



213 (2 cases)

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

Date of decision: February 06, 2025

1. CRA-AD-72-2020 (O&M)

Sukhjinder Singh

....Appellant

versus

State of Punjab and others

....Respondents

2. CRR-937-2020 (O&M)

Sukhjinder Singh

....Petitioner

versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Nitin Sachdeva, Advocate (Amicus Curiae)
for the appellant/petitioner.

Mr. Neeraj Madan, Senior DAG Punjab.

SUDHIR SINGH, J. (ORAL)

CRM-4293-2020 IN CRA-AD-72-2020

For the reasons stated in application, same is allowed. Delay of
327 days in filing the appeal is condoned.

CRM-13003-2020 IN CRR-937-2020

For the reasons stated in application, same is allowed. Delay of
420 days in filing the revision petition is condoned.

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CRR-937-2020 (O&M)
Main cases (O&M)**

Vide this common order, we shall be disposing off above noted two cases arising out of the common judgment of conviction and order of sentence. **CRA-AD-72-2020** has been filed by the complainant against the impugned judgment of conviction/order of sentence dated 10/11.10.2018 passed by the learned Additional Sessions Judge, Sangrur, whereby accused/respondents No.2 to 6 have been acquitted for offences under Sections 395, 412 of IPC read with Sections 67/67-A of the Information Technology Act; whereas, **CRR-937-2020** has been filed by the complainant for enhancement of sentence awarded to the aforesaid respondents under Section 384 read with Section 120-B IPC. For brevity, facts are taken from CRA-AD-72-2020.

2. Vide order dated 01.08.2022, the Lower Court record was called for. The same was received.

3. The prosecution case was that on 22.05.2017, complainant, namely, Sukhjinder Singh (appellant/petitioner herein) was present, along with his friend, namely Som Nath, in his fields to get the electricity tubewell connection repaired and levelling of some portion of the land was also going on. At about 4.30 p.m., Tarsem Singh alias Goma (respondent No.2), telephonically, desired to meet complainant to resolve some issue relating to conflict of a lady, who was relative of said Tarsem Singh alias Goma. Tarsem Singh alongwith said lady reached the fields of the complainant at about 9.00 p.m. In the meanwhile, Bablu Singh (respondent No.3), Lakhwinder Singh alias Kala (respondent No.4), Billa and Bhai also reached the spot, on two motorcycles. They scolded the complainant and Som Nath by saying that they had indulged under illegal activities with the aforesaid lady, and started

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raising noise; that they had taken the complainant and said Som Nath into their captivity in a room and had also brandished the *kirpan* by giving threats to kill them. They also took an amount of Rs.9,000/- from the pocket of the complainant after exerting threats of making viral the photographs of the complainant along with the aforesaid lady on the internet and had demanded an amount of Rs.50,000/- on that pretext. Subsequently, the complainant and Som Nath had reached near Bansal Hospital, Sangrur by carrying an amount of Rs.50,000/- where Bablu and Lakhwinder Singh alias Kala along with two other unidentified persons appeared and the aforesaid amount was delivered to them. It was further the case of the prosecution that accused-Lakhwinder Singh alias Kala had raised a further demand of Rs.1 lakh threatening that in case the said amount was not paid, the police would be informed about illegal acts of the complainant and Som Nath.

4. Based on the aforesaid complaint, FIR in question was registered. After investigation, the challan/report under Section 173 of Cr. P.C. was submitted in the Court. Thereafter, charges were framed against respondents No.2 to 6, to which they pleaded not guilty and claimed trial.

5. During trial, the prosecution examined PW1-Sukhjinder Singh (complainant), PW2-ASI Kamaljit Singh, PW3-HC Lakhwinder Singh, Malkhana Munshi, PW4-Lakhvir Singh, PW5-Inspector Deepinderpal Singh, Investigating Officer, PW6-Avtar Singh, PW7-Som Nath (eye witness), PW8-Harwinder Singh, PW9-Nirmal Singh and PW10-Jagbir Singh, Nodal Officer. On conclusion of the prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication in the case. In defence, the accused did not lead any evidence.

6. The grounds considered by the learned Trial Court, while passing the impugned judgment and order, are as under:-

- i) There is nothing on record to infer that an amount of Rs.9,000/- was not extracted at the spot from the complainant and Som Nath by the accused;
- ii) The complainant in his testimony deposed about the demand of Rs.50,000/- by the accused and the said amount was delivered to the accused. The complainant and Som Nath, both had given eye-witness account;
- iii) There is consistency and coherence in the testimony of aforesaid two witnesses of the prosecution;
- iv) The accused did not lead any evidence in order to discard the prosecution case;
- v) Fear of death or restraint was not given by the accused to the complainant and thus, the ingredients of Sections 383, 120-B were attracted;
- vi) The offences under Sections 67/67-A of the Information Technology Act were also not attracted.

7. Learned Amicus Curiae, appearing on behalf of the appellant, has vehemently argued that once it was proved on record that the accused had extracted money from the complainant under the threat and fear of death, there is no justification in not holding the said accused guilty for the offences under Sections 395, 412 of IPC and Sections 67/67-A of the IT Act. It is further argued that while holding the accused guilty for offences under Sections 384 read with Section 120-B IPC, it was rightly held by learned trial Court that the prosecution had been able to prove its case against the accused. Taking a thread of support from the said finding of learned trial Court, it is submitted that the same foundation of allegation was also the basis for the offences under Sections 395, 412 of IPC and Sections 67/67-A of the IT Act. It is thus, argued that while recording the impugned finding of acquittal *qua*

offences under the aforesaid Sections, the very approach of learned trial Court is untenable in the eyes of law.

8. After hearing learned counsel for the appellant, in our opinion, the following point arises for determination:-

“Whether the trial Court was justified in acquitting the accused for the offence under Sections 395, 412 of IPC and Sections 67/67-A of IT Act?”

9. In the instant case, on the basis of evidence led by the prosecution, mainly two eye-witness count, i.e., the Complainant (PW1) and Som Nath (PW7), it was proved on record that an amount of Rs.9,000/- had been extracted by the accused from them under the threat of making their photographs along with aforesaid lady viral on the internet. From the prosecution case, the complainant and said Som Nath had later on delivered an amount of Rs.50,000/- to the accused-Lakhwinder Singh alias Kala and others, but there is no recital or allegation as regards the violence or use of weapon by putting them under the fear of death. In our opinion, the trial Court has rightly brushed aside plea of the defence that all the witnesses were not examined by the prosecution and thus, held the accused guilty for offences under Sections 384, 120-B of IPC. Still further, we are of the opinion that the prosecution did not lead any cogent and convincing evidence so as to prove on record that the offences under Sections 395, 412 of IPC and Sections 67/67-A of the IT Act were made out. In the absence of any evidence to that effect, we do not find that findings recorded by learned trial Court suffer from any patent illegality or perversity.

10. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Court below is perverse and prima facie illegal. Once the Appellate Court comes to the finding that the

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grounds on which the judgment is based are 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 in **Mrinal Das versus State of Tripura**, (2011) 9 SCC 479, wherein it has been observed as under:-

“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 reappreciate, 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.”

11. In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court re-iterated 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.”

12. 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.

13. We find that the findings of acquittal of respondents No.2 to 6 *qua* offences under Sections 395, 412 IPC and Sections 67/67-A of IT Act, and conviction under Sections 384 and 120-B of IPC, recorded by the learned trial Court are based on evidence on record and no fault can be found with the same. The question framed above, is answered in affirmative. So far as prayer of the complainant in CRR-937-2020 for enhancement of sentence imposed upon accused/respondents No.2 to 6 is concerned, we find that all the accused had already undergone the sentence of 05 months or more during trial/investigation. A perusal of Section 384 of IPC shows that maximum punishment is 03 years, but sentence may include imprisonment, fine or both. As in the instant case, accused/respondents No.2 to 6 had already undergone 05 months or more of the sentence, we do not find any ground to interfere with the said part of the sentence.

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14. In view of the above, finding no merit in the present appeal

(CRA-AD-72-2020), the same is hereby dismissed. Consequently, **CRR-937-2020** also stands dismissed.

15. Pending application(s), if any, shall also stand disposed of.

**(SUDHIR SINGH)
JUDGE**

**(HARSH BUNGER)
JUDGE**

February 06, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No