

(2017) 04 RAJ CK 0214
In the Rajasthan High Court
Case No : 1453 of 2016

Smt. Khatoon

APPELLANT

Vs

Ramjan Khan & anr.

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 107](#), [Section 116\(3\)](#) - Calling for records to exercise powers of revision - High Co

Citation : (2017) 04 RAJ CK 0214

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Rohitash Singh, Ram Sukh Sharma

Judgement

1. Petitioner-complainant feeling aggrieved by judgment dated 3rd of August 2016, passed by learned Special Court, SC/ST (Prevention of Atrocities) Cases, Jodhpur (for short, "learned appellate Court"), whereby learned appellate Court confirmed the verdict of acquittal dated 12th of April 2013, passed by learned Metropolitan Magistrate No.2 Jodhpur (for short, "learned trial Court") has preferred this revision petition under Section 397/401 Cr.P.C. The learned trial Court vide its judgment dated 12 th of April 2013 acquitted the accused-respondents for offence punishable under Sections 498-A 406 and 363 IPC and on appeal being filed the learned appellate Court dismissed the appeal on the ground of limitation resulting in affirmation of judgment passed by the learned trial Court.

2. Succinctly stated, facts of the case are that petitioner- complainant lodged a written report at Police Station, Mahila Thana, Jodhpur against her husband respondent No.1 Ramjan Khan and his younger brother respondent No.2 Babu Khan, inter alia, on the ground that her Nikah (marriage) was solemnized with respondent No.1 10 years back and matrimonial relations between them were streamline for sometime and out of the said wedlock, a male child Sabir was

born. It is alleged by the complainant that she was subjected to cruelty and harassment by the respondents. A specific allegation is also made against respondents that she was thrown out of her matrimonial home by her brother-in-law Babu and husband Ramjan with a word of caution that she would be allowed to remain in matrimonial home only if she can bring a sum of Rs.10,000/- from her parents. It is further alleged that accused Ramjan took away her son Sabir forcefully. On the said written complaint, FIR 76/2005 came to be registered against the accused-respondents for offence punishable under Sections 498-A, 406 and 363 IPC. Investigation in the matter progressed and after completion of investigation, the accused-respondents were prosecuted for offence under Sections 498-A, 406 and 323 IPC by filing charge-sheet. The learned trial Court framed charge against the accused-respondents for the aforesaid offences, which were denied by them, and therefore, they were put on trial.

3. In order to prove charge against accused-respondents, prosecution examined eight witnesses. Besides that, six documents were also produced. On behalf of the accused- respondents, five defence witnesses were examined. Learned trial Court then proceeded to hear final arguments and by its verdict dated 12th of April 2013 acquitted the accused-respondents observing that complainant and her parents have made contradictory statements. The learned trial Court also noticed loopholes in the testimony of prosecution witnesses, more particularly, independent witnesses. As a matter of fact, all the three independent witnesses; viz., PW3 Dhana Ram, PW4 Kana Ram and PW6 Hari Ram, turned hostile. Therefore, in that background, learned trial Court found serious pitfalls in the prosecution evidence and consequently construed it unworthy to indict the accused-respondents and that resulted in acquittal of the respondents.

4. Feeling dismayed with the verdict of acquittal, petitioner approached learned appellate Court and the learned appellate Court dismissed the appeal on the ground of inordinate delay and laches. The appeal was filed by the petitioner after almost two years from the date of verdict of acquittal. While considering application for condonation of delay, learned appellate Court has observed that no good and sufficient cause is furnished for explaining delay and therefore rejected the same. Rejection of application entailed rejection of appeal also.

5. The learned appellate Court while dismissing the appeal has observed that on 5th of March 2014, petitioner filed a complaint against accused persons under Sections 107 and 116(3) Cr.P.C. at Police Station Karwar and in that proceeding her statements were recorded on 07.03.2014 and as such it is per se not believable and conceivable that she was unaware about the judgment of acquittal. Therefore, taking into account, petitioner's vigilant approach for vindication of her rights, learned appellate Court repelled her plea about knowledge of the judgment passed by learned trial Court. Rejection of appeal, may be on the ground of delay, has prompted the petitioner to invoke revisional jurisdiction of this Court.

6. I have heard learned counsel for the parties and perused the impugned

judgments.

7. True it is that in the instant case learned appellate Court has not examined the verdict of acquittal rendered by learned trial Court on merits and has simply dismissed the appeal on the ground of limitation but then crucial question is whether the discretion exercised by appellate Court can be examined by this Court in exercise of revisional jurisdiction. For condonation of delay, availability of good and sufficient cause is a sine qua non. That apart, it is within the discretion of appellate Court to condone delay upon recording its satisfaction for sufficiency of the cause of delay. In the instant case, the period of limitation prescribed for preferring appeal against the judgment of acquittal was 90 days but appeal by the petitioner was laid after almost two years. Upon consideration of the reasons assigned for belated presentation of appeal, the learned appellate Court has found that reasons are not sufficient, and therefore, taking into account inordinate delay, it has declined to exercise discretion in favour of the appellant. The legal position is no more res integra that words "sufficient cause" envisaged under Section 5 of the Limitation Act is liable to be construed liberally but its liberal construction does not mean that delay is to be condoned at the instance of an aggrieved party for mere asking. Law of limitation is based on public policy and therefore cannot be rendered nugatory and otiose at the behest of a party who is indolent about its right.

8. Therefore, in totality, I am not persuaded that learned appellate Court has committed any manifest error in rejecting the application of petitioner for condonation of delay. On threadbare examination of the impugned order, in my opinion, there is no semblance of proof questioning its correctness, legality or propriety requiring interference in exercise of revisional jurisdiction.

9. Although revision petition merits dismissal on the reasoning that a discretionary order passed by learned appellate Court is not liable to be tinkered with in exercise of revisional jurisdiction but I have also made endeavour to examine the verdict of acquittal passed by learned trial Court on merits.

10. There remains no quarrel that, in the present era, mushrooming of matrimonial disputes culminating into offence under Section 498-A, 406 and 323 IPC is a matter of grave and serious concern. Essentially, the cause of acrimony between spouses is mostly erratic behaviour of one of the spouses and at times it may be a cause of harassment to wife for unreasonable demand of dowry. In a civilized society, such behaviour of a groom or his family members cannot be countenanced and if such conduct is found to be proved then same is liable to be condemned in so many words by indicting the accused persons. However, slapping charge under Section 498-A, 406 and 323, which is edified on some trivial dispute between the spouses, is not desirable.

11. Upon examining the impugned judgment of learned trial Court, it is abundantly clear that it has made sincere endeavour to appreciate the evidence, which was available on record, while recording its finding favouring the accused

persons for acquitting them from the charges slapped against him. It is also noteworthy that learned appellate Court while affirming the judgment passed by the learned trial Court, and rejecting the appeal of the petitioner on the ground of limitation, has observed that the petitioner was vigilant for her legal rights and therefore it does not lie in the mouth of petitioner to give any reason for filing the appeal belatedly.

12. It is well settled that the appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible. In the case of State of Uttar Pradesh V/s. Nandu Vishwakarma [(2009) 14 SCC 501], the Supreme Court observed as under : "23. It is a settled principle of law that when on the basis of the evidence on record two views could be taken- one in favour of the accused and the other against the accused- the one favouring the accused should always be accepted. This Court in Chandrappa V/s. State of Karnataka observed as follows : (SCC p.432, para 42) (7 of 9)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise 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".

13. Thus, legal position is no more res-integra that against a verdict of acquittal, revisional jurisdiction is to be exercised only in exceptional cases where the

interests of public justice require interference for correction of a manifest illegality or prevention of gross miscarriage of justice. Reliance, in this behalf, can be profitably made to a decision of the Supreme Court in case of Kaptan Singh V/s. State of Madhya Pradesh [1997 4 Supreme 211].

14. The Supreme Court has culled out certain instances for exercising revisional jurisdiction at the instance of private complainant against a verdict of acquittal. In case of Sheetala Prasad V/s. Sri Kant & Anr. [(2010) 2 SCC 190], following guidelines are issued by the Supreme Court: "(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce;

(2) where the admissible evidence is wrongly brushed aside as inadmissible;

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused;

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence; and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law."

15. In the case in hand, the judgment of trial Court was passed on 12.04.2013 and the appeal against the said judgment was required to be filed within 90 days but the same was filed on 07.04.2015 i.e. after about two years, much after the expiry of period of limitation and there is no plausible explanation coming forth from the side of petitioner for filing the appeal belatedly rather she was well versed with the progress of the case and in the intermittent had filed a complaint against respondents. Moreso, the case is not covered within the four corners of any of the guidelines enumerated hereinabove and more particularly in view of indolent and apathy on the part of the petitioner in filing the appeal before the learned appellate Court now at this juncture I do not find it a fit case for exercising revisional jurisdiction to interfere with the verdict of acquittal passed by the learned trial Court and affirmed by the learned appellate Court. Resultantly, the petition fails and same is, hereby, dismissed.