(2025) 01 SHI CK 0024

High Court Of Himachal Pradesh

Case No: Criminal Appeal No.182 Of 2014

State Of Himachal Pradesh		APPELLANT
	Vs	
Varinder Soran		RESPONDENT

Date of Decision: Jan. 3, 2025

Acts Referred:

- Code of Criminal Procedure Act, 1973 - Section 154, 161, 313, 378
- Indian Penal Code, 1860 - Section 376, 377, 417, 506

Hon'ble Judges: Tarlok Singh Chauhan, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: I.N. Mehta, Navlesh Verma, Sharmila Patial, J.S. Guleria, Kishore Pundeer

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the acquittal of the respondent for the commission of offence punishable under Sections 376, 377, 506 and 417 of the Indian Penal

Code (for short the â€˜IPCâ€™), the State has filed the instant appeal.

2. The prosecution story, in a brief, is that on 18.04.2013, ASI Madan Lal (PW-20), Incharge, Police Post, City, Una, along with other police officials,

was on patrol duty near Government School, Galua (Una). At around, 4.20 p.m., the prosecutrix along with her husband met the police party and

prosecutrix got her statement Ext. PW1/A recorded under Section 154 Cr.P.C. in the presence of Lady Constable Jeewan Jyoti. The prosecutrix

stated that her marriage had been conducted with one Mukesh in the year 2004 and two children were born out of the wedlock. Her father-in-law and

mother-in-law were suffering from leprosy and therefore, they were residing in â€œKushth Ashramâ€, Una where she along with her husband and

children was residing in a â€œJhuggiâ€ (thatched shed). Her husband was labourer by profession and in the day time, she along with her children

remained in the â€œKushth Ashramâ€ for serving her in-laws. In the â€œKushth Ashramâ€, there was a lady by the name of Sucheta, who was

known to the prosecutrix for the last 5-6 yeas and her brother Varinder Soran i.e. the respondent herein had been working in the factory at Mehatpur

and was a frequent visitor to the â€œKushth Ashramâ€.

3. On 14.04.2013, there was a â€œBaishakhiâ€ fair in the â€œKushth Ashramâ€ and the prosecutrix along with her husband remained in the

â€œKushth Ashramâ€ upto 6.30 p.m. At around 6.30 p.m., her husband dropped her along with her children in the â€œJhuggiâ€ and thereafter came

back to â€œAshramâ€.Â Â At around 9.00 p.m., the respondent came to her â€œJhuggiâ€ and disclosed that her husband was lying near Railway

Station, Una, under the influence of liquor and asked her to accompany him in order to bring him back. She took her daughter with her as her son was

with her father-in-law and mother-in-law in the â€œKushth Ashramâ€. The respondent took her to the Railway Station but her husband was not found

there and accordingly the respondent then took her to the Bus-stand, Una, but, again husband of the prosecutrix was also not there. The respondent

disclosed that perhaps prosecutrixâ€™s husband had gone with Monu to â€œJhuggiâ€ and thereafter the respondent took her to the Railway Station

side and forcibly took her towards the bushes along with her daughter and put her on the ground and forcibly put off her slacks upto her knees and

committed carnal intercourse with her forcibly and on her objection, he threatened to kill her in case she raised alarm. The respondent also gagged her

mouth. Due to fear of the respondent, she (prosecutrix) did not report the matter to anybody and because she was feeling pain in her anus, therefore,

she narrated the entire incident to her husband. She requested that her medical examination be got conducted and strict action be taken against the

respondent.

4. During investigation, medical examination of the prosecutrix was got conducted and her statement under Section 161 Cr.P.C. was also recorded by

the Investigating Officer (I.O.). The doctor concerned preserved vaginal swab and blood sample of the prosecutrix and handed over the same to the

police and had reserved opinion till the report of the FSL. After going through the FSL report, the doctor issued the MLC Ext.PW9/C. The respondent

was arrested on 18.04.2013.

5. After completion of the investigation, the respondent was charged with the aforesaid sections to which he pleaded not guilty and claimed trial.

6. The prosecution examined as many as 20 witnesses and on closure of the prosecution evidence, statement of the respondent under Section 313

Cr.P.C. was recorded wherein he denied the prosecution case in toto and pleaded his innocence. As per statement of the respondent recorded under

Section 313 Cr.P.C., the husband of the prosecutrix had taken money from him but had not returned the same and, therefore, got planted a false case

against him. However, no evidence in defence was adduced by the respondent.

7. The learned trial Court, after recording evidence and evaluating the same, acquitted the respondent, constraining the State to file the instant appeal.

8. It is vehemently argued by Shri I.N. Mehta, learned Senior Additional Advocate General that the findings recorded by the learned trial Court are

perverse and the prosecution case could not have been thrown out solely on the basis of delay in lodging the FIR.

9. On the other hand, learned counsel for the respondent has supported the judgment passed by the learned trial Court.

10. We have heard the learned counsel for the parties and have scrutinized the records of the case minutely.

11. At the outset, we would reiterate the principles laid down by the Honâ€™ble Apex Court, governing the scope of interference by the High Court

in an appeal filed by the State for assailing the acquittal of the accused on the findings recorded by the learned trial Court.

12. In Rajesh Prasad vs. State of Bihar and another (2022) 3 SCC 471, a three Judge Bench of the Honâ€™ble Apex Court encapsulated the

legal position governing the field after considering various earlier judgments and held as under:-

Â â€œ29. 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: (Chandrappa v. State of Karnataka (2007) 4 SCC 415, SCC p. 432, para 42)

â€œ42. 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, â€œsubstantial and compelling reasonsâ€, â€œgood and sufficient groundsâ€, â€œvery strong circumstancesâ€, â€œdistorted

conclusionsâ€, â€œglaring mistakesâ€, 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 â€œflourishes of languageâ€ 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.â€

13. Further, in case titled as H.D. Sundara and others vs. State of Karnataka (2023) 9 SCC 581, the Honâ€™ble Apex Court summarized the

principles governing the exercise of Appellate jurisdiction, while dealing with an appeal against acquittal under Section 378 Cr.P.C. The relevant

paragraphs No. 8 to 10 of the judgment are reproduced as under:-

â€œ8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal

against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short, â€˜Cr.P.C.â€™). The principles which govern the exercise of appellate

jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. can be summarised as follows:-

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

8.3. 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;

8.4. 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

8.5. 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.

9. Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge

is correct or incorrect in law and on facts. The Appellate Court normally ascertains whether the decision under challenge is legal or illegal. But while dealing

with an appeal against acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect.

After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate

Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a

reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only

possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an accused can be reasonably taken on the

basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the

ground that another view could have been taken.

10. There is one more aspect of the matter. In many cases, the learned Trial Judge who eventually passes the order of acquittal has an occasion to record the oral

testimony of all material witnesses. Thus, in such cases, the Trial Court has the additional advantage of closely observing the prosecution witnesses and their

demeanour. While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the learned Trial

Judge. As observed in the commentary by Sarkar on the Law of Evidence, the demeanour of a witness frequently furnishes a clue to the weight of his testimony.

This aspect has to be borne in mind while dealing with an appeal against acquittal.â€

14. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal rendered by the

learned trial Court 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 misreading/omission to consider material evidence on record;

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

d) The Appellate Court in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors, if it is inclined to reverse

the judgment of acquittal rendered by the trial Court.

15. Equally settled is the proposition that it is not the duty of the Appellate Court when it agrees with the view of the trial Court on the evidence to

repeat the narration of the evidence or to reiterate the reasons given by the trial Court, expression of general agreement with reasons given by the

Court, the decisionÂ ofÂ whichÂ isÂ underÂ appeal,Â wouldÂ ordinarily suffice.(Refer:ÂG irijanandiniÂ DeviÂ andÂ othersÂ vs.

Bijendra Narain Choudhary AIR 1967 SC 1124).

16. Adverting to the facts, it needs to be noticed that even though the alleged incident is stated to have taken place on 14.04.2013, but the prosecutrix

did not disclose the same to anyone till 18.04.2013 despite the fact that it is on 14.04.2013 itself that the prosecutrix had taken meal in the

â€œAshramâ€ along with her husband. It is here that the statement of the prosecutrix in her cross-examination becomes relevant when she admits

that on both sides of the railway track people regularly pass-by and there are also many â€œJhuggisâ€. No doubt, she tried to claim that her mouth

was gagged by the respondent at the time of commission of the offence but then what prevented her from raising the noise or complaining after the

incident, is not forthcoming.

17. It is in this background that medical examination of the prosecutrix assumes relevance. PW9 doctor Santosh Didhra conducted medical

examination of prosecutrix on 18.04.2013 with the alleged history of carnal intercourse on 14.04.2013 at about 9.00 p.m. However, she did not notice

any mark of violence on any part of the body of the prosecutrix. She preserved vaginal swab, rectal swab and blood sample and handed over the same

to the police. She reserved her final opinion till the report of FSL. Human semen was detected on the slacks of the prosecutrix but blood had not been

detected on exhibits and ultimately the doctor had given the opinion Ext. PW9/B. PW9 in her statement has categorically stated that carnal intercourse

is possible without injury mark and she had conducted medication examination after four days of alleged occurrence, as such, possibility of carnal

intercourse cannot be ruled out. However, during cross-examination, she admitted that she had not noticed any injury around the anus on the person of

the prosecutrix and as per clinical examination and FSL report, there was no evidence of carnal intercourse on the person of the prosecutrix.

18. As noticed above, human semen was detected on slacks of the prosecutrix but same is also of no avail given the fact that the prosecutrix is a

married lady and, therefore, the presence of semen in her wearing apparels seized by the police ipso facto does not establish the culpability of the

respondent, more particularly, when the prosecutrix has been examined after four days of the alleged incident and it has also not been established that

semen is of the respondent.

19. In this background, the testimony of the doctor, who examined the respondent also assumes significance and becomes relevant.

20. PW10 doctor O.P. Ramdeo had conducted medical examination of the respondent on 19.04.2013 and on examination, he had not noticed any

injury present over penis of the respondent. During cross-examination, the doctor clearly opined that the semen may have come on the underwear of

the respondent even by having hand-masturbation.

21. PW2 is husband of the prosecutrix but his testimony is admittedly of no avail given the fact that it is based on hearsay. The only statement which

could be of some relevance is denial of having taken money from the respondent. But, then there is vital admission made by this witness to the effect

that on 14.04.2013, the prosecutrix had not disclosed anything to him.

22. In the given background, it is not at all necessary now to discuss the testimonies of other witnesses, who had clicked photographs or produced the

clothes etc.

23. The findings recorded by the learned trial Court are based on correct appreciation of the evidence on record and, therefore, warrant no

interference.

24. In view of the aforesaid discussion, we find no merit in this appeal and accordingly the same is dismissed.