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(2012) 07 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-A-204-MA of 2012 (O and M)

Sunita		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 378(4)#Limitation Act, 1963 â€" Section 5#Penal Code, 1860 (IPC) â€" Section 313, 323, 34, 452, 506

Citation: (2012) 07 P&H CK 0213

Hon'ble Judges: Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: R.S. Mamli, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Acting Chief Justice

CRM No. 18019 of 2012

1. This application has been filed u/s 5 of the Limitation Act for condonation of 16 days'' delay in filing the application seeking leave to file an

appeal. Application is accompanied by an affidavit. In view of the reasons given in the application, it is allowed and delay in filing the application,

seeking leave to file an appeal, is condoned.

CRM-A-204-MA of 2012

2. This application has been filed u/s 378 (4) Cr. P.C. seeking leave to file an appeal against the judgment of acquittal dated 30.11.2011, vide

which respondents No. 2 and 3 were acquitted of the charge framed against them.

3. Heard.

4. It was an allegation against respondent No. 1 that he had given slap and kick blows to the complainant/ applicant on 31.3.2006 at 8.30 P.M.

Thereafter, the matter was reported to the police. When no action was taken, a criminal complaint was filed by the applicant against respondents

No. 2 and 3 for commission of offences under Sections 313, 452, 323, 506 read with Section 34 IPC.

5. The trial Judge has noted the following facts regarding case of the prosecution :

On 31.3.2006 at about 8.30 P.M. Smt. Sunita (complainant) along with her sister-in-law Smt. Dharamwati was going to see her mother-in-law

(who was ill and was residing separately in another house). When they reached in front of the house of their mother-in-law, accused Bhoop Singh

and Suresh, who were standing in front of their house located in the neighbourhood hurled abuses on the complainant. When the complainant

asked them as to why they were abusing her, accused Bhoop Singh disclosed that she was to be taught a lesson for filing a case against him.

Complainant along with Smt. Dharamwati hurriedly entered the house of her mother-in-law. Accused had also entered the said house. Accused

Bhoop Singh caught hold of the complainant and gave her slaps and a kick blows in her abdomen, as a result of which, blood started oozing out.

She was medico-legally examined at General Hospital, Sohna wherefrom she was referred to General Hospital, Gurgaon. On 1.4.2006 she was

discharged after giving medical aid but the blood did not stop oozing out. She was again brought to General Hospital, Gurgaon where her

ultrasound examination was conducted which revealed death of her baby and abortion was conducted upon her by the doctor. The police did not

take any action against the accused persons.

6. The applicant led preliminary evidence. After consideration, respondents No. 2 and 3 were summoned to face trial for commission of the above

offences. Taking note of a fact that offence u/s 313 IPC is triable by the Court of Sessions, the case was committed for trial to the above Court

vide order dated 16.11.2009. Respondents No. 2 and 3 were charge sheeted to which they pleaded not guilty and claimed trial. The complainant/

prosecution produced 6 witnesses and also brought on record documentary evidence to prove its case.

7. On conclusion of the prosecution''s evidence, separate statements of the accused were recorded u/s 313 Cr. P.C. Incriminating material existing

on record was put to them, which they denied, claimed innocence and false implication. They also led evidence in defence. The trial Judge on

appraisal of evidence, found both the respondents not guilty and accordingly, they were acquitted of the charges framed against them.

8. It was noted by the trial Judge that the parties were locked in a long drawn litigation. When occurrence had taken place, a case filed by the

respondents was pending against husband of PW3-Smt. Dharamwati. Giasi Ram was cited as a witness in that case. Incidently, Suresh, one of the

accused, is son of that Giasi Ram. It has also come on record that Mukesh Devi wife of Shiv Dayal has lodged a case against her brother-in-law

Brijpal. One more criminal case was pending inter se the parties. It was also noticed by the trial Court that it was only by chance that the accused

and the complainant had met in front of the house of her mother-in-law. The accused were not armed. It was case of the prosecution that when

injuries were caused to the complainant, she raised hue & cry. However, no neighbour was cited as a witness. It was also rightly said that there is

nothing on record to prove that the respondents were in the knowledge of pregnancy of the complainant. Trial Court also noticed that in the

complaint, period of pregnancy is not mentioned. There is no independent corroboration to the case of the prosecution. It was also noted by the

trial Court that Dr. Kamini Kalra-PW-4 has specifically stated that on examination of abdomen of the complainant, nothing abnormal was

detected. No injury was found on the abdomen to support theory of termination of pregnancy. To give benefit of doubt to the respondents,

reliance was also placed on deposition made by Dr. Sunita Sharma-PW-5. The occurrence had taken place on 31.3.2006. the complainant got

her medical examination done from Civil Hospital, Gurgaon on that very date and came back to her house. She went back for check up on

2.4.2006. Then she was examined by Dr. Saryu Sharma-PW-6. This witness had stated that chances of previous physical assault having nexus

with fresh pain of the complainant are very bleak. The trial Court has rightly given benefit of contradictions in the statements made by PW-2

(complainant) and PW-3 (her sister-in-law Dharamwati) to the respondents. Reliance of the trial Court placed upon defence witnesses, is also

justified. Order of acquittal of respondents No. 2 and 3 is correct and based upon appreciation of evidence on record.

9. Their Lordships of the Supreme Court in "Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Cri) 748", held that where, in a case, two

views are possible, the one which favours the accused, has to be adopted by the Court.

10. A Division Bench of this Court in "State of Punjab v. Hansa Singh, 2001(1) RCR (Cri) 775", while dealing with an appeal against acquittal,

has opined as under:

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in Ashok Kumar

Vs. State of Rajasthan, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were

perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a

reason calling for interference.

11. Similarly, in State of Goa Vs. Sanjay Thakran and Another, and in Chandrappa and Others Vs. State of Karnataka, ", it was held that where,

in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

12. In ''Mrinal Das & others v. The State of Tripura, 2011 (9) SCC 479'', decided on September 5, 2011, the Supreme Court, after looking into

many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

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. When the trial Court has ignored the evidence or misread the material evidence or has

ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial

Court depending on the materials placed.

13. Similarly, in the case of '' State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, the Hon''ble Supreme Court has observed as under:

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the

judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction

keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of

innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such

presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a

normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within

its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

14. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance

of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except

that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused

has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds

well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while

exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where

interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

Counsel for applicant has failed to show any error in law on the basis of which interference can be made by this Court in the judgment under

challenge. Dismissed.