

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-AD No. 133 of 2019 (O&M)
Date of Decision: 24.07.2019

Kulwinder Kaur

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Harchand Singh Batth, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 4938 of 2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **215 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit of the applicant, the delay of **215 days** in filing the appeal is condoned.

Application stands disposed of accordingly.

CRA-AD No. 133 of 2019

1. Challenge in this appeal, preferred by the appellant, is to the judgment of acquittal dated 15.03.2018 passed by learned Additional Sessions Judge/Exclusive Court, Amritsar, whereby respondent No.2/accused (*Sukhmandeep Singh*) has been acquitted for offences under Sections 376, 451 & 457 of Indian Penal Code.

2. Factual matrix of the case of the prosecution are that at the time of alleged occurrence, the husband of prosecutrix namely **Rachhpal Singh** was staying in Dubai. On 21.11.2015 at about 10.00 p.m., the prosecutrix was watching T.V, while laying on her bed and in the meantime, **respondent No. 2/accused (Sukhmandeep Singh son of Kuldeep Singh)**, entered in her house by scaling the outer wall of the house. He entered in her room and bolted the room from the inside and caught hold her. Thereafter, she raised the noise but accused/respondent gagged her mouth and she was not allowed to raise alarm. Then he forcibly opened the string of her *salwar* and committed rape upon her forcibly. She again started raising hue and cry, which attracted to **Paramjit Singh** and on seeing him, **Sukhmandeep Singh** managed to escape by scaling the wall of her house. The matter was reported by her immediately to save her honour but on coming back of her husband from Dubai, she clarified the entire episode to her husband and as such, she along with her husband reported the matter to the police. An F.I.R. was registered and the prosecution swung into action. The statement of prosecutrix was recorded under Section 164 Cr.P.C.

After completion of the necessary formalities of investigation, report under Section 173 Cr.P.C. was presented by the prosecution in the Court of Illaqa Magistrate against the respondent/accused. Thereafter, the case was committed to the Court of Sessions. Finding a *prime facie* case, the respondent/accused was charge-sheeted for commission of offences under Sections 451, 457 and 376 of IPC.

To prove its case against the respondent/accused, the prosecution has examined as many as Eight (08) witnesses, which are as

under:-

“ **Prosecutrix/Complainant as PW-1, Paramjit Singh as PW-2, Dr. Narinder Singh, Medical Officer as PW-3, ASI Maninderjit Singh as PW-4, ASI Surjit Singh as PW-5, HC Karaj Singh as PW-6, Dr. Sushma Bhatia, Medical Officer (wrongly again numbered as PW-6) as PW-6 and ASI Bhupinderjit Kaur as PW-7. ”**

On completion of prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent-accused were put to him and he pleaded his innocence and false implication.

On the basis of weak evidence led by the prosecution, the Sessions Court has acquitted the respondent-accused for the commission of offences for which he has been charge-sheeted.

3. We have heard the learned counsel for the applicant-appellant and have also gone through the paper book very carefully.

At the very outset of the case, it can be stated that the prosecution has totally failed to explain the inordinate delay in registration of the F.I.R. As per the stand of the prosecution, the alleged episode took place on 21.11.2015 and the police was informed on 25.12.2015, after gap of about more than one month. We fail to understand that why the prosecutrix remained mum for such a long time and did not bother to give the information to the police immediately in case she was ravaged by the respondent/accused. The statement of the witness of prosecution, namely, *Paramjit Singh* can be termed as a procured witness. There is force in the stand of the defence that when it was noticed by this witness that accused/respondent was scaling the outer wall of the prosecutrix then why

he did not make any attempt to catch him and he also did not take the steps to follow him in order to apprehend him.

In the absence of any medical examination of the prosecutrix, the trial Court has rightly observed that prosecution has failed to prove its case beyond doubt. Right from the very beginning, it is the case of the prosecutrix that at the time of alleged incident, her minor child was available in the room and in case any kind of scuffle took place between the prosecutrix and the accused, the minor children might have started crying. But the prosecution is silent on this aspect and the silence of the prosecution creates a serious dent in its case.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. 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, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The

Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

Appeal is dismissed.

**(JASWANT SINGH)
JUDGE**

July 24, 2019
'dk kamra'

**(LALIT BATRA)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>