

CRA-AS-286-2022

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-286-2022

Date of decision: 05.08.2024

POOJA

... PETITIONER

V/s

STATE OF U.T. CHANDIGARH AND OTHERS..

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Bimal Maini, Advocate for appellant-applicant.

SUMEET GOEL, J.

1. Present appeal has been filed against the judgment of acquittal dated 26.05.2022 passed by Learned Judge, Fast Track Special Court, Chandigarh in sessions case No. 197 of 18.11.2017 / 11.08.2020, arising out of FIR No.150 dated 05.06.2017, registered under Sections 323, 354, 506, 34, 147, 149, 120-B IPC & 8 and 12 of POCSO Act, 2012, at Police Station Sector 36, Chandigarh. The appeal has been filed by the complainant.

2. Brief facts of the case shorn of unnecessary details as gathered from the trial Court record are that the above-mentioned FIR was lodged by the police on the following allegations:

The complainant stated that accused Ankush used to harass and tease her younger sister. One day he tried to hold her hand and following date, he held the hand of her younger sister, with insistence to marry him followed by a threat to throw acid on her, in case she disclosed the incident to anyone. However, on disclosure of the incident by her sister to her mother, she along with her

younger sister and mother visited the house of Ankush to report the matter to his family. There Raju (father), Sonu (brother), and Sangeeta (mother) of Ankush attacked them knife and threatened them with dire consequences. It is alleged that Ankush and his friends being drug addicts threatened to kill them and Ankush often made obscene talks with her sister. On 03.06.2017, when the complainant was standing outside her house with her mother, sister and brother, at that time accused Ankush came with 150 boys and dragged and beat her brother and younger sister. Her mother tried to save them but Ankush touched the breast of her younger sister, he along with his friends threw bricks at their house. The matter was reported to the police. Friends of Ankush gave injuries on his person, to put the blame thereof on Complainant and her family. The mother of Ankush while sitting at her house makes plans to kill them and often uses abusive language against them.

3. The police after completion of the investigation filed a challan in the matter and charges under Sections 120-B, 147, 323 r/w 149, 120-B, 354 r/w 120-B, 506 r/w 120-B IPC and under Section 8 of the POCSO Act were framed against the accused persons by the trial Court. After conducting the trial, vide the impugned judgment dated 26.05.2022 trial Court acquitted the respondents from the charges framed against them.

4. I have heard the learned counsel for the appellant and perused the trial Court record carefully.

5. While arguing the matter the counsel for the appellant has argued that the learned trial Court has faulted in holding that there is a delay in lodging of FIR on the part of the complainant. He argued that the police were informed

on 03.06.2017 after the incident, and police registered the DDR the same day, further the injured persons were taken by police for Medico-Legal Examination on the same day. The complainant gave a written complaint to the police on 04.06.2017 and the FIR was lodged on 05.06.2017. He argued as such in these facts no delay in lodging the FIR can be attributed to the complainant side.

6. He further argued that the findings of the learned trial Court regarding the non-examination of independent witnesses being fatal to the case of prosecution are wrong and illegal. It is submitted that the complainant is supposed to report the matter to the police, and thereafter, it is for the police to collect the evidence. If the police failed to join any independent person as a witness, then the complainant cannot be blamed for that aspect. He argued that in the year 2017 itself the complainant had to file a criminal miscellaneous petition bearing No. CRM-M 25518 of 2017 seeking directions to the police to conduct fair and proper investigation in the matter, and thereafter, the accused were arrested in the present case.

7. It is further argued on behalf of the appellant that the learned trial Court has erred in appreciating the effect of the MLRs on the injured persons. As a result of the misreading the MLRs the learned trial Court failed to appreciate the MLRs in correct perspective.

8. Learned trial Court while passing the impugned judgment, after taking into account preexisting enmity between the complainant and accused sides, held that as a rule of prudence, the evidence of relative witnesses of the complainant is required to be appreciated with greater caution. While appreciating the testimonies of PW-1 (mother of complainant), PW-6 (complainant) and PW-7 (younger sister of complainant) learned trial Court came to the conclusion that they had made material improvements in their statements

before the Court, by putting an exaggerated version of the incident. Learned trial Court held that since the incident allegedly took place at the house of the complainant, in the residential area it is highly improbable, that no independent person from the vicinity would have witnessed the incident.

9. The learned trial Court further took notice of the fact that there was an unexplained delay of 2 days in lodging the FIR. This fact assumed significance as taken note of by the trial Court that PW-5 HC Rajni deposed that when she went to the Hospital to record statements of the complainant and victim, they refused to give statement despite the fact that they were conscious. Referring to the testimony of PW-3 Dr. Sunny Mehta, the learned trial Court held that injuries sustained by the complainant vide MLR Ex.P-11, and of victim, Y Ex.P12 and their Mother Ex.P-12 were abrasions and simple injuries on the forearm only.

10. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal passed by the trial Court, as laid down by various judgments passed by the Hon'ble Supreme Court of India are as under:

In case of Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 it is held as under:

"28. After referring to a catena of judgments, this Court 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 following words:

"42. 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, reappreciate 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.

(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."

11. Further in the case of ***H.D. Sundara & Ors. Vs. State of Karnataka, 2023 (9) SCC 581*** Hon'ble Supreme Court of India summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal as under:

- “(a) The acquittal of the accused further strengthens the presumption of innocence;
- (b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;
- (c) The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;
- (d) If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and
- (e) The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

12. While reiterating the above principles governing the exercise of power by the appellate Court in an appeal against acquittal, the Hon'ble Supreme Court in the judgment passed in Case titled ***“Babu Sahebagouda Rudragoudar***

vs The State Of Karnataka”, 2024 INSC 320 = 2024(2) Law Herald (SC) 928

held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

13. In the light of the above principles laid down by the Hon’ble Supreme Court, I have thoughtfully considered the arguments advanced on behalf of the appellant; perused the entire case record and the impugned judgment passed by the learned trial Court.

14. In their statements recorded under Section 313 of the Cr.P.C. the accused in the present case have claimed their false implication. They stated that on 03.06.2017 father and two brothers of the complainant attacked Ankush. As a result, thereof, Ankush remained admitted to PGI for treatment for 4 days on account of the injuries sustained by him. Police registered a case FIR No.151 dated 05.06.2017 under Section 326 of IPC at Police Station Sector 36, Chandigarh in that regard. The factum of the said FIR registered against the father and brothers of the complainant and victims in the present case, has been admitted by prosecution witnesses in their testimonies in the present case. In view of this fact learned trial Court has correctly held that in view of the pre-

existing enmity between the parties, the statements of prosecution witnesses are to be appreciated with circumspection.

15. A perusal of the testimonies of the prosecution witnesses in the present case makes it clear that the prosecution's version of the incident is marred by grave and material suspicious and doubtful circumstances. It is the case of the complainant that on 18.05.2017 Raju (father of Ankush), Sonu (brother of Ankush), Sapna (sister-in-law of Ankush), Sangeeta (mother of Ankush) gave beatings and knife blow injuries on the hand of the mother of the complainant. She said that she reported the matter to the police but does not know what happened to her complaint. Her testimony in this regard, bereft of any corroborative evidence, cannot be relied upon. It is highly doubtful that if the mother of the complainant was given knife injuries, and the matter was reported to the police, the police did not take any action in that regard. The complainant failed to depose any steps taken by her further with the police in that incident. For the sake of argument even if it is assumed that the police did not act in furtherance of an alleged incident of 18.05.2017 then also it was incumbent upon the complainant to prove the medical condition of her mother and treatment taken by her after sustaining alleged knife injuries.

16. The finding given by the learned trial Court that the version given by the complainant PW6, victim PW7, and their mother PW1 before the Court is not in consonance with their complaint Ex.P14, is based on sound reasoning. Perusal of the testimonies of these witnesses clearly shows that the findings of the learned trial Court are based on correct appreciation of their testimonies. The version of these witnesses in their statements before the Court is a clear improvement and exaggeration of their complainant and their statements recorded by the police under Section 161 of the Cr.P.C. It is alleged in their

statements before the Court that accused Ankush caught Y from her breast and tore her clothes and tried to commit rape with her. Then it is alleged that the accused CCL caught hold of Y from her salwar and caught her breast. Accused Rohit tore her clothes and slapped her. Accused Abdul alias Shahrukh slapped Y, tore her clothes and also pulled her hair. The complainant went to save Y but Sonu dragged her from her feet and tore her clothes. He also beat, slapped and dragged her by caught holding of her hair. Sangeeta slapped her. All the accused persons dragged her of her hair took her out of her house and tried to commit wrong acts with her. It is version of the complainant that around 150 boys standing outside their house started throwing bricks and stones upon their house and they were also armed with swords.

17. As pointed out earlier the statements of these witnesses in this regard do not find corroboration from their earlier statements recorded by the police under Section 161 of the Cr.P.C. as well as the contents of their complaint. The incident as narrated by these witnesses is not corroborated by the medical evidence of the case also. As per PW-3 Dr. Sunny Mehta, EMO, GMSH, Sector 16, Chandigarh at the time of the medical examination of Y on 04.06.2017 he found multiple red abrasions on the left forearm of Y. He found multiple red abrasions and contusions on the forearms of X. Mother of X and Y had multiple red abrasions and contusions on the right forearm and on the chest two in number. As per the medical examiner, all the injuries were simple in nature. The nature of injuries on persons of X, Y and their mother as established by medical evidence, wholly belies their version in Court.

18. The version as narrated by X that after the incident when they went to the police station there were told that their statements would be recorded on next day as there was no lady police officer in the police station at that time, is

also not true. Statement of PW-3 Doctor makes it clear that they were taken to the hospital for medical examination by Head Constable Rajni of Police Station, Sector 36. As such it is proved that the lady police officer was present at the police station and also accompanied these witnesses for their medical examination. PW-5 HC Rajni Devi in her statement deposed that after getting medically examined on the intervening night of 03/04.06.2017 these witnesses refused to give any statement to the police. She further deposed that these witnesses gave written complaint to the police on the intervening night of 04/05.06.2017.

19. The finding recorded by the learned trial Court with regard to the non-examination of independent witnesses in the facts of the present case goes to the root of the case. The argument advanced on behalf of the appellant that it was the responsibility of the police to have joined the independent witnesses with the investigation of the case is of no help to the case of the appellant in the peculiar facts of the present case. The Complainant X, Victim Y and their mother all have given lengthy versions of the incident in their statements. As per them the incident took place inside of their house as well as outside their house in the street. The alleged place of occurrence being a residential area, it is expected that these witnesses must know the persons living in their neighbourhood. The huge incident narrated by these witnesses cannot be expected to have gone unnoticed by anyone from the vicinity. It is highly suspicious that these witnesses have narrated the names of so many persons as accused with distinct overt acts attributed to them, but have failed to name any person who would have been present from the area watching the incident.

20. The witnesses have deposed that their clothes were torn by the accused persons separately, but no such clothes have been proved in the case as

case property. These witnesses tried to reason out that aspect by alleging that they tried to hand over the said clothes to the police, but the police did not receive the same. It is the case of these witnesses that after registration of this case, they even approached this Court seeking directions to the police for arrest of the accused persons. In these facts of the case, it is highly improbable that they did not contest the action of the police in allegedly not receiving their torn clothes as case property during the investigation of the case. Learned trial Court has rightly held that there is no explanation to the effect that the factum of torn clothes was not incorporated in the recital of complaint Ex.P-14 that was moved after considerable time of the alleged incident. The version with regard to torn the clothes does not find mention in their statements under Section 161 of the Cr.P.C. No fault can be found with the findings of the learned trial Court that the nature of injuries on person of X, Y and their mother lacks plausibility of they having been attacked by 150 persons. Learned Trial Court correctly took note of the inconsistency in the prosecution version as PW7 in her statement deposed that the blood was oozing from the wound of her sister PW6 and her mother PW1 as well as her minor brother Manish. But the medical evidence does not corroborate her version at all in this regard. PW-1 tried to state that her minor son Manish was not medically examined by the police in the present case and she herself got medically treated by Private Doctor. But no such medical record of the said Manish has been proved on the record of the case.

21. A perusal of the judgment of acquittal passed by the trial Court shows that the trial Court has gone through the entire evidence led by the prosecution in detail in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic manner. The judgment of acquittal passed by trial Court based on sound reasoning does not suffer from any illegality or

perversity. As such the judgment of acquittal dated 26.05.2022 passed by learned Fast Track Special Court, Chandigarh in the present case is upheld. Resultantly, the present appeal being bereft of merit fails and is dismissed.

(SUMEET GOEL)
JUDGE

August 05, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No