fazal Rehman Abdul***, 2014(7) SCC (Criminal) 01, the Hon'ble Apex Court laid down few parameters which are required to be kept in mind while entertaining appeals against judgments of acquittal. It was held that the Appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the Appellate Court may be the more probable one. It was held that while dealing with a judgment of acquittal, the Appellate Court has to consider the entire evidence on record so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:-

“This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be

avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

This view was also taken by the Hon'ble Apex Court in a case titled as ***State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R. (S.C.) 09***. It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of ***Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490***.

7. Reverting to the facts of the present case, taking into view the peculiar facts which shall be discussed in the succeeding paragraphs, we did not feel the need to even summon the trial Court record.

7(ii) First of all, admittedly, the appellant had intimacy with respondent No.2 and she wanted to solemnize marriage with him. It is her own case that she had started living separately from her husband as he had found out that she was having relations with respondent No.2. It has also come on record that she had in fact solemnized marriage with respondent No.2 on 04.06.2021, after which she had moved a protection petition in the Court of Additional Sessions Judge, Ludhiana. The said petition was subsequently withdrawn on a statement having been given by the appellant and respondent No.2 that there was no threat to them. In fact, a compromise was also arrived at between the parties in the present FIR, which was produced on record as an Ex.D2. On the basis of the said compromise,

No.196, dated 07.11.2020 under Sections 376 IPC, 1860, registered at Police Station Jamalpur, District Ludhiana.

7(iii) Further, the appellant kept on changing her stand throughout. As has been mentioned in the preceding paragraphs also, in her statement made before the police, she had admitted about her relations with respondent No.2 and the factum of her residing separately from her husband. When she stepped into the witness-box as PW-1, she made material improvements in her statement and gave a totally different version, levelling allegations apart from respondent No.2, upon one Aakash, who was the cousin of respondent No.2. She, therefore, put up a different version from that given in her statement before the police, as also from her statement recorded under Section 164 Cr.P.C. An application under Section 319 Cr.P.C was moved to summon Aakash as an accused, but subsequently on 18.11.2021, the same was withdrawn. The appellant again stepped into the witness-box on 21.11.2021 and stated that she had got the case registered and had given the statement in the witness-box at the instance of her husband. She stated that respondent No.2 was not the person who had committed rape upon her and her husband had compelled her to get the case registered and there was some money dispute between her husband and respondent No.2. In her cross-examination, which was conducted by the Public Prosecutor, after she was declared hostile, she denied having given such statement to the police. She went to the extent of stating that her previous statement in Court wherein she had levelled allegations against respondent No.2 had been given under pressure and at the instance of her husband. Subsequently, on 02.12.2021, she moved an application under Section 311 Cr.P.C, stating that she wished to give a further statement. That application was, however, declined vide

Court by way of CRM-M-2081-2022 but withdrew the same on 18.01.2023, meaning thereby that the order dated 21.12.2021 passed by the trial Court dismissing her application under Section 311 Cr.P.C attained finality.

7(iv) Even her statement under Section 164 Cr.P.C was marred by contradictions and she kept on changing her stand as has been noticed by the trial Court in paragraph 32 of the judgment. It is, therefore, apparent that the statement given by the victim before the Court did not inspire confidence on account of the inconsistencies, infirmities and contradictions. The trial Court, therefore, rightly gave the benefit of doubt to the accused.

7(v) Still further, the aunt Lata Rani in whose house, respondent No.2 is alleged to have committed rape upon the appellant, also stepped into the witness-box as PW-13. She deposed that on 06.11.2020 i.e. the date of the alleged incident, neither the appellant, nor respondent No.2 had come to her or had met her. Certain other discrepancies were also noticed by the trial Court. It was also found that there was no scientific evidence to link respondent No.2 with the alleged offence. If one considers the matter in its entirety, there remains no doubt that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt and also that the version put forth by the prosecution especially, in view of the contradictory statements given by the prosecutrix, did not inspire any confidence and was not worth of credit. The trial Court, therefore, rightly came to the conclusion that the guilt of the accused did not stand proved.

8. Keeping in view the ratio of the judgments referred to in the preceding paragraphs and the factual matrix, as has been discussed above, we do not find any reason, whatsoever, to interfere in the judgment passed

by the trial court and the appeal is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

13.03.2024
vcgarg

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