IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1736-2019
Reserved on : 22.09.2022
Pronounced on : 30.09.2022

..... Appellant

Versus

State of Haryana and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Anil Kumar, Advocate
for the appellant.

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JAGMOHAN BANSAL, J.

1. The appellant, at whose complaint FIR No.191 dated 19.09.2017 under Sections 376, 354, 354-B, 506 and 509 IPC at Police Station Kosli was registered, has preferred, along with an application under Section 378 (4) present appeal, seeking setting aside of judgment and order dated 01.05.2019 whereby learned Additional Sessions Judge, Rewari (for short 'trial court') has acquitted the respondent on the ground that prosecution has failed to

JBT (Junior Basic Training) and pursuing her final year course of B.A. As per appellant, on 31.05.2017 and 02.07.2017, respondent No.2-Satish along with his family members came to her house and a ring ceremony was performed. On 09.08.2017, respondent called appellant to come to Kosli and she after getting permission of her parents went to meet respondent at Bus Stand, Kosli. The respondent took her away on his bike to '7 days Rooms and Restaurant, Kosli' and they spent half an hour in the said restaurant where respondent clicked her photographs and they took cold drink. The respondent tried to get a room in the hotel, however, staff refused to give him room. The respondent thereafter took her away on his bike to Kosli, Dauroli Road near BKD School where he did obscene acts. He pressed her breast, broke string of her salwar and inserted his fingers in her private parts. She told the respondent that she would not establish physical relation with him till the marriage but respondent got offended and threatened not only to kill her but also not to marry her and then left the place. The appellant returned to her home and on 12.08.2017 as well 14.08.2017 received calls from respondent's mobile who threatened her to kill her. A lady called from the mobile of respondent who claimed to be wife of the respondent and abused her (appellant). She got frightened and

entire facts to her father who tried to contact family members of accused, however, they did not take call of her father. On 18.09.2017, she went to Women Police Station, Jhajjar, where she filed an application and Jhajjar Police Authorities transferred the matter to Police Station Kosli in view of territorial jurisdiction. On 19.09.2017, she went to Kosli and apprised the police official about the incident occurred on 09.08.2017. The lady police official brought her to Government Hospital, Rewari, where she was medico-legally examined.

2.1 On the basis of complaint of appellant, an FIR No.191 dated 19.09.2017 was registered under Sections 376, 354, 354-B, 506 and 509 IPC at Police Station Kosli.

2.2 On 08.11.2017, police arrested respondent who at that time was serving Indian Army. The police after completing investigation filed its report under Section 173 of Cr.P.C.

3. During the course of trial, prosecution examined 17 witnesses which included appellant, father of appellant, owner of hotel, doctors and different police officials. The respondent examined 04 witnesses. The statement of respondent was recorded under Section 313 of Cr.P.C. wherein he denied allegations of prosecution and pleaded that he has been falsely implicated.

police authorities. Father of appellant appeared as PW14 and verbatim narrated facts as narrated by appellant. Chanderdeep @ Parul owner of afore-stated hotel appeared as PW1 and deposed that appellant and respondent came to his hotel on 09.08.2017 and stayed there for about 15-20 minutes and enjoyed cold drink/tea and thereafter left his hotel.

4. The trial Court framed different issues for its consideration and came to a conclusion that prosecution has failed to connect the accused with the commission of offence and essential ingredients for proving charge against the respondent are not proved. The trial Court held that it would be neither safe nor in the interest of justice to hold the respondent guilty as there is no cogent and convincing evidence on record to link the respondent with the crime in question. With these findings, the trial Court acquitted the accused from all the charges.

5. The trial court vide judgment and order dated 01.05.2019 acquitted the accused/respondent and appellant has filed present appeal seeking setting aside of aforesaid order passed by the trial court.

Findings of trial court :

6. The trial court while acquitting the respondent has

day of incident. It is not possible that a boy on his first meeting with his fiancee would commit acts as alleged by appellant;

(ii) As per appellant as well as site plan, the incident took place at a public place which is very near to police station, hospital as well as busy road. It is not possible that a boy would commit alleged act at a public place;

(iil) The appellant and respondent are from different villages and no relative of appellant is staying at Kosli-Dharouli Road. It is difficult to believe that a girl for the first time visited at a road and she memorized name of the road as well as the school located in the vicinity;

(iv) As per appellant string of salwar of appellant was broken, however, there is no evidence to indicate that how she got assistance or clothing from any co-passenger and there is no evidence of clothing having been torn or soiled;

(v) The hotelier did not produce CCTV footage and it is difficult to believe that an owner of a hotel can disclose that a particular couple stayed in his hotel for 15-20 minutes. It is further relevant that Investigating Officer (PW17) has stated that as per statement of owner of hotel, he did not see couple on the day of incident;

registration of FIR. The reason of delay advanced by appellant is not satisfactory and believable;

(viii) During the course of cross-examination, appellant denied the fact of calling respondent after 09.08.2017 whereas call details record is indicating that appellant made a number of calls on 09.08.2017 as well during 10.08.2017 to 14.08.2017. The denial of appellant is contrary to electronic record;

(ix) The father of prosecutrix disclosed that he made a call on phone number of father of accused whereas call details record does not show that the father of prosecutrix ever called the father of accused/ respondent.

7. Learned counsel for the appellant contended that statement of prosecutrix was sufficient to hold the respondent guilty. There are categoric allegations against the respondent. The owner of hotel has deposed that appellant and respondent came to his hotel on 09.08.2017. Thus, meeting of both sides stands proved. The trial Court ignoring substantial evidence has acquitted the accused. Delay in the peculiar facts of this case was not fatal to the case of prosecution. Thus, the judgment of trial Court needs to be set aside.

8. We have perused the record and heard arguments of learned counsel for the appellant.

02.07.2017 whereas trial Court on the basis of cross-examination of witness has found that respondent did not meet appellant on 31.05.2017 and 02.07.2017. The engagement ceremony was performed by family members of the respondent and he met prosecutrix for the first time on 09.08.2017. As per deposition of prosecutrix, she did not call the respondent after 09.08.2017 and she got threatening calls on 12.08.2017 and 14.08.2017 whereas as per call details record, it was appellant who made calls during 09.08.2017 to 14.08.2017. The appellant made a number of calls from 01.08.2017 to 09.08.2017 and respondent made calls during January' 2017 to July' 2017 on every 8th day of month. The respondent was serving Indian Army so there was possibility that he was getting opportunity to call on 8th day of every month. The alleged accident took place on 09.08.2017 whereas police was informed on 18.09.2017 i.e. after the expiry of more than one month. The father of appellant never called the father of respondent whereas he deposed that he called father of respondent. The place where alleged incident took place is a public place.

10. On being confronted with the facts that the alleged incident has taken place at public place and respondent had met appellant for the first time on 09.08.2017 and engagement ceremony

prosecutrix must be given pre-dominant consideration. The trial Court after noticing this fact has examined veracity and truthfulness of the allegations of the prosecutrix. Though, it is settled proposition of law that statement of prosecutrix must be given pre-dominant consideration yet nobody in the civilised society can be implicated or held guilty just because there is a statement of prosecutrix. The statement of prosecutrix cannot be treated as gospel truth and the Court has to see that she is a witness of sterling quality. If the statement of prosecutrix is held to be gospel truth and Courts are bound to hold someone guilty just because there is allegation by prosecutrix, it would be travesty of justice and there would be no need to conduct trial. The statement recorded by Magistrate under Section 164 or police authorities under Section 161 of Cr.P.C. would be sufficient to put a person behind the bars and hold him guilty.

We do not find substance in the arguments of the appellant. The findings recorded by trial Court are well reasoned and there is no substance in the allegations of prosecutrix. The Trial Court has passed a reasoned judgment, nevertheless, we deem it appropriate to consider the arguments and allegations of appellant.

12. The respondent did not meet appellant prior to 09.08.2017 and as per appellant, the alleged incident took place on

engaged and has met for the first time.

12.1 The prosecutrix in her cross-examination denied the fact that she had called respondent after 09.08.2017. She further alleged that on 12.08.2017 and 14.08.2017, she got calls from the respondent who threatened her. As per electronic record which is not disputed by appellant, it was appellant who called not once but a number of times to respondent. The conclusion of call records as noticed by trial Court is reproduced as below :-

> *"It is pertinent to mention here that it was prosecutrix, who made five calls out of six on 01.08.2017, all four calls on 03.08.2017, four calls out of five on 04.08.2017, both calls on 05.08.2017, all 14 and 12 on 06.08.2017 and 07.08.2017, 9 calls out of 13 on 08.08.2017, 10 out of 16 calls on 09.08.2017, one out of four on 10.08.2017, four out of seven on 12.08.2017, all five calls on 14.08.2017."*

The statement of appellant that she did not make call after 09.08.2017 was fatal to allegations of appellant especially when she is JBT and pursuing final year of BA.

As noticed by trial Court, in Indian culture, there is always attempt to settle the issues, if there is dispute between the children. Attempts are always made by one or another side to get the marriage

hotelier, who before the Investigating Officer accepted that he did not see the boy. The hotelier did not bring CCTV footage and in the absence of CCTV footage, it was impossible to memorise a couple who came one month back and no special incident took place on the said date. It is important to notice that as per appellant, respondent tried to take room but hotel staff refused to let out whereas there is no such averment in the deposition of the hotelier. There is nothing on record to indicate that why hotel staff refused to give room to the appellant. There is clear contradiction between statement of appellant and hotelier and statement of hotelier seems to be unbelievable.

12.3 The alleged incident took place on 09.08.2018 whereas police was informed on 18.09.2017 and FIR was registered on 19.09.2017. The appellant during the course of trial as well learned counsel for appellant contended that respondent threatened appellant on 12.08.2017 and 14.08.2017 and because of fear, the appellant did not inform her family members. It is undisputed fact that engagement was broken on 09.08.2017 and appellant called respondent in between 10.08.2017 to 14.08.2017, thus, there is no question of threatening by respondent on 12.08.2017 and 14.08.2017. Had appellant been scared and suffered from alleged incident, she must have not called the respondent. It seems that she

versa.

12.4 On the question of delay in FIR, in **Harbans Kaur v. State of Haryana, (2005) 9 SCC 195 : 2005 SCC (Cri) 1213 : 2005 SCC Online SC 454 at page 198**, Hon'ble Supreme Court has held:

> *7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. No evidence has been led in this regard. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition, immediate effort was to get him hospitalized and get him treated. There cannot be any generalisation that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross-examination at length, no infirmity was noticed in their evidence. Therefore, the trial court and the High Court were right in relying on the evidence of the prosecution witnesses.*

12.5 Similarly, **in Baldev Singh v. State of Punjab, (2014) 12**

believable. There cannot be any doubt that delay in the lodging of the FIR often results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal for the prosecution case.

18. In the present case, we find from the evidence of PW 3 that the terrorists were active in the State of Punjab and the police was taking action against the terrorists and in such a state of affairs, PW 3 was apprehensive of the consequences of lodging an FIR against the appellants, one of whom was a Deputy Superintendent of Police in control of several police stations and the other was a police constable. Hence, after seven members of his family were picked up on 29-10-1991, PW 3 waited for 2 months and 21 days with the hope that they would be released by the police and only after all his efforts to get them released failed, he lodged complaint on 19-1-1992 (Ext. PB). The fact that the complainant addressed the complaint (Ext. PB) not to the police station but to the Director General of Police, Punjab, is enough evidence of the fact that PW 3 was afraid of lodging the complaint to the local police station which was under the control of the appellant Baldev Singh.

As per afore-cited judgments of Hon'ble Supreme Court, delay in registration of FIR is not fatal in every case. The trial Court

engaged, however, engagement was snapped on 09.08.2017. The appellant continued to call respondent upto 14.08.2017. The appellant in her cross-examination denied the fact that criminal cases are pending against her brother whereas her father admitted that his sons were involved in criminal cases. Thus, the family of appellant was not ignorant about criminal law & procedure whereas they are well acquainted with criminal procedure. Appellant just to cover up delay has alleged that she was threatened by respondent and due to fear she did not disclose about alleged incident to her parents. The trial Court has rightly concluded that there is unexplained delay in registration of FIR and it appears that FIR was registered to spite the boy side at a later point of time just because respondent refused to marry appellant.

13. The Hon'ble Supreme Court has repeatedly held that benefit of doubt ensues to accused. If two views are possible, the benefit of doubt must be granted to accused. It has been further held that if two views are possible, the order of acquittal should not be set aside by High Court because there is double presumption of innocence. The Hon'ble Supreme Court in **para 39 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

In the case in hand, the opinion expressed by the trial court is not only a possible view, but also it is fair and reasonable and cannot be termed as perverse in any manner, thus, it does not warrant interference.

As noted above, there is always presumption of innocence and in case of acquittal, there is double presumption. The burden lies upon prosecution to prove the guilt beyond reasonable

14. Finding no merit in the present appeal, we are of the considered opinion that leave to appeal deserves to be declined and accordingly application seeking leave to appeal as well as appeal is dismissed.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

30.09.2022
anju

Whether speaking/reasoned	Yes
Whether Reportable	*No*