
(2013) 08 P&H CK 0366

In the Punjab And Haryana At Chandigarh

Case No : CRM-A No. 1032-MA of 2012 (O and M)

Rajbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Penal Code, 1860 (IPC) — Section 363, 366A

Citation : (2013) 08 P&H CK 0366

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Rajesh Lamba, for the Appellant;

Final Decision : Dismissed

Judgement

Sabina, J.—Respondents No. 2 and 3 had faced trial in FIR No. 521 dated 22.9.2010 under Sections 363, 366-A of the Indian Penal Code, 1860 registered at Police Station City Ballabgarh District Faridabad. The trial Court, vide impugned judgment dated 15.10.2012, acquitted respondents No. 2 and 3 of the charges framed against them. Hence, the application u/s 378(4) of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) has been filed by the applicant with a prayer for grant of leave to file an appeal against the judgment dated 15.10.2012.

2. Prosecution story, in brief, is that on 28.6.2010, daughter of the complainant, aged about 13 years, was playing in an open plot situated near his house. Respondents No. 2 and 3, in conspiracy with each other, had kidnapped the daughter of the complainant with an intention to commit rape or to sell her further for prostitution.

3. I have heard learned counsel for the applicant and have perused the record available on the file carefully.

4. Learned trial Court, while ordering the acquittal of respondents No. 2 and 3,

has held as under:-

14. I find force in the arguments advanced by learned defence counsel that the testimony of PW3 Rajbir Sharma is not trustworthy in the absence of any independent corroboration. The whole case of the prosecution rests upon the testimony of PW3 Rajbir Sharma complainant. He has deposed in his cross-examination that he did not notice his daughter going with the accused. He voluntarily testified that accused had confessed themselves in the Panchayat convened by him regarding the kidnapping of his daughter but no member of the Panchayat who attended the said Panchayat has been examined by the prosecution. Moreover, no witness has been examined by the prosecution from the neighbourhood of the complainant who has seen the missing girl going with the accused or to prove that the missing girl was on visiting terms with accused Smt. Nirmala. Thus, there is no independent/cogent and convincing evidence led by the prosecution to corroborate the version of PW3 Rajbir Sharma and to bring home the guilt against the accused.

15. It is also noted here that daughter of complainant was missing since 28.6.2010 but the complainant filed the complaint in the Court on 16.9.2010 after a gap of about 2 1/2 month. No doubt, the complainant in his complaint Ex. PB stated that he made a complaint to ACP, Ballabgarh on 22.7.2010 which was marked to SHO, P.S. City Ballabgarh vide diary No. 263-C but no such complaint has been placed or proved on record by the complainant. Even if for the sake of arguments, it is presumed that complainant made the complaint on 22.7.2010, it also shows that there was an inordinate delay of about one month in lodging the said complaint and delay is not at all explained.

5. The reasons given by the trial Court, while ordering the acquittal of respondents No. 2 and 3 of the charges framed against them are sound reasons. Respondents No. 2 and 3 cannot be convicted merely on the basis of suspicion.

6. Learned counsel for the applicant has failed to point out any misreading of evidence on record by the trial Court which would warrant interference by this Court.

7. Their lordships of the Supreme Court in Allarakha K. Mansuri Vs. State of Gujarat, , 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 Vs. Hansa Singh , 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 misreading 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. To the same effect is the ratio of the judgments of the Supreme Court in *State of Goa Vs. Sanjay Thakran and Another*, and in *Chandrappa and Others Vs. State of Karnataka*, .

10. Similarly, in *Mrinal Das and Others Vs. The State of Tripura*, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. 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.

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.