

2024:PHHC:110231-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-AD-390-2023 (O&M)
Date of Decision: 20.08.2024

S ...Appellant

Versus

U.T. CHANDIGARH AND ANR ...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Arnav Ghai, Advocate (Amicus Curaie)
Mr. Rohit Mahajan, Advocatefor appellant.

Mr. CS Bakshi, A.P.P. for U.T. Chandigarh.

SUDHIR SINGH, J.

The present appeal is directed against the judgment dated 06.04.2022 passed by the Fast Track Special Court, Chandigarh, whererby accused-respondent No.2 has been acquitted of the charges under Sections 323, 342, 376(2)(n) IPC by extending him the benefit of doubt.

2. Vide order dated 29.01.2024, the Lower Court record was called for. The scanned copy of the same was received on 23.07.2024.

3. As per the case of the prosecution, complainant-victim alleged that after the death of her husband on 05.11.2016, she and her son started residing in Chandigarh. A few months later, she met the

respondent No.2 at marriage bureau, Sector 41, Chandigarh with regard to some property matter. The respondent No.2 and his father resided together in House No.3036, Sector 27-D, Chandigarh. The respondent No.2 proposed the victim for marriage on the occasion of Valentines Day. On such pretext, the respondent No.2 took the victim to House No.410, Top Floor, Sector 44, Chandigarh and developed physical relations. It was further alleged that on 27.08.2017, the respondent No.2 forced the victim to take a tablet in a drink and on her refusal, the respondent No.2 again tried to develop physical relations with her, nonetheless she resisted but was subjected to physical abuse. Thereafter, the victim tried to contact the police, however, respondent No.2 physically overpowered the victim and locked the room from inside and again assaulted her sexually. Further, it was alleged that respondent No.2 successfully consoled the victim and gave her assurance that he would solemnize marriage with her on 28.08.2017. The victim patiently waited for the respondent No.2, but he never turned up. Based on the aforesaid complainant, the FIR was registered under Sections 323, 342, 376(2)(n) IPC at Police Station Sector 26, Chandigarh. After investigation the charge sheet was submitted and cognizance was taken to which he pleaded not guilty and claimed trial.

4. During trial, the prosecution examined PW-1Prosecutrix; PW2 Constable Hitesh; PW 3 ASI Babita, Investigating Officer; PW Dr. Sarita, Medical Officer; PW-5HC Yash Pal, Draftsmen, PW – 6 SI Naveen Kumar and PW – 7 Dr. Palvi Singh, EMO, Civil Hospital, Manimajra besides leading documentary evidence Ex. P-1 to P-18.

Thereafter statement of the accused under Section 313 Cr.P.C. was recorded. The entire incriminating material was put to accused/respondent No.2, which he denied and pleaded his false implication. In defence evidence, accused examined DW1 Sohrab Khurana, Data Entry Operator, Election Department, Chandigarh; DW 2 HC Sunder Lal; DW 3 Constable Shakti Singh; DW 4 Rajesh Kaushik, Junior Assistant, Criminal Branch, Hon'ble Punjab and Haryana High Court, Chandigarh; DW 5 Sahil, Ahlmad (Criminal) in the court of Sh. Sachin Kumar the then JMIC, Chandigarh; DW 6 Jasminder Singh, Senior Assistant, Punjab School Education Board, SAS Nagar, Mohali; DW 7 Ashanjeet Singh, data Entry Operator, office of Registrar of Marriages, UT, Chandigarh; DW 8 Dr. NajlaEiman, Psychiatric Specialist, Mental Health Institute, Sector 32, Chandigarh; DW 9 Mandeep Singh, Civil Ahlmad from the court of Sh. Sanjay, Civil Judge (Jr. Division), Chandigarh and DW 10 Sahil Thakur, Senior Passport Assistant office of Regional Passport Office, Sector 34 – A, Chandigarh beside leading documentary evidence as Ex. D1 to Ex. DW10/D.

5. The learned trial Court after considering the rival contentions and evidence on record, acquitted accused/respondent No.2 of the charges framed against him.

6. The ground considered by the learned trial Court for acquitting the respondent No.2 are as follows:-

“1. The star witness of the prosecution was complainant-victim, whose testimony was disbelieved by the trial Court, being unworthy of credence.

2. The victim is found to be facing criminal trial and she has filed different cases of molestation, rape, sexual assault, cheating besides filing complaints under Section 138 of the Negotiable Instruments Act, against different persons.

3. There was no other eye witness to the incident. Further, the prosecution failed to examine any other witness with respect to the proposal of marriage by the respondent No.2 to the victim. Additionally, to prove the alleged intimate relationship of the victim and the respondent No.2, no friend/acquaintance of respondent No.2 or of the victim was examined as a witness.

4. The absence of medical evidence, oral evidence and documentary evidence i.e. in the shape of call details, messages, photographs, casts a shadow on the case of prosecution.”

6. Learned counsel appearing for the appellant submits that merely because at one stage a compromise had been affected between the parties, could not have been taken as a basis for acquittal of the accused as it was accused-respondent No.2, who had backtracked from the terms of the compromise. It is further submitted that as respondent no. 2 did not comply with the terms of the compromise, the prosecutrix filed an application under Section 311 of Cr.P.c, 1973, which was allowed by the learned trial Court. It is further argued that the victim had supported the prosecution version and only because the medical evidence was lacking, could not be a ground to acquit the accused.

7. We have heard learned counsel for the appellant and have also gone through the record of the case.

8. The sole question that requires consideration by this Court is “whether the impugned judgment of acquittal requires any interference by this Court”.

9. Indisputably, the principal witness for the prosecution was the complainant-victim, whose testimony was crucial to the case. However, the Court finds her testimony to be unreliable and untrustworthy. This conclusion was based on her hostile demeanor and contradictory statements during the proceedings, which led the Court to discard the same. Still further, it was found by the trial Court that the victim had initiated various cases of molestation, rape, sexual assault, cheating etc. against various persons, which clearly showed her conduct and the falsehood of being innocent and victim.

10. The prosecution’s case is further compromised by the absence of crucial types of evidence. Specifically, there is a notable lack of medical evidence that might have supported the claim made. Additionally, there is no oral evidence from other potential witnesses, nor are there any documentary pieces of evidence. The absence of these forms of evidence substantially weakens the credibility and impact of the prosecution’s case.

11. The entire case of the prosecution is that the accused had developed physical relations with the victim on the pretext of marrying her. Still further, as per the case set up by the prosecution, the accused established physical relations with the victim for the first time on 14.02.2017, and continued to do so for nearly six months and

when he had allegedly backed out from his promise of marriage, she got the FIR registered on 29.08.2017. The victim was already married and her husband had already expired on 05.11.2016. She did have a child from said marriage. This all indicates that she was well aware of the consequences of her advances towards the accused. There is no evidence on record that she had been forced by the accused to enter the alleged relationship with him. Be that as it may, still the fact remains that the victim had initiated a number of litigations of similar nature against various other people, which further goes to show that she had been in the know of the things she had been doing. The relationship between the victim and the accused seemed to be consensual and, therefore, the findings recorded by the trial Court cannot be found fault with.

12. We find that the findings recorded by the learned trial Court do not suffer from any illegality or perversity. It is settled principle that the prosecution has to prove its case beyond reasonable doubt and whenever any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

13. In criminal appeal against acquittal what the appellate Court has to examine, whether the finding of the learned Court below is perverse and prima facie illegal. Once the appellate Court comes to the finding that the ground on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court

passed in the case of Mrinal Das versus State of Tripura, (2011) 9 SCC 479, it has been observed that:

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.”

In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court reiterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

14. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly

unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

15. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present appeal is dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

20.08.2024
Himanshu

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