



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

**CRA-D-1163-DB-2015 (O&M)
Date of decision : 14.01.2025**

Aslam

...Appellant

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Kunal Dawar, Advocate and
Ms. Shruti Mandhotra, Advocate
for the appellant.
Mr. Anant Kataria, DAG, Haryana.

DEEPAK MANCHANDA, J.

CRM-24603-2015

This application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 43 days in filing the appeal.

For the reasons mentioned in the application, same is allowed and delay of 43 days in filing the present appeal is condoned.

CRM-25483-2016 in CRA-D-1163-DB-2015

The present application under Section 378(3) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 21.04.2015 passed by learned Additional Sessions Judge, Palwal, in a case bearing FIR No. 363 dated 27.09.2013 registered at Police Station Hathin under Sections 363, 366, 376, and 506 of the Indian Penal Code, 1860 (for

short 'IPC'), where all the accused were acquitted.

2. The facts in brief emanated from the pleadings of the present appeal are that the applicant/complainant filed a complaint, Ex. P-6 alleging therein that his youngest sister (prosecutrix), aged 19-20 years was married to one Mushtak s/o Shammi Khan, caste Meo r/o Teubass. P.S Kot Kasim, District Alwar, Rajasthan. She was residing at village Mirpur for the last 3 months, where accused-Irshad enticed away his sister to marry her. Despite best efforts, they could not find out her whereabouts; accordingly, the FIR mentioned above was registered, and the accused was arrested. Thereafter, an investigation was carried out, and a challan under Section 173 Cr.P.C. was presented before the court. The charges under Sections 363, 366, 376 and 506 of IPC were framed against the accused-Irshad, who pleaded not guilty and claimed trial. PW-1 prosecutrix was examined, and after her part cross-examination, the applicant/complainant moved an application under Section 319 of Cr.P.C., was filed which was allowed vide order dated 16.01.2014 and other remaining accused, namely Fakru, Sukkan, Dulla and Ahmed were also summoned to face trial. Since accused-Irshad was already facing trial, the rest of the accused were charge-sheeted separately under Sections 363, 366, 376 (D) and 506 of IPC, to which they also pleaded not guilty and claimed trial.

3. The prosecution examined as many as 13 witnesses, and subsequently, the public prosecutor closed the prosecution evidence, however, the accused closed its defence evidence by examining five witnesses. The statements of accused were recorded in consonance with the spirit of Section 313 Cr.P.C., wherein they denied the allegations levelled against them by the prosecution and pleaded their false implication in the present case. The accused

examined DW-1 Rehman, DW-2 DCP Phool Kumar, DW-3 HC Raghbir Singh, DW-4 Tayub, and DW-5 Habib to prove their defence. The prosecution also adduced documentary evidence from Ex. D-1 to Ex.D-12, and the evidence was closed.

4. Based on the evidence presented, the accused/respondent was acquitted by the trial Court vide impugned judgment dated 21.04.2015, passed by learned Additional Sessions Judge Palwal, which is under challenge in the present case.

5. The learned counsel for the appellant/State contends that the trial Court did not appreciate the evidence produced by the prosecution and acquitted the accused/respondents based on conjectures and surmises. The material witnesses had duly supported the prosecution version, which had not been objectively considered in its proper perspective. The trial Court, however, erroneously proceeded to acquit the accused/respondents on the ground that some of the prosecution witnesses had not supported the prosecution case. The MLR also established the guilt of the accused/respondents. He, therefore, contends that leave be granted to file an appeal against the acquittal of the respondent/accused.

6. We have heard counsel for the applicant/appellant and have reviewed the Lower Court record.

7. The sole question that requires consideration by this Court is that whether the impugned judgment of acquittal requires interference. As per the allegations made by the applicant/complainant, who is the brother of the prosecutrix vide Ex. P-6, i.e the complaint, are that his youngest sister (prosecutrix) was missing since the night of 24.09.2013. He searched for his

sister for two days, and he came to know that one-Irsahd, along with other accused had abducted his sister. After finding no clue, the applicant/complainant requested the police authorities to take action against the Irshad. A perusal of the pleadings would show that the applicant/complainant, PW-10 stated during his cross-examination that his mother raised suspicion on accused-Irshad because he had suspected Irsahd talking to his sister a few days ago. Further, the prosecutrix was a married lady, who stated that she had been residing at her parental house for three months before the incident had been spotted by her family members and she was talking to accused-Irshad a few days before the date of the incident. Further, as per facts, four accused, who lifted the prosecutrix together, brought into the Bolero vehicle, which was being driven by one of the accused, namely Ahmed, and thereafter, she was taken to the place Dossa, District (Rajasthan) at the house of other co-accused namely, Fakru where she was kept in confinement for next three days and was repeatedly raped.

8. The trial court, while discussing the evidence, observed that the prosecutrix stated that she did not eat food and drink for 4 days when she was kept in confinement at Dossa. It is beyond limit of physical strength of a lady to have been repeatedly raped by five persons for four days by not giving any food and water. Further, there is no surprise element in the evidence of the prosecutrix as per her statement, also supported by her brother, i.e. PW-10, where they stated that five accused themselves brought the prosecutrix in a Bolero vehicle to the bus stand Nuh, however the recovery memo which was prepared by the police during the investigation, Ex. P-7 revealed that the prosecutrix was recovered from the custody of accused-Irshad with the help of

public persons, and the prosecutrix was then handed over to the police. These facts are contradictory to each other, and the contents of Ex. P-7 is in direct conflict with the statement of the prosecutrix and her brother PW-10, regarding the place of recovery of the prosecutrix. The PW-13 ASI Rajpal, the investigating officer, stated that the prosecutrix was recovered on 28.09.2013 in village Meerpur, again a different place as disclosed by the prosecutrix and her brother/complainant. In contrast, as per the version of the prosecutrix and complainant, she was recovered from Bus Stand Nuh.

9. The trial Court also observed that as per recovery memo Ex. P-7, if the prosecutrix was recovered from the possession of accused Irsahd, why was he not arrested by the police then and there, whereas the prosecution failed to answer these questions. Further, in the same sequence as per the contentions of the defence, the prosecutrix was firstly raped in village Meerpur and the occurrence memo, i.e. Ex P-10, was also prepared during the investigation. Still, no such place was identified, nor was the site plan prepared regarding the confinement and the gang rape committed upon the prosecutrix at the house belonging to Faku in Dossa, (Rajasthan) or the place of recovery of the prosecutrix, which, as per the case of the prosecutrix, was the bus stand Nuh. It was further discussed that as per the record one site plan of the first place where the prosecutrix was alleged to have been gang raped on 24.09.2013 i.e. the fields of the village Meerpur has been proved by the prosecution. The investigating officer i.e. PW-13 ASI Rajpal stated that he did not notice any signs of struggle including the availability of any hair, broken bangle glasses, foot mark, tyre marks and damaged grass on the spot, the alleged Bolero vehicle used in the commission of the crime was also not taken into custody.

Even the allegations of gang rape made by the prosecutrix, are not supported by the medical evidence, whereas as per PW-6, Dr Narendar Kaur, who opined that the prosecutrix was recorded with “No mark of external injury seen..Hymen torn with irregular healed margins. No mark of external injury seen.” which is not easily believable in case of repeated gang rape alleged to have been committed by the accused continuously for four days upon the prosecutrix. There was no DNA matching of the accused and no other medical evidence of competency to perform sexual intercourse with the co-accused, namely Fakruddin @Fakru, Fateh Mohd@Sukkan, Abdulla@ Dulla and Ahmed on record. Even no external injury was recorded on the prosecutrix immediately after recovery despite her being subjected to repeated raped by four persons for 4 days and being thrown out of the vehicle at the Bust Stand Nuh.

10. The trial Court also discussed the suspicious conduct of the husband of the prosecutrix. Further, no hue and cry was made by the prosecutrix, especially between the time when she was taken by the accused from Dossa (Rajasthan) and then brought back to the bus stand, Nuh. The investigating officer attested that the use of vehicle Bolero or the incident at Dossa (Rajasthan) was not found to be correct in their investigation. Even the place of recovery was differently stated by the investigating officer and the prosecution witnesses, which creates doubt. After going through the pleadings and impugned judgment, we believe that the examination of witnesses examined by the prosecution does not match the allegations made against all the accused, and the evidence produced on record also does not support the allegations.

11. Hence, the findings recorded by the Ld. trial do not suffer from illegality or perversity. In a criminal matter, whenever doubt is cast upon the prosecution's case, the accused is entitled to the benefit of such doubt. After examining the depositions of the prosecution and defence witnesses, the trial court held that the prosecution had failed to prove the charges regarding the offences levelled against the accused and acquitted them of the charges.

12. In an appeal filed against acquittal the appellate Court has to examine as to whether the findings of the Court is perverse and *prima facie* illegal. Once the appellate Court comes to the finding that the grounds on which the judgment is based are not perverse, the scope of the appeal filed against acquittal is limited considering the fact that legal presumption about the innocence of the accused is further strengthened by the finding of the trial Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das v. State of Tripura, (2011) 9 SCC 479***, wherein it has been observed as follows:

“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 re-appreciate, 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....."*

13. Similarly, in the case of ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, the Hon'ble Supreme Court reiterated the same 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, the judgment of acquittal is to be interfered with only for compelling and substantial reasons. In case the impugned judgment is clearly unreasonable, it would be 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. This 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/or compelling grounds.

15. Given the above discussion, we are not inclined to interfere.

16. In view of the above, we do not find any illegality or perversity in the findings recorded by the trial Court. Therefore, the application seeking grant of leave to appeal stands dismissed and leave to appeal declined.

(DEEPAK MANCHANDA)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

14.01.2025

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No