IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P(M) No. 1234 of 2024
Decided on: 11th July, 2024

State of Himachal Pradesh .....Appellant

Versus

...Respondent

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: **Mr. I.N. Mehta, Sr. Addl. A.G. with Ms. Sharmila Patial, Addl.A.G and Mr. Navlesh Verma, Addl. A.G.**

For the respondent: ***Nemo.***

Tarlok Singh Chauhan, Judge (Oral)

Aggrieved by the acquittal of the respondent for the commission of offence punishable under Sections 363, 366, 376 of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the State has filed the instant application for grant of leave to appeal.

2. As per case of the prosecution, the respondent made a telephonic call to the prosecutrix on 14.10.2017 at about 9.10 p.m., asking her to accompany him and solemnize

[1] *Whether the reporters of Local Papers may be allowed to see the judgment? Yes.*

marriage, lest he ends up his life committing suicide. The prosecutrix met the respondent on the road along-with her testimonials, clothes and an amount of Rs.15,500/-. The respondent picked her up in his father's car. The prosecutrix stayed with the respondent and on 16.10.2017, they proceeded to Manali and stayed with one 'SM'. On 17.10.2017, the respondent asked the prosecutrix to perform marriage and thereafter allegedly committed sexual intercourse with her uptill 25.10.2017.

3. On 27.10.2017, both the respondent and the prosecutrix reached Bilaspur. The respondent left her at the bus stand and allegedly disappeared, so prosecutrix was forced to board a bus back to Manali on 28.10.2017, where she again went to the house of 'SM'. The said 'SM' thereupon informed PW-2, the father of the prosecutrix, who then, came along-with the police and took the prosecutrix back. In the meanwhile, PW-2 had already lodged a written complaint Ext.PW-2/A on 15.10.2017 itself, based on which FIR came to be registered. The police tried to procure the CDRs of the phone of the prosecutrix and the respondent. The Investigating Officer SI Prabhakar Ram (PW-36) procured the date of birth certificates of the prosecutrix vide Ext.PW-12/A and from Nagar Parishad vide Ext.PW-9/A, on the basis of which, it was found that the

prosecutrix was born on 03.07.2000. Copy of the parivar register along-with pedigree table was also prepared.

4. On the identification of the prosecutrix, the spot map Ext.P-4/PW-36, purportedly the house of 'SM' was prepared. The photographs of the spot were also clicked. Thereafter, the bed sheet and jeans (trouser) were recovered and taken into possession. The preserves collected by the doctors were sent to FSL and result thereof was received vide Ext.PW-1/C. The report of DNA profiling Ext.PW-34/A was also collected. PW-1 the doctor who examined the prosecutrix opined that the possibility of sexual intercourse cannot be ruled-out.

5. On the charges having been framed, the accused pleaded not guilty and claimed trial. The prosecution in order to prove its case has examined as many as 36 witnesses.

6. The statement of accused under Section 313 Cr.P.C was recorded, in which, he denied the case of the prosecution. However, no defence evidence was led by him.

7. At the outset, we may observe that the prosecutrix, in the instant case was more than 17 years of age as on the date of alleged offence and now has got married with the accused and they are blessed with a daughter and are happily

residing together. Secondly, it is the appeal of the State that has been preferred against the order of acquittal.

8. It is well settled by the Hon'ble Apex Court in a catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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. Further, if two reasonable views 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.

9. The scope of power of appellate court in case of appeal against acquittal has been dealt with by the Hon'ble Apex Court in case titled ***Muralidhar alias Gidda & another*** vs. ***State of Karnatka reported in (2014)5 SCC 730***, which read as under :-

> *"10. Lord Russell in Sheo Swarup[1], highlighted the approach of the High Court as an appellate*

court hearing the appeal against acquittal. Lord Russell said, "... 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." The opinion of the Lord Russell has been followed over the years.

11. *As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed,*

> *"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.*

12. *The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu[3], Madan Mohan Singh[4], Atley[5] , Aher Raja Khima[6], Balbir Singh[7], M.G. Agarwal[8], Noor Khan[9], Khedu Mohton[10], Shivaji Sahabrao Bobade[11], Lekha Yadav[12], Khem Karan[13], Bishan Singh[14], Umedbhai Jadavbhai[15], K. Gopal Reddy[16], Tota Singh[17], Ram Kumar[18], Madan Lal[19], Sambasivan[20], Bhagwan Singh[21], Harijana Thirupala[22], C. Antony[23], K. Gopalakrishna[24], Sanjay Thakran[25] and Chandrappa[26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:*

> *(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order*

of acquittal passed in his favour by the trial.

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified.

Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

10. The Hon'ble Supreme Court in ***Rajesh Prasad*** vs. ***State of Bihar & another, (2022) 3 Supreme Court Cases 471***, observed as under:

"31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir 1991 Supp (1) SCC 35

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse;

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh (1980)

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no

axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99] Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2. Where acquittal would result is gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State

of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]"

11. In ***H.D. Sundara & others vs. State of Karnataka, (2023) 9 Supreme Court Cases 581,*** the Hon'ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:

"8. In this appeal, were are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt

of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After reappreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

12. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

13. By applying the aforesaid principles to the case in hand and also bearing in mind that the prosecutrix and respondent have not only solemnized marriage, but also have daughter out of this wed-lock, we are of the considered opinion, that the prosecution has not been able to establish its case against the accused beyond reasonable doubt. The 'SM' could have been the best witness to have supported the case of the prosecution. But, unfortunately, she was never examined by the prosecution, in this case. There was no reason forthcoming for the same. Obviously, in such circumstances, this Court has no option but to draw an adverse inference against the prosecution.

14. Apart from the above, the prosecutrix herself has not supported the case of the prosecution and has clearly admitted that she had married the respondent and has a three years old daughter out of this wedlock. Obviously, in such circumstances, there was no occasion for the State in fact to file the present appeal as once it has come on record that the prosecutrix is living happy married life with the respondent, then, this Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix.

15. In taking this view, we are duly supported by the judgment rendered by the Hon'ble Apex Court in ***K. Dhandapani*** vs. ***The State by the Inspector of Police*** (Criminal Appeal No. 796 of 2022), decided on 9th May, 2022.

16. Further, having regard to the fact that the marriage between the appellant and the prosecutrix stands solemnized and out of this wedlock, they have a three years old daughter, it will be extremely harsh and totally unwarranted upon the child in case her father is labelled as a criminal only because he wanted to and did get married with the prosecutrix.

17. This Court in plethora of cases has come across the issues where FIRs are registered with any rhyme or reason or out of knee jerk reactions and the proceedings are ultimately quashed by the Court in exercise of jurisdiction under Section 482 Cr.P.C. We, therefore, are of the considered view that after the accused gets blame-free by a process of law, the respondent cannot be seen to be carrying sword of his being accused for all his life. Right to oblivion; right to be forgotten are the principles evolved by the democratic nations, as one of the facets of right to information privacy. The rights have been evolved in the countries like France and Italy way back in the 19th century.

18. The vital principle which has evolved from time to time has now become an integral part and recognized as a part of right to life under Article 21 of the Constitution of India. Recognizing this right, as a facet of privacy, the three Judge Bench of the Hon'ble Apex Court in ***Justice K. S. Puttaswamy*** vs. ***Union of India, 2017)10 SCC 1,*** observed as follows:-

> *"632. The technology results almost in a sort of a permanent storage in some way or the other making it difficult to begin life again giving up past mistakes. People are not static, they change and grow through their lives. They evolve. They make mistakes. But they are entitled to re-invent themselves and reform and correct their mistakes. It is privacy which nurtures this ability and removes the shackles of unadvisable things which may have been done in the past.*
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> *633. Children around the world create perpetual digital footprints on social network websites on a 24/7 basis as they learn their "ABCs": Apple, Bluetooth and chat followed by download, e-mail, Facebook, Google, Hotmail and Instagram. [Michael L. Rustad, SannaKulevska, "Reconceptualizing the right to be forgotten to enable transatlantic data flow", (2015) 28 Harv JL & Tech 349.] They should not be subjected to the consequences of their childish mistakes and naivety, their entire life. Privacy of children will require special protection not just in the context of the virtual world, but also the real world.*
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> *634. People change and an individual should be able to determine the path of his life and not be stuck only on a path of which he/she treaded initially. An individual should have the capacity to change his/her beliefs and evolve as a person. Individuals should not live in fear that the views they expressed will forever be associated with them and thus refrain from expressing themselves.*
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> *635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right to privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.*
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> *636. Thus, the European Union Regulation of 2016 [Regulation No. (EU) 2016/679 of the European Parliament and of the Council of 27-4-2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive No. 95/46/EC*

(General Data Protection Regulation).] has recognised what has been termed as "the right to be forgotten". This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information/data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the performance of a task carried out in public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy."

19. The Hon'ble Apex Court in a case concerning squabble between husband and wife, wherein the High Court had rejected the plea of the parties therein to mask their names, directed the High Court to evolve methodology for masking the names of both the accused and the victim. The order passed by the Hon'ble Apex Court in case XXXXX vs. YYYY2 2022 SSC online SC, neutral citation 2024 KHC: 14572, on dated 18.07.2022 reads as follows:-

"i) Learned counsel for respondent No.1 has entered appearance and joins in the request made by the petitioner.

ii) The petitioner submits that the display of her name in the public domain with respect to offences committed on the modesty of woman and Sexually Transmitted Disease(STD) has caused immense loss by way of social stigma and infringement of her personal privacy. Even if the name of the respondent No.1 appears, it causes the same result.

iii) The petitioner pleads the 'right to be forgotten' and 'right of eraser' being rights of privacy, the name of the petitioner as well as the respondent be removed/masked along with the

address, identification details and case numbers to the extent that the same are not visible for search engines. We thus, call upon the Registry of the Supreme Court to examine the issue and to work out how the name of both the petitioner and respondent No.1 along with address details can be masked so that they do not appear visible for any search engine.

iv) The IA and the Miscellaneous Application accordingly stand disposed of.

v) The needful be done within three weeks from today by the Registry."

20. Thus, there can be no dispute that right of privacy of which the right to be forgotten and the right to be left alone are inherent aspects. Once that be so, obviously, the names of the prosecutrix as also the appellant need to be masked/erased so that they do not appear/visible in any search engine, least the same is likely to jeopardize and cause irreparable hardship, prejudice etc., not only to the respondent and the prosecutrix, but to their little daughter in their day-to-day life, career prospects etc. etc.

21. Article 21 of the Constitution of India mandates that no person shall be deprived of his life or liberty except in accordance with law. It is more than settled that the expression 'life' cannot be seem to connote a mere animal existence it has a much wider meaning. It takes within its sweep right to live with dignity. In the crime, once the accused gets acquitted/honorably discharged by a competent Court of

law or this Court, and the order becomes final, the shadow of crime, if permitted to continue and substitute its place for the shadow of dignity on any citizen, it would be a travesty of the concept of life under Article 21. Every person has a right to live with dignity.

22. In view of the aforesaid discussion, we not only do not find any merit in the instant application and accordingly reject the application for grant of leave to appeal, but also direct masking the names of the appellant and the prosecutrix from the data base of the learned Special Judge, Bilaspur and further direct the Registrar General of this Court to mask the names of the appellant in the digital records, pertaining to the instant appeal.

23. Records be sent down.

(**Tarlok Singh Chauhan**)
Judge

July 11, 2024
(naveen)

(**Sushil Kukreja**)
Judge