

SUPREME COURT OF INDIA

Nepal Singh

Vs.

State of Haryana

Crl.A.No.383 of 2002

(Arijit Pasayat J.)

24.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court convicting the appellant for offences punishable under Sections 304-B, 498-A of the *Indian Penal Code, 1860* (in short the `IPC'). He was sentenced to undergo rigorous imprisonment for seven years and to pay a fine with default stipulation for the first offence. But no separate sentence was awarded in respect of the later offence. The appellant faced trial before learned Sessions Judge, Narnaul, and was acquitted by learned Sessions Judge giving him the benefit of doubt. The State Government preferred an appeal which was allowed by the High Court.

2. Prosecution version in a nutshell is as follows:

“The marriage of Manju (hereinafter referred to as the `deceased') was solemnised with appellant-Nepal Singh on 26.1.1989. Though Yudhishter Singh (PW5) the father of the deceased had spent sufficient money for the marriage, accused Nepal Singh was not satisfied with the dowry. He demanded a gas connection which deceased conveyed to her mother Lajwant (PW6) on which her father (PW5) got the gas connection and gave it to Manju.

On 16.5.1991, deceased had come to Bapora (village of her father) to attend the marriage of the daughter of Shyam Pal Singh (brother of her father). Deceased told her father (PW5) and mother (PW6) that accused had completed his course and wanted her to bring Rs. One lakh from them and that if she failed to do so, accused would turn her out of the house.

Yudhishter Singh (PW5) told her that he would arrange for the money.

On 23.5.1991 deceased left for Kanti (village of her in-laws) accompanied by Sunil Kumar (PW7), her brother. While going, deceased told her father to arrange for the money otherwise her in laws would not allow her to live.

Since Yudhishter Singh (PW5) could not arrange money, Manju had committed suicide by consuming some poisonous substance. On receiving information on 26.5.1991, Yudhishter Singh (PW5) alongwith Sarpanch- Mitter Pal and Head Constable Rohtas Singh (PW3) met SI-Ramji Lal (PW8) at the bus stand of Ateli and Yudhishter Singh (PW5) made the above said statement which formed the basis for registering the formal FIR.

Investigation was undertaken.

After investigation was completed, charge sheet was filed. Since the accused pleaded innocence, trial was held. The prosecution primarily relied upon the evidence of Yudhishter Singh (PW5) father of the deceased and Lajwant (PW6) mother of the deceased and Sunil Kumar (PW7) brother of the deceased. The trial court found that this was a case of suicide and little physical contact between the accused and the deceased was the primary reason. It was noted that the accused was pursuing studies till 13th May, 1991, and thereafter he returned home. Finding the prosecution version to be suspect, the trial court directed acquittal. As noted above State preferred an appeal. It was the primary stand that some thing must have happened otherwise the victim would not have committed suicide and the fact that the accused and the deceased could not have any sexual relationship was an additional ground for suicide. The High Court found that the evidence of Sunil Kumar (PW7) the brother of the deceased conclusively established the accusations and accordingly set aside the order of acquittal and recorded conviction.”

3. In support of the appeal, learned counsel for the appellant submitted that the High Court has not even discussed the conclusions of the trial court in the proper perspective and even no reason was indicated as to why the High Court differed with the view of the trial court. The allegation of dowry demand was not stated during investigation and lot of improvements were made in court for the first time. It is in essence submitted that considering the limited scope for interference with the judgment of acquittal, the High Court should not have interfered with the judgment of the trial court.

4. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court submitting that the High Court has rightly analysed the evidence of PWs 5, 6 & 7 which was casually done by the trial court.

5. The parameters for dealing with an appeal against judgment of acquittal have been laid down by this Court in several cases.

6. It would be appropriate to consider and clarify the legal position first.

Chapter XXIX (Sections 372-394) of the *Code of Criminal Procedure, 1973* (hereinafter referred to as "the Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

“378. Appeal in case of acquittal.--(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the *Delhi Special Police Establishment Act, 1946* (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).”

7. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

8. It may be stated that more or less similar provisions were found in the *Code of Criminal Procedure, 1898* (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

9. Bare reading of Section 378 of the Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to reappraise, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

10. It cannot, however, be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

11. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

12. The first important decision was rendered by the Judicial Committee of the Privy Council in *Sheo Swarup v. R. Emperor*¹. In *Sheo Swarup*, the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the

Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

13. Lord Russel summed up the legal position thus:

“There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has ‘obstinately blundered’, or has ‘through incompetence, stupidity or perversity’ reached such ‘distorted conclusions as to produce a positive miscarriage of justice’, or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.”

14. His Lordship, then proceeded to observe: (IA p.404) "Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

15. The Committee, however, cautioned appellate courts and stated: (IA p.404) 10 "But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

(emphasis supplied)

16. In *Nur Mohd. v. Emperor*², the Committee reiterated the above view in Sheo Swarup (Supra) and held that in an appeal against acquittal, the High Court has full powers to review and to reverse acquittal.

¹(1934) 61 IA 398)

²AIR 1945 PC 151