(2012) 07 P&H CK 0271

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM A-168-MA -2012 (O and M)

Ramphool and Another		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: July 17, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(4)
- Penal Code, 1860 (IPC) - Section 363, 366, 376

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

Bench: Division Bench

Advocate: Bijender Dhankhar, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Acting Chief Justice

1. The applicant has filed this application u/s 378(4) Cr.P.C., seeking leave to file an appeal against judgment of acquittal dated 17.12.2011. Vide that judgment, respondent Nos.2 and 3 were acquitted of the charge framed against them on 11.3.2011 for commission of offences under Sections 366, 363 and 376 IPC. It was allegation against both of them that they had enticed away daughters of the applicants with a false pretext to marry them and thereafter they had committed rape upon them. The process of law was set in motion on a statement made by Ramphool Singh (PW1), stating that his daughter and daughter of applicant No. 2 (his brother) aged about 16 years were missing from their house. Both were studying in plus two class in a government school of village Nagal Kalan and in the morning of 26th December 2010, at about 4.00 a.m. they were found missing. Suspicion was raised against respondent No. 2 and 3 having taken away both the girls. After recording FIR, the investigating officer came into action. Both the girls were recovered from Banglore from the custody of respondent Nos.2 and 3. The girls disclosed to the investigating officer that they had been enticed away by the

accused with a promise to marry them. It was further stated that both have committed rape upon them. Both the girls and the accused after arrest, were medico legally examined from government hospital at Sonepat.

2. On completion of investigation, final report was put in Court. Copies of the documents were supplied to the accused respondent Nos.2 and 3 as per norms. Vide order dated 2.2.2011, case was committed to the competent court for trial. On 11.3.2011, both the respondents were charge sheeted to which they pleaded not guilty and claimed trial. Prosecution produced 19 witnesses and also brought on record documentary evidence to prove its case.

3. On conclusion of prosecution''s evidence, statements of both 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. However, they led no evidence in defence.

4. The trial Court on appraisal of evidence found both the accused not guilty and accordingly, they were acquitted.

5. The trial Court after noting testimony of both the girls rightly came to a conclusion that they had gone with the accused persons from their house, of their own. Taking note the girls going from one place to other with the accused, the trial Court rightly said that it was a case of consent. Furthermore, no injury mark was found on person of the girls at the time of medical examination as deposed by Dr.Anuradha Jain (PW5). Case of the prosecution that both the girls were below 16 years of age, was rightly discarded by placing reliance upon statement made by DW1 Smt.Jaiwati Incharge Angan Wari Centre, Nangal Kalan. As per documents produced by her both the girls were more than 16 years of age.

6. Counsel for the applicant has failed to show any lacuna in the judgment and also misreading of evidence by the trial Judge. Opinion forms is as per record.

7. Their Lordships of the Supreme Court in Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

8. A Division Bench of this Court in State of Punjab v. Hansa Singh, 2001(1) RCR (Criminal) 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Counsel for the applicants has failed to indicate any misreading of evidence on the part of the trial Court. Dismissed.