Punjab-Haryana High Court
Smt. Imlesh vs Amit And Others on 20 February, 2013
CRM-A No. 317-MA of 2012 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-A No. 317-MA of 2012
Date of decision : 20.2.2013

Smt. Imlesh .....Applicant-appellant

Vs.

Amit and others .....Respondents

CORAM: Hon'ble Mr. Justice Jasbir Singh
Hon'ble Mr. Justice Inderjit Singh

Present:- Mr. Vikas Kumar, Advocate, for the applicant-appellant

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Jasbir Singh, J.

The applicant-complainant is seeking leave to file an appeal against judgment dated 10.2.2012 acquitting respondents No. 1 to 3 of the charges framed against them. Respondent No.1 is her husband, respondents No.2 and 3 are her father-in-law and mother-in-law respectively.

The process of law was started on a complaint made by the applicant-complainant (PW-3). Her statement was recorded by SI Dharambir (PW-7) on 21..10.2009, whereupon, FIR No.322 dated 22.10.2009 was registered against the respondents-accused at Police Station Surajkund, Faridabad, for commission of offences under Sections 498A, 406 and 307/34 IPC.

The trial Judge has noted the following facts regarding case of the prosecution :-

> "This case was registered on a complaint made by Smt. Imlesh (PW-3) alleging therein that she was married to Amit. The co-accused were her parents-in-law. She had an infant daughter from the marriage. Her husband, parents-in-law and two sisters-in-law used to harass her for want of dowry and were demanding a car. On her protest, she was beaten. On 21.10.2009 at about 5.30 P.M. all the aforesaid persons came to her room on the third floor. Her husband and mother-in- law caught hold of her and the latter sprinkled kerosene on her. Her sisters-in-law Pooja and Aarti started throwing her clothes and other articles outside the room, while her father-in-law Rajju set her on fire. The complainant managed to free herself and rushed down. She called her brother on phone. Her brother Satbir and Arun arrived there and took her to the hospital where she was admitted."

It is necessary to mention her that besides respondents No.1 to 3, Pooja and Aarti, sisters-in-law of the complainant, were also arrayed as accused in the above FIR. During investigation, both along with respondent No.3, were found to be innocent and final report was presented against respondents No.1 and 2 only.

After concluding investigation, the Investigating Officer submitted the final report in Court. Copies of the documents were supplied to the respondents-accused as per norms. Case was committed to the competent court for trial vide order dated 1.12.2009. Respondents No.1 and 2 were charge sheeted to which they pleaded not guilty and claimed trial.

During pendency of the trial, prosecution moved an application under Section 319 Cr.P.C. whereupon, respondent No.3 was summoned to face trial as an additional accused. The charge was re- framed on 27.8.2010. The respondents-accused pleaded not guilty and claimed trial. To prove its case, the prosecution produced 8 witnesses and also brought on record documentary evidence.

On conclusion of the prosecution's evidence, separate statements of all the respondents-accused were recorded under Section 313 Cr.P.C., in which they denied all the allegations levelled against them, claimed innocence and false implication. No evidence was led in defence.

The trial Judge on appraisal of evidence found the respondents-accused not guilty, which resulted into their acquittal. Hence, this application.

When giving benefit of acquittal to the respondents-accused, it was noticed by the trial Court that in the witness box, applicant- complainant PW-3 had made many improvements, so far as her allegations are concerned. It was also noticed that the burnt clothes of the complainant were not taken into possession by the Investigating Officer. In the witness box it was stated by the complainant that after she was put on fire, she grabbed mobile phone from one of the culprits and made a telephonic call to her brother and thereafter, she doused the fire by sprinkling water upon her from a drum. On this aspect, deposition made by the complainant, was rightly discarded by the trial Court.

Qua PW-4 Satbir, brother of the complainant, it was rightly said that he was not an eye witness to the alleged occurrence. Material witness namely; Arun was not examined, to whom in the first instance, information was given by the complainant, after she was put on fire.

Nothing was brought on record to prove that regarding harassment to the complainant, panchayats were convened. Taking note of statement made by the Investigating Officer, the trial Court rightly said that story of the prosecution was not believable.

When discussing testimony of SI Dharambir PW-7, the trial Court observed as under :-

> "11. The next material witness examined by the prosecution is the Investigating Officer SI Dharambir (PW-7). The testimony of this witness assumes significance because he has introduced certain new aspects to the case which were hitherto not

known or disclosed. As has already been pointed out above, apart from the complainant there is no eye witness account. She has stated that she was set ablaze at about 5.30 P.M. on 21.10.2009. The Investigating Officer (PW-7) has disclosed in his cross examination that on 21.10.2009 at about 5.30 P.M. Imlesh along with her brother (name not disclosed) and two year old daughter had come to the police station in his (PW-7) presence for making a report against her in-laws, but she did not have any proper proof thereof and, therefore, they had not registered any case. He had not seen any burn/injury on her person. This statement reflects that when the complainant left her house, she was neither burnt nor in a bad condition as the Investigating Officer would certainly have noticed the burns and the same would also have been disclosed to him. 30% burns on exposed body parts would be visible to anyone and had there been any such apparent injury, the police would not have dismissed her stand for want of sufficient proof.

Moreover, the infant daughter of the complainant was with her. If at all the complainant would have been badly burnt, she could hardly have handled an infant child. It will be relevant to point out here that neither the complainant (PW-1/PW-3) nor her brother Satbir (PW-4) have disclosed that they ever visited the police station on that day. This casts a serious doubt on the veracity of the version of the complainant. Where was the reason for the complainant and her brother to hide the fact that they had gone to the police station? If the complainant was physically fine when she went to the police station, there is no question of her having been set on fire by the accused thereafter. It is not her case that she returned home after once having left it. The fact that neither Imlesh nor Satbir have referred to their visit to the police reflects their mala-fides. There is no reason for this Court to disbelieve the Investigating Officer as his testimony is corroborated from record and no one including the complainant (who is pursuing this case) have cast aspersions on his investigations.

The Investigating Officer further clarified that it was the accused who had informed the police on the telephone No.100 that Imlesh had been harassing them and wanted to set their house on fire. In pursuance of this, the concerned official had advised the accused to inform the Police Station Surajkund whereupon it was the accused who had informed this witness (PW-7) of the occurrence telephonically that Imlesh was trying to set their house on fire. When the police reached the spot, no one was present there and part of the house had already been burnt. The neighbours had disclosed to the Investigating Officer that it was Imlesh who had put certain goods on fire in the house and had thereafter run away. No action seems to have been taken by him against anyone in this regard. He further claims that he received telephonic intimation about the hospitalisation of Imlesh at about 4.30 P.M. on 22.10.2009 i.e. on the day after this incident. There is no explanation why the police was not informed about it earlier in the first instance."

To prove injuries to the complainant, medico legal report was not got proved by producing a doctor in Court. It was also noted that there was no independent corroboration of the case of the prosecution, which rests upon sole testimony of the complainant. It was also found, as a matter of fact, that the investigation was faulty and it was one sided.

Counsel for the applicant has failed to show any misreading of evidence on the part of the trial Court, which may necessitate interference by this Court. The trial Judge has thrashed the entire evidence in a proper manner and the opinion formed is as per evidence on record.

Their Lordships of the Supreme Court in 'Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in 'State of Punjab v. Hansa Singh, 2001(1) RCR (Criminal) 775', 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 v. State of Rajasthan, 1991 (1) SCC 166, 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 mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference."

Similarly, in State of 'Goa v. Sanjay Thakran, (2007) 3 SCC 755', and in 'Chandrappa v. State of Karnataka, (2007) 4 SCC 415', it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

In 'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479', decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

> "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."

Similarly, in the case of 'State of Rajasthan v. Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602', the Hon'ble Supreme Court has observed as under:-

> "7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken

> by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.
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> 8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for."

Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

> "10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience."

Counsel for applicant-appellant has failed to show any error in law on the basis of which interference can be made by this Court in the judgment under challenge.

Accordingly, the application is dismissed.

(Jasbir Singh) Judge (Inderjit Singh) Judge 20.2.2013 Ashwani