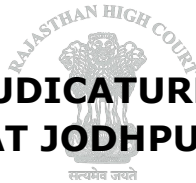




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Criminal Revision Petition No. 593/2018
CNR: RJHC010279052018 | URN: CRLR / 1454U / 2018

Hemant S/o Shri Goverdhan, By Caste Dadhich Resident Of
Village Kunwaria Police Station Kunwaria Tehsil And District
Rajsamand.

-----Petitioner

Versus

1. State Of Rajasthan Through Public Prosecutor.
2. Smt. Sunder Kumari W/o Shri Prem Shanker, By Caste Dadhich, Resident Of Nai Abadi, Asotiya Kankroli Tehsil And District Rajsamand.

-----Respondents

For Petitioner(s) : Mr. C.S. Kotwani
Mr. Manoj Chaudhary
For Respondent(s) : Mr. Gaurav Solanki
Mr. N.S. Chandawat

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable
08/10/2026

1. The instant criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred by the petitioner assailing the order dated 15.07.2018 passed by the learned Sessions Judge, Rajsamand, in Criminal Appeal No.35/2017, whereby the learned Appellate Court, while setting aside the order dated 19.01.2017 passed by the learned Additional Chief Judicial Magistrate, Rajsamand, in Criminal Original Case No.130/2013, held the petitioner guilty of the offences punishable under Sections 341 and 323 IPC and remanded the matter to the



learned trial Court for passing an appropriate order on the question of sentence.

2. The concise facts of the case are that on 13.11.2012, the complainant lodged a report alleging that the petitioner and his uncle, Jamna Lal, had assaulted her, outraged her modesty and attempted to commit rape. Accordingly, FIR No.89/2012 was registered for the offences under Sections 354, 367, 511 and 323/34 IPC. Upon investigation, the police submitted a negative final report, whereafter the complainant filed a protest petition and, upon recording her statements and those of witnesses, the learned Trial Court took cognizance for the offences under Sections 341 and 323 IPC. After trial, the petitioner was acquitted vide order dated 19.01.2017 by extending the benefit of doubt. However, in an appeal preferred by the complainant, the learned Sessions Judge, Rajsamand, vide order dated 15.05.2018, set aside the acquittal, held the petitioner guilty of the aforesaid offences and remanded the matter to the learned Trial Court for passing an appropriate order on sentence. Aggrieved by the said order, the petitioner has preferred the instant criminal revision petition, assailing, inter alia, the maintainability of the appeal and the legality of the order passed by the learned Appellate Court.

3. Heard learned counsel for the parties and perused the material available on record.

4. The principal controversy involved in the present matter is whether the learned Appellate Court was justified in reversing the order of acquittal passed by the learned trial Court and recording





a finding of guilt against the petitioner, followed by remanding the matter to the learned trial Court for determination of the question of sentence.

5. It is a settled principle of criminal jurisprudence that an appellate court, while dealing with an appeal against acquittal, is undoubtedly empowered to reappreciate the evidence on record. However, where the view taken by the learned trial Court is a reasonable and plausible view emerging from the evidence available on record, the mere possibility of another view cannot, by itself, furnish a sufficient ground for reversing the order of acquittal. The appellate jurisdiction is not intended to substitute one possible view for another merely because the appellate court finds the latter more appealing. The presumption of innocence stands reinforced by an order of acquittal, and the same cannot be displaced without cogent and compelling reasons founded upon the evidence on record.

6. In the present case, a perusal of the impugned judgment reveals that the learned Appellate Court has proceeded to reverse the acquittal substantially on the basis of the depositions of PW-2 Prem Shankar and PW-3 Anurag, who, as per the prosecution case, reached the place of occurrence after the incident. The initial version of the prosecution does not disclose the presence of any eyewitness to the actual occurrence. Consequently, the testimony of the aforesaid witnesses was required to be examined with due circumspection, particularly with regard to the extent of their personal knowledge and whether their depositions furnished reliable and convincing evidence of the alleged assault.





7. Another significant aspect which appears to have escaped the proper consideration of the learned Appellate Court is the absence of medical corroboration. No injury report was tendered in evidence to substantiate the allegation of physical assault. The learned Appellate Court has sought to draw an adverse inference from the alleged failure of the SHO to take the complainant to the hospital for medical examination. Such an omission, even if established, may reflect upon the manner in which the investigation was conducted; however, a deficiency in investigation cannot, by itself, be converted into substantive evidence of the guilt of the accused. The omission of the investigating agency cannot relieve the prosecution of its fundamental obligation to establish the charge beyond reasonable doubt. An accused cannot be convicted merely because an investigating officer may have failed to discharge a particular duty, nor can the existence of an injury be presumed in the absence of reliable evidence establishing the same.

8. This Court is conscious of the settled proposition that though no particular number of witnesses is required to prove a fact and a conviction can be based upon the testimony of a solitary witness, yet, where such testimony does not inspire confidence and the circumstances give rise to suspicion, corroboration from an independent source becomes necessary as a rule of prudence. The quality of evidence, rather than its numerical strength, is the determining consideration. In the present case, the aforesaid deficiencies, when considered cumulatively, assume significance in assessing whether the reversal of acquittal was justified.



9. Upon an overall consideration of the evidence and the reasons assigned by the learned Courts below, this Court finds that the view adopted by the learned trial Court was a reasonably possible view of the matter. The learned Appellate Court, instead of demonstrating that the findings recorded by the learned trial Court were perverse, manifestly unreasonable, or contrary to the evidence on record, has proceeded to substitute its own appreciation of the evidence without adequately dislodging the reasons which had persuaded the learned trial Court to extend the benefit of doubt to the petitioner. The impugned judgment dated 15.07.2018, therefore, does not withstand judicial scrutiny and warrants interference in the exercise of revisional jurisdiction.

10. Accordingly, the instant criminal revision petition is allowed. The impugned judgment and order dated 15.05.2018 passed by the learned Sessions Judge, Rajsamand, in Criminal Appeal No.35/2017 is hereby set aside. The judgment and order dated 19.01.2017 passed by the learned Additional Chief Judicial Magistrate, Rajsamand, in Criminal Original Case No.130/2013, acquitting the petitioner of the charges levelled against him, is hereby affirmed.

11. The petitioner stands acquitted of the charges in question. His bail bonds, if any, shall stand discharged

12. Record be sent back.

(FARJAND ALI),J

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Mamta Tak