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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3221-2015
Date of Decision: 20.05.2024

NAVEEN KUMAR

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Daldeep Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present revision petition is for setting aside the impugned judgment of conviction and order of sentence dated 30.07.2015 passed by learned Additional Sessions Judge, Rewari in Criminal Appeal No.15 of 2014 preferred by the complainant vide which the judgment of acquittal dated 28.02.2014 passed by learned Judicial Magistrate Ist Class, Rewari acquitting the present petitioner in the case arising out of FIR No. 203 dated 11.09.2007 registered under Sections 452, 354, 506 of IPC at Police Station- Khol, was set aside, and the petitioner was held guilty under the aforesaid penal provisions and was sentenced as follows: -

Under Section	Sentence
452 IPC	<i>R.I for 2 years along with a fine of Rs.1,000/- and in case of default on fine, S.I.for6 months.</i>
354 IPC	<i>R.I for2 years along with a fine of Rs.1,000/- and in case of default on fine, S.I.for6 months.</i>
506 IPC	<i>R.I for 6 months.</i>

2. Succinctly, the facts are that the FIR (supra) was lodged in consequence of the application dated 11.09.2007 moved by respondent no.2-complainant, wherein, it was alleged that on 06.09.2007, when she was sleeping along with her child in the front courtyard of her room, a boy entered her house and laid upon her in order to rape her. When the complainant got up, she immediately identified him as Naveen Kumar, i.e., the present petitioner as he used to come to the village to meet his maternal uncle and pushed him away. As the petitioner tried to flee, the husband of the complainant came and tried to catch him but he managed to escape somehow. While escaping, the petitioner threatened the complainant with death in case she told anyone about this incident. When the father-in-law of the complainant came to the house, she narrated the entire incident to him and then they all reported the matter to the concerned police.

3. After registration of the FIR (supra), the petitioner-accused was arrested on the same day and was subjected to medico-legal examination. After completion of the necessary formalities of investigation, the final report under Section 173 Cr.P.C. was prepared and presented before the learned trial Court.

Thereafter, the accused was charge-sheeted under Sections 452, 354 and 506 of

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IPC to which he pleaded not guilty and claimed trial. After appreciating the evidence on record, the learned trial Court acquitted the accused of the charges framed against him vide judgment dated 28.02.2014.

4. Aggrieved by the aforesaid judgment of acquittal, the complainant preferred an appeal before the learned lower Appellate Court and consequently, the same was allowed vide judgment dated 11.09.2007 and the judgment of acquittal was set aside. Further, the accused was held guilty under Sections 452, 354 and 506 of IPC and sentenced as mentioned hereinabove. The said judgment of conviction and order of sentence dated has been assailed by the petitioner in the present revision petition.

5. Learned counsel for the petitioner vociferously contends that there is an unexplained delay of 5 days in lodging the FIR and the same has been wrongly justified by the learned lower Appellate Court. He further contends that even a material eye-witness namely Hukam Singh who is the father-in-law of the complainant has appeared as DW1 and demolished the entire case of the prosecution. Also, the learned trial Court had rightly observed that there are material discrepancies in the statements of the complainant examined as PW1 as well as her husband who was examined as PW3. It is further contended that the fact that husband of the complainant had borrowed Rs.50,000 from the petitioner which he could not repay and thus falsely implicated him, cannot be ignored. It is further argued that the material improvements made by the complainant in her testimony have been unreasonably brushed aside by the learned lower Appellate Court by finding them trivial in nature. Even the testimony of DW1- Hukam Singh has been perfunctorily discarded by the said

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Court. Therefore, the learned lower Appellate Court erred in overturning the judgment of acquittal and places reliance on the case of *M.C. Ali and Anr. vs. State of Kerala, 2010(7) R.C.R.(Crl.) 1148*.

6. Learned State counsel submits that the judgment under challenge in the present petition has been passed after correct appreciation of the evidence on record, in accordance with law and does not deserve any interference by this Court.

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that substantial improvements have been made by the complainant in her version. Further, there are material contradictions in her version as in the complaint Ex.PW1/A moved by her before the concerned police, she had mentioned that the appellant fled from the scene after she got up but in her cross-examination, she has stated that the appellant stayed with her for 5-10 minutes after she got up and when her husband came after 2-4 minutes and then her husband and the appellant had a conversation for 4 to 7 minutes and then the appellant fled away. Furthermore, the husband of the complainant who was examined as PW3 deposed that the appellant had threatened the complainant with death but the complainant in her stated in her cross-examination that the threat was made to her husband. As such, adverse inference is drawn against the veracity of the testimony of the complainant-PW1. Moreover, there is an inexplicable delay of 5 days in lodging the FIR (supra). It was the case of the prosecution that the delay was on account of the pressure of the villagers as *Panchayat* was convened for 2-3 days but the complainant has failed to reveal the names of the



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persons who allegedly gathered at her house. It is pertinent to note that as per the version of the complainant, her father-in-law Hukam Singh had arrived at the place of occurrence but the same Hukam Singh has appeared as DW1 and deposed in favour of the appellant and stated that the appellant did not misbehave with the complainant but the complaint was filed against the appellant as the husband of the complainant had borrowed Rs.50,000/- from the appellant. Thus, in the opinion of this Court, there is sufficient material to tilt the scales in favour of the appellant.

8. Pertinently, the Hon'ble Supreme Court in the case of ***M.C. Ali*** (*supra*) held that acquittal of the accused should not have been interfered with, in absence of concrete evidence against him, and made the following observations which are relevant to the case at hand: -

"43. We have considered the submissions made by the learned counsel. We may notice here that the High Court has clearly recorded the legal proposition involved in this case in the following words:

"Being an appeal against acquittal, we are bound to see whether views expressed by the learned Sessions Judge are reasonably possible. If the views expressed are reasonably possible, even if another view is possible, appellate court will not interfere in it."

*The aforesaid statement of law recognizes the settled position in the case of **Antar Singh v. State of M.P., (1979) 1 SCC 79:***

"This Court has repeatedly held that although in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as of the Trial Court, but before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal at the trial; and further, the opinion of the Trial Court which had the advantage of



observing the demeanour of the witnesses, as to the value of their evidence should not be lightly discarded. Where two views of the evidence are reasonably possible, and the Trial Court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the Trial Court, it would have taken the alternative view and convicted the accused accordingly."

44. *This settled proposition of law has been reiterated by this Court in the case of **Chandrappa v.State of Karnataka {2007 (4) SCC 415}**. In this case, the provisions of Section 378 of the Code of Criminal Procedure, 1997 were critically examined. After advertng to numerous decisions of this Court, it was observed as follows:*

"From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reapprciate and reconsider the evidence upon which the order of acquittal is founded.

(2) 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.

(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.



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(4) 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.

(5) 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."

*From the above, it becomes evident that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal. The acquittal re-enforces and reaffirms the presumption of innocence of the accused. The High Court, in fact, makes a reference to the judgment of this Court in the case of **Kali Ram v. State of H.P.,(1973) 2 SCC 808** wherein this Court has observed:*

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

45. Having noticed the aforesaid principle, the High Court reviewed the entire evidence. It reached the conclusions which are opposite to the conclusions recorded by the Trial Court. We are unable to accept the opinion of the High Court that findings recorded by the Trial Court are perverse and manifestly erroneous."

9. In view of the above discussion, the present revision petition is allowed and the judgment of conviction and order of sentence dated

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30.07.2015 passed by learned Additional Sessions Judge, Rewari in Criminal Appeal No.15 of 2014, is hereby, set aside.

10. Consequently, the petitioner is acquitted of the charges framed against him in the present case and his bail bond and surety bond stand discharged.
11. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

20.05.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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