



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

**CRM-A-2447-2019 (O&M)
Date of decision : 10.01.2025**

Dxxxxxxxx

...Appellant

Vs.

Jai Parkash and others

...Respondents

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

Present: Mr. Varshit Garg, Legal Aid Counsel
for the appellant.

DEEPAK MANCHANDA, J.

1. The instant appeal has been filed with an application CRM-A-2447-2019 under Section 378(3) of Cr.PC for grant of leave to appeal against the judgment of acquittal dated 16.03.2019 passed by learned Additional Sessions Judge, Palwal in a case bearing FIR No.913 dated 04.11.2016 registered under Sections 120-B and 376 of Indian Penal Code, 1860 at Police Station Camp Palwal where all the accused were acquitted.

2. The brief facts emanated from the pleadings of the case are that as per allegations made by the appellant, the appellant visited the house of her maternal uncle in May 2014 to attend a marriage function where she met the accused-Jai Parkash, who used to visit the house of her uncle being a friend of her cousin. Thereafter, the appellant returned to her village after the marriage, however, she continued to talk to the accused/respondent No.1. Soon, the said friendship ripened into an affair. The accused-Jai Parkash visited the house of

the appellant along with his cousin and proposed her for marriage. On 06.05.2016 accused-Jai Parkash came to the house of the appellant in Alto car bearing registration No.DL 9-CP/6610 and contacted her through message where the appellant left her house and accompanied accused-Jai Parkash. The said car was being driven by someone, who was later identified as accused, namely, Ombir. The appellant was taken to the Tehsil, Sector 12, Faridabad where accused-Jai Parkash submitted papers relating to his marriage with the appellant. Thereafter, they stayed in village Lakdi in the house of accused Pradeep and on 07.05.2016, the appellant was brought to Delhi by accused Jai Parkash and his friends Pradeep and Ombir, where their marriage was solemnized in a temple. After the marriage, appellant and accused Jai Parkash stayed as husband and wife in the house of accused Pradeep. As per the allegations, from 09.05.2016 to 19.05.2016, the appellant and accused Jai Parkash remained in a Police Protection Room situated in Sector 31, Faridabad and thereafter from 19.05.2016 to 09.06.2016, the appellant and accused Jai Parkash stayed in village Jatwari, Tehsil Chata, District Mathura and after that they both came to Palwal for a job and hired a house.

3. It was further alleged that after occupying the rented premises, accused-Jai Parkash started demanding the appellant to bring cash ₹ 50 lakhs and a flat from her parents and also extended threats to the appellant that he would kill her father and brother. It was also alleged that in the evening, accused-Jai Parkash used to come along with accused Ombir and Pradeep and they used to exploit her sexually. One day, accused-Jai Parkash left his phone in the room bearing the SIM card No.9255550073, through which the appellant contacted her father and came on the main road from where she was taken to

her village by her family. Thereafter, she disclosed that she was exploited while she was staying with the accused. Upon the statement given by the appellant, initially Zero FIR was registered under Sections 376, 506 and 34 IPC at Police Station Kapashera. Thereafter, the same was forwarded to the office of Superintendent of Police, Palwal for necessary action, where FIR No. 913 dated 04.11.2016 under Sections 376, 506 and 34 of IPC was registered at Police Station Camp Palwal, against all the three accused.

4. The appellant was medico-legally examined in Government Hospital, Palwal. The Duty Magistrate, Palwal recorded her statement on 25.11.2016. The prosecution has examined as many as 19 witnesses, and subsequently, the public prosecutor closed the prosecution evidence, wherein the accused pleaded innocence and claimed false implication. The prosecution also adduced documentary evidence from Ex. P-1 to Ex.PY, and the evidence was closed. 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.

5. The accused examined DW1-Dr Veena Singh and DW2-Ami Ram as witnesses to prove their defence and also adduced documentary evidence from Ex D-1 to Ex D-19, and their evidence was closed.

6. Based on the evidence presented, the accused/respondents were acquitted by the Court vide impugned judgment dated 16.03.2019 passed by learned Additional Sessions Judge Palwal, which is under challenge in the present case.

7. The learned counsel for the appellant contends that the trial Court

did not appreciate the evidence produced by the prosecution and acquitted the accused/respondent(s) based on conjectures and surmises. The material witnesses had duly supported the prosecution version, which had not been objectively considered. 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. He, therefore, contends that leave be granted to contest the appeal against the acquittal of the accused/respondent.

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

9. The trial Court, after examining the prosecution witnesses and the entire evidence on record, observed that the appellant alleged that she was forcibly married on 07.05.2016 with accused-Jai Parkash whereas the attending circumstances depicted the contrary. The PW-1 appellant had testified that on 09.07.2016 accused-Jai Parkash had left his phone at the house by mistake and narrated entire story to her father about being exploited at the hands of accused/respondents and asked her father to come to Palwal where she met him at bus stand Palwal and thereafter on 09.10.2016 went with her parents to Police Station Kapashera, New Delhi and got her statement as Ex. P-1. The trial Court observed that the appellant was able to escape from the confinement of accused-Jai Parkash, but went to the Police Station only on 29.10.2016, and there is no explanation as to why an FIR was not registered for five months despite the time and opportunity.

10. Learned trial Court mentioned that on 05.05.2016, PW-2 (appellant's father), came to know that the appellant along with accused had

left the house and were in the Protection Home, Faridabad and the appellant also voluntarily stated during her cross-examination that her marriage was forcibly done with the accused-Jai Parkash but neither the appellant nor PW-2 ever attempted to get the FIR registered against the accused.

11. The trial Court also discussed that the appellant was brought to Palwal, where she stayed with accused-Jai Parkash for about five days and thereafter, she was taken to the house of accused i.e. the rented house of one JP Gujjar, where accused-Jai Parkash got her raped by accused Pradeep and Ombir and while committing rape, they also made MMS, But neither the challan nor the court charge-sheeted any of the accused, including accused-Jai Parkash under Section 376-D of IPC. Even during the proceedings, the appellant was duly represented by private counsel, but despite that, no application was ever made before the trial Court for addition or alteration of the charge. Further, even the allegations under Section 498-A were also made but same were not worth believing as the accused-Jai Parkash was well aware that the appellant eloped and married him and, therefore, asking for the dowry does not inspire any confidence, accordingly was not charge-sheeted under Section 498-A of IPC.

12. After going through the entire evidence, pleadings and the impugned judgement, we found that the appellant tried to project her marriage as a forcible marriage where, in such a case, she could have objected to the same, but to the contrary she appeared before Sessions Judge, Faridabad and made statement qua her protection. It is mentioned that even the appellant identified her signatures on the marriage certificate i.e. Ex.D-1 and the marriage agreement, Ex.D-2. As per the appellant's statement, she saw the

accused-Ombir and Pradeep for the first time on 06.07.2016 while she stayed with the accused-Jai Parkash at the house of accused Pradeep. The said statement demolished the entire prosecution case insofar as the charge under Section 376 and 120 B of IPC is concerned. Moreover, accused-Pradeep Kumar signed on Ex. D-1 i.e. the marriage certificate. On the other hand, not only the signatures of the accused of Pradeep Kumar and Ombir are discernible on the Agreement Ex.D-2 executed by the victim and accused Jai Parkash, but photographs of the accused Pardeep Kumar and Ombir were also there.

13. As per record, the allegations of rape were also falsified after medico-legally examination i.e. MLR Ex P-21. PW-16 Dr. Varuna Gaur reported in the Ex. P-21 that there was no sign of fresh external injury on the body of the appellant and on the private parts of the appellant, which shows that medical evidence did not support the allegations made by the appellant regarding rape. The trial court examined all the evidence and witnesses and concluded that the accused-Ombir and Pradeep, were falsely implicated because they stood witness to the appellant's marriage and the appellant's father kept mum for about five months, which proved fatal to the prosecution's case.

14. After reviewing the pleadings and impugned judgment, we believe that the examination of prosecution witnesses do not corroborate with the allegations levelled against the accused/respondents, and the evidence placed on record also does not support such allegations. Therefore, the findings recorded by the trial Court do not suffer from illegality or perversity. In a criminal matter, whenever doubt is cast upon the prosecution 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 levelled against the accused and acquitted them.

15. 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....."

16. 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."

17. 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.

18. 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

10.01.2025
vanita

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