

(2019) 09 DEL CK 0217

In the Delhi High Court

Case No : Criminal Leave Petition No. 681 Of 2018

State (Nct Of Delhi)

APPELLANT

Vs

Pankaj Bansal

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6
Code Of Criminal Procedure, 1973 — Section 313, 378, 386

Citation : (2019) 4 JCC 3696

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Rajat Katyal, Anil Soni, Bharat Bhushan Gupta

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present criminal leave petition has been filed by the State challenging the judgment and order dated 06th August, 2018 passed by the Additional Sessions Judge-01/Special Judge at North, Rohini Courts, New Delhi, whereby the respondent/accused has been acquitted in Session Case No.58435/16 registered with PS Adarsh Nagar in FIR No.401/2015, under Sections 363 as well as 376 IPC and Sections 4 and 6 POCSO Act. The relevant portion of the impugned judgment is reproduced hereinbelow:-

"50. Moreover, the accused in his statement u/s 313 CrPC has denied that his blood samples were ever taken in the hospital, though he has admitted that he was medically examined and has even alleged that the FSL result is manipulated one. Though the chain of the custody of the exhibits of the victim has been proved by the IO, the MLC of the victim remained unproved as the doctor concerned was not examined. However, since the same is a document being relied upon by the prosecution, its scrutiny reveals the silence of the doctor concerned, regarding the details of the samples of the victim taken and whether

the same were sealed or not, and if so, the details of the seal. Similarly, the MLC of the accused prepared at BJRM Hospital dated 26.06.2015, though not proved formally by the doctor concerned, but the said MLC talks about the blood samples of the accused having been sealed and handed over to the IO, but the details of the seal have not been given. The IO/PW 10 has stated that the pullanda containing the exhibits of the victim and a separate pullanda containing the exhibits of the accused, were seized by her and deposited in a sealed condition with MHC(M), but since the doctor who collected the samples of the victim, is silent regarding sealing of the same and thereafter handing over the same to the IO, the tampering with the exhibits of the victim cannot be ruled out. Therefore, the version of the accused in his SA that the FSL result is a manipulated one, cannot be ignored and accordingly it is held that the prosecution has also failed to establish the genuineness of the FSL result convincingly. Furthermore, with the victim not having supported the prosecution case as regards any sexual assault having taken place upon her, by the accused, the FSL result, which is only a corroboratory piece of evidence, does not suffice to bring home the guilt of the accused under these sections. As such, the victim not having supported the prosecution case and medical evidence not supporting the prosecution case regarding the use of force/sexual assault upon the victim, the offence u/s 376 IPC and section 4 POCSO is not proved."

2. Mr. Rajat Kaytal, learned APP for the State submits that the Trial Court failed to appreciate that the FSL report had found that male DNA profile generated from the source of the exhibit 1a2 of victim (underwear semen) matched with the male DNA profile generated from the source of exhibit 3 (blood gauze of the accused), which clearly shows that the victim was sexually assaulted by the accused. He emphasises that as the date of birth of the victim is 10th March, 2000, she was a minor on the date of incident and therefore her consent was immaterial.

3. It is pertinent to mention that the victim had turned hostile during the trial and the victim had married the accused on 02nd May, 2018.

4. The victim is personally present in Court and she states that she is happily married.

5. Though there is merit in the submission advanced by learned APP for the State, yet we find that in the present case, none of the relevant witnesses like doctor, link witness(s) etc., have been examined. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

6. In similar circumstances, in State v. Kaishar Ali [CRL.L.P. 188/2018, decided on 30th August, 2019], we had held as under:-

"13. The Apex Court in Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450

has held as under:-

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

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

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable 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.

71. Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

(emphasis supplied)

14. One of us, (Manmohan, J) in *Niraj vs. Ramesh Pratap Singh*, 2012, SCC OnLine Del 3813 has held as under:-

"6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in *Chandrappa & Ors. Vs. State of Karnataka*, (2007) 4 SCC 415 while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of 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 emphasize 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 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."

7. The Supreme Court in a subsequent judgment in *Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr.*, (2009) 10 SCC 206 has held as under:-

"40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

(emphasis supplied)

7. Consequently, for the foregoing reasons, this Court does not find any reason to interfere with the impugned judgment. Accordingly, the present leave petition is dismissed.