REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1229 OF 2017

Chaman Lal **...Appellant**

Versus

The State of Himachal Pradesh **...Respondent**

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.09.2016/19.09.2016 passed by the High Court of Himachal Pradesh, Shimla in Criminal Appeal No. 36 of 2014, by which the High Court has allowed the said appeal preferred by the State and has quashed and set aside the judgment and order of acquittal passed by the learned trial Court acquitting the appellant herein – original accused for the offences under Sections 376 and 506 of the IPC and consequently has convicted the appellant – accused for the aforesaid offences and

has sentenced him to undergo seven years R.I. with fine of Rs. 10,000/- and in default of payment of fine, further six months R.I. under Section 376 IPC and four years R.I. with fine of Rs.5,000/- and in default of payment of fine, further three months R.I. under Section 506 IPC, the original accused has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the father of the prosecutrix lodged an FIR against the accused with the allegations that on 1.4.2008, his wife Dhaneshwari Devi telephonically informed him at Shimla that their daughter (prosecutrix) is pregnant. It was alleged that the prosecutrix told her mother that when she used to go to jungle to graze goats and cattle, accused also used to go to jungle to graze cattle and goats. The prosecutrix told her mother that three-four months ago, accused had sexual intercourse with her forcibly and without her consent. That the accused threatened the prosecutrix not to disclose the incident to anyone. That due to fear and due to forgetting the same and further due to mental weakness, she did not disclose about the incident to anyone

including her mother. That the prosecutrix was got medically examined and as per the Medical Officer the prosecutrix was carrying a pregnancy of 31 weeks. Her age was stated to be 19 years. Prosecutrix was alleged to be mentally retarded. She was medically examined at IGMC, Shimla as well as PGI, Chandigarh. Prosecutrix gave birth to a female child on 19.6.2008 at KNH, Shimla. Blood samples of the prosecutrix, the baby and the accused were taken for DNA test. As per report, accused was the biological father of the female child. The accused was arrested. After completion of the investigation, the Investigating Officer submitted the chargesheet against the accused for the offences under Sections 376 and 506 IPC. The accused pleaded not guilty and therefore he came to be tried by the learned trial Court for the aforesaid offences.

2.1 To prove the case against the accused, the prosecution examined as many as 23 witnesses including the parents of the prosecutrix (PW 1 & 2), Prosecutrix (PW3), Laboratory Technician – Jitender Kumar (PW8), Dr. Sarla Chand (PW9), Dr. Rakesh Kumar, Radiologist (PW10), Dr. Ramesh Kumar, Assistant Professor, Department of Psychiatry (PW11), Dr. Jeeva Nand

Chauhan (PW12), Nand Singh, Sr. Lab Technician, KNH, Shimla (PW13), Dr. Monika Sharma (PW14), ASI Takpa Dorje (PW17), SI Sunder Singh (PW19), Dr. Rama Malhotra, PGI, Chandigarh (PW22) and other witnesses. That after closure of the evidence on behalf of the prosecution, statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded total innocence. The learned trial Court acquitted the accused mainly on the ground of delay in lodging the FIR and also on the ground that the prosecutrix was not mentally unsound to understand the consequences and what was happening.

3. Feeling aggrieved and dissatisfied with the judgment and order of acquittal passed by the learned trial Court, the State preferred appeal before the High Court and by the impugned judgment and order and on re-appreciation of the entire evidence on record, more particularly the medical evidence, the High Court has reversed the order of acquittal and has convicted the accused for the offences under Sections 376 and 506 IPC by observing that the prosecutrix was not in a position to understand the good and bad aspect of the sexual assault. On re-appreciation of the entire evidence on record, the High Court came to the conclusion

that the IQ of the prosecutrix was 62 and that she had mild mental retardation.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the High Court convicting the accused for the aforesaid offences, the original accused has preferred the present appeal.

5. Ms. Radhika Gautam, learned Advocate has appeared for the appellant and Mr. Sarthak Ghonkrokta, Advocate has appeared for the respondent-State.

5.1 Ms. Radhika Gautam, learned Advocate appearing on behalf of the appellant – accused has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in reversing the acquittal and convicting the accused in an appeal against acquittal. It is submitted that cogent reasons were given by the learned trial Court, which were on appreciation of the evidence on record, and therefore the same were not required to be interfered with by the High Court in exercise of the appellate jurisdiction in an appeal against acquittal.

5.2 Learned counsel for the appellant-accused has made the following submissions:

i) there was a delay of four months in registering the FIR from the time the prosecution claimed the incident occurred and therefore the learned trial Court rightly acquitted the accused;

ii) even the father of the prosecutrix (PW1) clearly deposed that the appellant – accused was called to discuss the matter and he offered to take care of the child but refused to marry the prosecutrix. It is submitted therefore that the FIR was filed only as a vengeful act. It is submitted that the appellant-accused was not in a position to marry the prosecutrix as the appellant was married and was having the children of his own;

iii) as such there is a delay of 8 months from the date of incident in filing the FIR. It is submitted that the prosecutrix when examined the day after registering the FIR dated 22.4.2008 is found to be carrying a foetus of 8 months. It is submitted that it is not believable that the parents were not aware of the pregnancy of the prosecutrix;

iv) as such the prosecutrix was not suffering from mild mental retardation as claimed by the prosecution. It is submitted that

two psychiatrists gave a different account of which language the prosecutrix seems to know. It is submitted that one says she knew 'Hindi' and other says she knew 'Phari' and he had to use the interpreter. It is submitted that this is a major discrepancy in the prosecution's case when one Doctor who is supposed to have assessed her for mental faculties and therefore must have asked her many questions which she spoke in Hindi and the other Doctor who is also supposed to ask her a lot of questions in Phari and he had to use the interpreter. It is submitted that therefore either both of them or at least one of them is not stating the true facts;

v) even there are material contradictions in the deposition of the prosecutrix as well as the mother, sister and father of the prosecutrix inasmuch as the prosecutrix said that she came to know about her pregnancy from her family members when they told her about it, whereas the testimony of the mother, sister and father reveal that it was clearly the prosecutrix who informed her sister about the pregnancy;

vi) the High Court has mainly relied upon the medical evidence of PW22 while coming to the conclusion that the prosecutrix was

having mild mental retardation. It is submitted that deposition of PW22 is compared with the deposition of other family members. As rightly observed by the learned trial Court, the prosecutrix was a person capable of understanding her welfare and quite intelligent.

5.3 Making the above submissions and relying upon the decision of this Court in the case of *Krishna v. State of Karnataka (2014) 15 SCC 596*, it is submitted that the High Court has clearly erred in reversing the order of acquittal passed by the learned trial Court which was based on appreciation of evidence on record and the view taken by the learned trial Court was a plausible view.

5.4 It is further submitted by the learned Advocate appearing on behalf of the appellant – accused that out of seven years imprisonment, the accused has already undergone four years and therefore it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and in the alternative to reduce the sentence to the period already undergone by the accused.

6. While opposing the present appeal, the learned Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case the High Court has rightly reversed the order of acquittal passed by the learned trial Court and has rightly convicted the accused for the offences under Sections 376 and 506 IPC, more particularly when the prosecutrix was suffering from mental disease and as per the medical evidence she was not in a position to understand the good and bad aspect of sexual assault.

6.1 Learned counsel for the State has made the following submissions:

i) as the first appellate court the High Court was well within its jurisdiction to re-appreciate the entire evidence on record and to come to the right conclusion. It is submitted that in the present case the High Court has rightly re-appreciated the entire evidence on record, more particularly the medical evidence;

ii) the aspect of delay in lodging the FIR has already been dealt with and considered by the High Court. It is submitted that as such the accused had taken undue advantage of the mental condition of the prosecutrix and therefore even if there is any

material contradiction, the benefit shall not go to the accused and the benefit must go in favour of such a victim who is suffering from a mental disease and not in a position to understand the good and bad aspect of sexual assault;

iii) that in the present case even the conduct on the part of the accused is also required to be appreciated. It is submitted that it is an admitted position that the accused had sexually intercourse with the prosecutrix and because of that the prosecutrix was pregnant and delivered a baby child. Accused is not now disputing that the child does not belong to him. Despite the above, in his 313 Cr.P.C. statement his case was of a total denial and innocence and it was not even his case that the prosecutrix was a consenting party and that he had sexually intercourse with the consent of the prosecutrix. It is submitted that thus the accused in his 313 statement came out with a false case and did not state the true facts;

iv) now so far as the submission on behalf of the accused that out of seven years RI, the accused has undergone four years RI and therefore the same may be considered in favour of the accused is concerned, it is submitted that the minimum sentence

provided for the offence under Section 376 is seven years and the same can be reduced only by giving a special reasons. It is submitted that in the present case, as such, the High Court has already taken a lenient view by awarding seven years RI only. It is submitted that when it is a case of sexual assault on a person suffering from mental sickness and the accused has taken disadvantage of the mental condition of the victim, such cases should be dealt with an iron hand and no leniency should be shown to such accused.

6.2 Making the above submissions, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that by the impugned judgment and order the High Court has convicted the accused for the offences under Section 376 and 506 IPC. It is also required to be noted that on re-appreciation of the evidence, the High Court found that the IQ of the victim was very low and she was suffering from mental illness and she was not in a position to understand good and bad aspect of sexual assault. It

is also required to be noted and it is not in dispute that the accused had sexually intercourse with the victim and that the victim delivered a baby child and that the accused is found to be the biological father of the baby child delivered by the victim. It is also required to be noted that in the 313 statement the case of the accused was of a total denial. It was not his case that it was a case of consent. Thus, the accused, as such, came with a false defence.

8. It is true that the learned trial Court acquitted the accused. However, the High Court on re-appreciation of the entire evidence on record has found the accused guilty for the offences under Sections 376 & 506 IPC and has reversed the order of acquittal passed by the learned trial Court. It is the case on behalf of the appellant-accused that in an appeal against order of acquittal passed by the learned trial Court, the High Court has committed a grave error in convicting the accused and reversing the order of acquittal passed by the learned trial Court. Therefore, the first thing which is required to be considered in the facts and circumstances of the case is, whether the High Court is justified

in interfering with the order of acquittal passed by the learned trial Court and thereby convicting the accused?

9. Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

9.1 In the case of *Babu v. State of Kerala, (2010) 9 SCC 189),* this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

> **12.** This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram* v. *State of U.P (1975) 3 SCC 219*, *Shambhoo Missir* v. *State of Bihar (1990) 4 SCC 17*, *Shailendra Pratap* v. *State of U.P (2003) 1 SCC 761*, *Narendra Singh* v. *State of M.P (2004) 10 SCC 699*, *Budh Singh* v. *State of U.P (2006) 9 SCC 731*, *State of U.P.* v. *Ram Veer Singh (2007) 13 SCC 102*, *S. Rama Krishna* v. *S. Rami Reddy (2008) 5 SCC 535*, *Arulvelu* v. *State (2009) 10 SCC 206*,

Perla Somasekhara Reddy v. *State of A.P (2009) 16 SCC 98* and *Ram Singh* v. *State of H.P (2010) 2 SCC 445*)

13. In *Sheo Swarup* v. *King Emperor AIR 1934 PC 227,* the Privy Council observed as under: (IA p. 404)

"... the High Court should and will always give proper weight and consideration to such matters as (*1*) the views of the trial Judge as to the credibility of the witnesses; (*2*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (*3*) the right of the accused to the benefit of any doubt; and (*4*) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu* v. *State AIR 1954 SC 1*, *Balbir Singh* v. *State of Punjab AIR 1957 SC 216*, *M.G. Agarwal* v. *State of Maharashtra AIR 1963 SC 200*, *Khedu Mohton* v. *State of Bihar (1970) 2 SCC 450*, *Sambasivan* v. *State of Kerala (1998) 5 SCC 412*, *Bhagwan Singh* v. *State of M.P(2002) 4 SCC 85* and *State of Goa* v. *Sanjay Thakran (2007) 3 SCC 755*)

15. In *Chandrappa* v. *State of Karnataka (2007) 4 SCC 415,* this Court reiterated the legal position as under: (SCC p. 432, para 42)

"(*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, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', 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 'flourishes of language' 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."

16. In *Ghurey Lal* v. *State of U.P (2008) 10 SCC 450,* this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan* v. *Naresh (2009) 9 SCC 368,* the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

"*20.* … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P.* v. *Banne (2009) 4 SCC 271,* this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)

"(*i*) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(*ii*) The High Court's conclusions are contrary to evidence and documents on record;

(*iii*) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(*iv*) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(*v*) This Court must always give proper weight and consideration to the findings of the High Court;

(*vi*) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in *Dhanapal* v. *State (2009) 10 SCC 401*.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial

court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

9.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

> **"20.** The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra* v. *Delhi Admn (1984) 4 SCC 635*, *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons 1992 Supp (2) SCC 312*, *Triveni Rubber & Plastics* v. *CCE 1994 Supp. (3) SCC 665*, *Gaya Din* v. *Hanuman Prasad (2001) 1 SCC 501*, *Aruvelu v. State (2009) 10 SCC 206* and *Gamini Bala Koteswara Rao* v. *State of A.P (2009) 10 SCC 636*)."
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> (emphasis supplied)

9.3 It is further observed, after following the decision of this Court in the case of *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10*, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

9.4 In the recent decision of *Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436,* this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

> **"31.** An identical question came to be considered before this Court in *Umedbhai Jadavbhai (1978) 1 SCC 228*. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)
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> > "*10*. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."
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> **31.1.** In *Sambasivan v. State of Kerala (1998) 5 SCC 412*, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.

While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

> "*8.* We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal *Doshi v. State of Gujarat (1996) 9 SCC 225* viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309*, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High

Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P. AIR 1955 SC 807*, in para 5, this Court observed and held as under: (AIR pp. 809-10)

"*5.* It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh* v. *State AIR 1952 SC 52*; *Wilayat Khan* v. *State of U.P AIR 1953 SC 122*) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

> **31.4.** In *K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355*, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."
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> (emphasis supplied)

10. Having gone through the impugned judgment and order passed by the High Court and also the judgment and order of acquittal passed by the learned trial Court, we are of the firm opinion that in the facts and circumstances of the case the High Court is justified and, as such, has not committed any error in reversing the order of acquittal passed by the learned trial Court and convicting the accused for the offences under Sections 376 and 506 IPC. Being the first appellate Court and as observed hereinabove in the aforesaid decisions the High Court was justified in re-appreciating the entire evidence on record and the reasoning given by the learned trial Court. In the facts and circumstances of the case, the High Court has acted within the parameters of the law laid down by this Court in the decisions, referred to hereinabove.

11. So far as the merit of the appeal is concerned, on re-appreciation of the entire evidence on record, more particularly the deposition of doctors examined as PW11 – Dr. Ramesh Kumar and PW22 – Dr. Rama Malhotra, the High Court has specifically found that the IQ of the victim was 62 which was based on the history and mental state examination of the victim. The High Court has also come to the conclusion that the victim was not in a position to understand the good and bad aspect of the sexual assault. Merely because the victim was in a position to do some household works cannot discard the medical evidence that the victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault. It appears that the accused had taken disadvantage of the mental illness of the victim. It is required to be appreciated coupled with the fact that the accused is found to be the biological father of the baby child delivered by the victim. Despite the above, in his 313 statement the case of the accused was of a total denial. It was never the case of the accused that it was a case of consent. Therefore, considering the evidence on record, more particularly the deposition of PW11 and PW22 and even the deposition of the other prosecution witnesses, the High Court has

rightly observed that case would fall under Section 375 IPC and has rightly convicted the accused for the offence under Section 376 IPC. Even as per clause fifthly of Section 375 IPC, "a man is said to commit rape", if with her consent when, at the time of giving such consent, by reason of unsoundness of mind, is unable to understand the nature and consequences of that to which she gives consent. As observed hereinabove, even it is not the case on behalf of the accused that it was a case of consent. On evidence, it has been established and proved that the victim was mentally retarded and her IQ was 62 and she was not in a position to understand the good and bad aspect of sexual assault. The accused has taken disadvantage of the mental sickness and low IQ of the victim.

12. Now so far as the submission on behalf of the accused that there are contradictions in the statement of PW11 – Dr. Ramesh Kumar and PW22 – Dr. Rama Malhotra that she was not knowing 'Hindi' and that she was only knowing 'Phari' and therefore in view of such contradictions the benefit of doubt must go in favour of the accused is concerned, the aforesaid aspect has been explained by PW22 in her cross-examination. In the cross-examination, PW22- Dr. Rama Malhotra has specifically stated

that the language is not material in the tests because these are independent of language. From the medical evidence, it emerges that IQ 62 falls in the category of 'mild mental retardation'. It has also emerged that the mental status and IQ are determined on the basis of the injuries and activities. IQ of a person can be known on the basis of the questions, activities and the history of a patient. Therefore, even if there might be some contradictions with respect to language known by the victim, in that case also, it cannot be said to be the major contradictions to disbelieve the entire medical evidence on the mental status of the victim. Therefore, the High Court is justified in reversing the order of acquittal and convicting the accused for the offences under Sections 376 & 506 IPC.

13. Now so far as the submission on behalf of the accused that he has already undergone four years RI out of seven years RI awarded to him and is married and has two children and therefore a lenient view may be taken is concerned, it is required to be noted that as such the High Court has also taken a very lenient view by imposing the minimum sentence of seven years RI. It is required to be noted that it is a case of sexual assault on a victim whose IQ was 62 and was mentally retarded and that

accused has taken undue advantage of the mental sickness/illness of the victim. A person suffering from mental disorder or mental sickness deserves special care, love and affection. They are not to be exploited. In the present case, the accused has exploited the victim by taking disadvantage of her mental sickness/illness. Therefore, no interference of this Court against the impugned judgment and order passed by the High Court convicting the accused is called for.

14. In view of the above and for the reasons stated hereinabove, the present appeal fails and deserves to be dismissed and is accordingly dismissed.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
DECEMBER 03, 2020.

.....J.
[M.R. SHAH]