

Neutral Citation No.2024:PHHC:022982

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

245

CRM-A-1124 of 2023
Date of decision: 16.02.2024

Simarjit Kaur alias Simran

... Applicant

Vs.

Manisha and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Payal Mehta, Advocate (Legal Aid Counsel),
for the applicant-complainant.

MANISHA BATRA, J.

1. The applicant-complainant has filed the instant application for grant of leave to file appeal against the judgment of acquittal dated 06.02.2023 passed by learned Judicial Magistrate, 1st Class, Amritsar in Criminal Complaint bearing No.COMI/703/2015 titled as *Simarjit Kaur alias Simran v. Manisha and others*, whereby the respondents were acquitted of the charges as framed under Sections 148, 323, 354-B and 506 read with Sections 34 and 149 of IPC.
2. For the sake of convenience, the parties shall be referred to as per their original nomenclature as given before the learned trial Court.
3. Brief facts relevant for the purpose of disposal of this application are that the aforementioned complaint had been filed on the allegations that the accused Manisha was married with Jaideep Singh, brother of the complainant on 07.10.2013. She, however, left her matrimonial house shortly after her marriage while taking away/stealing the gold ornaments

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kept in the house. Litigation was pending in this regard. It was submitted that the accused Sunny was the real brother, accused Manjit Kumar and Sukhdev Kumar were relatives of accused Manisha whereas accused Ashok Kumar is Ex Sarpanch of her village with whom she is quite close. The complainant had lodged a FIR bearing No.48 of 2014 as against the accused persons and feeling offended with the same, the accused Manisha had got registered a false case under Section 498-A of IPC as against the complainant and her family members. It was alleged by her that on 04.03.2015, she had gone to Chandigarh for some personal work and arrived back at Amritsar at about 11 PM. While she was going from the bus stand towards her house and was looking for some vehicle, suddenly, all the accused persons who were boarding in an Innova car driven by accused Ashok Kumar reached there. The accused Manisha made an exhortation by proclaiming that the complainant should be taught a lesson and then the accused Sunny and Manjit Kumar opened an assault upon her and caused injuries to her. She further alleged that both these accused tried to outrage her modesty by trying to pull down her pyajami, tearing of her shirt and biting of her left shoulder. The complainant raised alarm on hearing which the witness Kunal Dhawan who was incidentally passing through that area on his motorcycle, rushed for her rescue, on seeing whom the assailants fled away from the spot in their car. The witness Kunal Dhawan also called the mother of the complainant and then she was got admitted to Guru Nanak Dev Hospital, Amritsar and was medico legally examined.

4. It was further alleged that the matter was reported to the police and a case bearing FIR No.85 of 2015 was registered at Police Station "A"

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Division Amritsar against the accused under Sections 323, 354-B and 506 read with Section 34 of IPC. She alleged that however, the police subsequently failed to take any action against the culprits and a cancellation report was filed and, therefore, she was constrained to file the complaint. In her preliminary evidence, the complainant examined some witnesses including herself besides placing documents on record. Vide order dated 12.09.2016, the learned trial Magistrate issued process as against the accused calling upon them to appear and face trial for commission of offences punishable under Sections 148, 323, 354-B, 506 read with Sections 34 and 149 of IPC.

5. In pre-charge evidence, the complainant examined five witnesses while herself appearing as CW-3. The learned trial Magistrate after hearing the contentions raised by both the sides and appraising the evidence produced on record, passed order dated 29.04.2019 thereby framing charges under the aforementioned sections against the accused Manisha, Manjit Kumar, Sukhdev Kumar and Ashok Kumar and accused Sunny had died by that time. During the course of after charge evidence, the accused further cross-examined witnesses namely, Kunal Dhawan, ASI Sukhdev Singh, ASI Baljinder Singh, Dr. Swati Tyagi and the complainant. The statements of the accused were recorded under Section 313 of Cr.P.C. wherein they pleaded false implication and claimed themselves to be innocent. In defence evidence, the accused examined four witnesses besides placing reliance upon documentary evidence.

6. After giving due deliberations to the contentions raised by both the sides and on going through the evidence produced on record, the learned

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trial Magistrate vide the impugned judgment dated 06.02.2023, acquitted the accused of the charges as framed against them.

7. Feeling aggrieved, the present application for grant of leave to file appeal has been filed by the complainant-applicant (henceforth the complainant shall be referred to as applicant and the accused shall be referred to as respondents).

8. Learned counsel for the applicant has argued that the impugned judgment is liable to be reversed as the findings given therein are not sustainable in the eyes of law, the same being suffering from several material infirmities. It is argued, that the learned trial Court committed a grave error in holding that the applicant had not proved her case beyond doubt though there was overwhelming evidence on record to prove the allegations as levelled against the respondents. It is, therefore, argued that the leave to appeal deserves to be granted to the applicant and further that the appeal filed by her deserves to be accepted.

9. I have heard learned counsel for the applicant at considerable length and have given due deliberations to the contentions raised by her besides perusing the material placed on record of the learned trial Court which has been requisitioned.

10. Since the applicant has sought leave to file appeal against the judgment of acquittal, 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

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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

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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.

11. While applying the proposition of law as discussed above to the peculiar facts and circumstances of the present case and on a careful scrutiny of the evidence produced on record of the trial Court, I am of the considered opinion that the application does not deserve to be allowed and no case has been made out for grant of leave to appeal to the applicant. The allegations as levelled by the applicant against the accused were that as on the night of 04.03.2015, while she had come from Chandigarh to Amritsar bus stand and was proceeding towards her house at about 11 PM, then she was waylaid by the respondents who came in an Innova car and they tried to outrage her modesty after forming membership of an unlawful assembly and had opened an assault upon her as well as criminally intimidated her. The learned trial Court had observed that the testimony of the applicant herself demolished

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her own case and did not inspire any confidence to connect the respondents with the allegations as levelled by her. It was observed that no tickets qua her travelling from Chandigarh to Amritsar on 04.03.015 had been produced by her either before the police authorities or before the Court. More so, she had failed to explain as to how the respondents had the information about her presence at the place of occurrence on that particular point of time i.e. 11 PM.

12. While recording the findings of acquittal of the respondents, the learned trial Court had observed that the testimony of the applicant was unnatural and improbable and did not inspire any confidence to connect the respondents with the allegations as levelled against her. It was observed that her allegation that she had been assaulted by the respondent Manjit Kumar stood belied from the fact that in his defence evidence, the respondent Manjit Kumar had produced ample evidence on record to prove that he had departed from India to UAE on 28.02.2015 and had returned to India on 28.09.2016 only. He has even examined witnesses to prove that he was declared a proclaimed person in the FIR No.48 of 2014 which was lodged by the present applicant herself due to the fact that he was not present in India at that time. Learned counsel for the applicant failed to address any argument as to the plea of alibi as taken by the respondent Manjit Kumar and established by him on the basis of evidence produced before learned trial Court. Therefore, in the considered opinion of this Court only, the fact that respondent Manjit Kumar had established his absence not only from the place of occurrence but from India itself on 04.03.2015, belies the entire case of the complainant.

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13. That apart, it was held by the learned trial Court and it has also been observed by this Court that Kunal Dhawan who was claimed to be an eye witness to the occurrence has simply deposed that he had seen one person while extending beatings to the applicant with something and had seen an Innova car with three man and one woman present there. He did not identify or named any of the accused nor any injury by any respondent to the applicant had been attributed by him. Therefore, the testimony of this witness also did not serve much useful purpose for the applicant except proving that she had been assaulted by somebody as on 04.03.2015.

14. Further, though the applicant had asserted that she had been assaulted by the respondents with a sharp edged weapon Kirch and had sustained serious injuries from them but the testimony of CW-5 Dr. Swati Tyagi proved that the applicant had sustained 13 injuries on her person as mentioned in her medico legal report but all these injuries were simple in nature. No external mark of injuries was found on her person neither any blood was oozing out on the clothing as worn by the applicant as deposed to by this witness. The injuries as found on the person of the applicant were in the form of bruises and abrasions which falsified her claim that she was given bites and had sustained injuries with baseball bats and kirch. The learned trial Court had discussed each and every piece of evidence as produced on record by the applicant and has given well reasoned findings.

15. 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

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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 grant leave to appeal to the applicant. Finding no merit in the application, the same is dismissed.

16.02.2024
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(MANISHA BATRA)
JUDGE

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