

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

CRM-A No. 553 of 2019 (O&M)

Date of decision : 03.05.2019

State of Haryana

.....Applicant

Versus

Dharampal @ Dharmi

...Respondent

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present : Mr. Rajesh Sheoran, Addl. A. G., Haryana
for the applicant.

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DAYA CHAUDHARY, J.

The present application has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short - 'Cr.P.C.') for grant of leave to appeal against judgment of acquittal dated 01.12.2017 passed by learned Additional Sessions Judge, Rewari along with an application for condonation of delay.

FIR No. 01 dated 03.01.2017 under Sections 366, 342, 376 of the Indian Penal Code, 1860 (for short - 'IPC') was registered at Women Police Station, Rewari against respondent-accused Dharampal alias Dharmi on the basis of complaint made by the prosecutrix (name of the prosecutrix is withheld in compliance of provisions of Section 327 Cr.P.C. and law laid down in judgment of case *State of Orrisa Vs. Sukru Gauda AIR 2009 (SC) 508* and *Prem Parkash Vs. State of Rajasthan 2008(4) RCR (Criminal)*

539 (SC). Respondent-accused Dharampal alias Dharmi faced trial and ultimately he was acquitted of the charges vide judgment of the trial Court dated 01.12.2017 by giving benefit of doubt.

There is delay of 323 days in filing of the main application for grant of leave to appeal. An application under Section 5 of Limitation Act read with Section 482 Cr.P.C. for condoning delay of 323 days in filing of the main application has also been filed mentioning therein that after obtaining certified copy of the judgment, the case file was put up before the Additional Legal Remembrancer, Haryana for taking opinion for filing appeal and it was opined that the matter was fit for filing appeal before this Court. The delay of 323 days has occurred in the process of taking legal opinion in filing the application for grant of leave to appeal. The application for condonation of delay has been supported by an affidavit of the Deputy Superintendent of Police, Rewari. However, neither the details for sending the file for having legal opinion nor the details as to when the opinion was given has been mentioned, meaning thereby the delay of 323 days has not been explained properly.

A very vague averment has been made in the application for condonation of delay that the file remained in action of seeking legal advice for filing appeal. When the file was sent for legal opinion and when it was returned has not been mentioned. The application does not disclose sufficient ground to condone the delay of so many days in filing the application for leave to appeal. The judgment of acquittal was passed on 01.12.2017 and application for leave to appeal was filed on 17.01.2019. But

the in between period has not been properly explained.

Article 114 of the Schedule to Limitation Act, 1963 provides that an appeal from an order of acquittal by the State is to be filed within a period of 90 days from the date of the order appealed from. While inserting the provision the Legislature, of course, had the internal administration of the State in mind. Previously the limitation period was 6 months, but subsequently it was decreased to 3 months. The Law Commission of India in its 3rd Report, on which the Limitation Act, 1963 was based and introduced in the Parliament, had observed that even this period is too long.

The relevant portion is reproduced as under :-

"166. Article 157 provided a period of 6 months limitation for an appeal against an order of acquittal. The recent Act amending the Criminal Procedure Code has substituted a period of 3 months for 6 months. We do not propose any alteration of that period though we think that even the present period is too long to enable the State to make up its mind to file or not to file an appeal against an order of acquittal. ..."

The observation of the Apex Court in case ***Postmaster General Vs. Living Media India Ltd., (2012) 3 SCC 563*** is as under:-

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the

benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Same view was taken in another judgment of case ***State Vs. Harihar, 2016 SCC Online Del 2354*** and petition was dismissed on the ground of delay holding that reasons were mechanical and stereotyped.

In our view, the explanation for condonation of delay as mentioned in the application has not specifically been explained. The department was well aware that the period of limitation fixed for filing leave to appeal was 90 days but did not bother to know as to when the file was sent and what was its status.

It has been observed in various cases that State does not file appeal within the stipulated period and takes defence of procedural delay in obtaining approval/opinion. The State does not have the right to file appeals at belated stage on the ground of procedural delay. The State is expected to expedite the matter in case they want to prefer appeal against judgment of acquittal or conviction. No proper explanation has been given by the State which has caused delay in filing the instant appeal.

The Legislature was wise enough while enacting Section 378 Cr.P.C. by giving 6 months time to the State to prefer an appeal against judgment of conviction or acquittal as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the

delay. If any delay is caused, the person responsible for the same is to be inquired and departmental action is required to be taken against him. Only under the exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned in case the delay is properly explained of each and every day supported by documentary evidence.

Accordingly, we find no ground to condone the delay and the application for condonation of delay is dismissed.

On merits also, there is no force in the application for grant of leave to appeal. On perusal of judgment of acquittal and the findings recorded by the trial Court, no infirmity has been found. The trial Court has acquitted the respondent-accused primarily on the ground that the victim was known to him. They remained together for a longer period and no hue and cry was raised. No injury was found on the person of victim. The prosecution was unable to establish that the victim was minor or forcibly kept in room against her will and the prosecution has failed to prove the allegation against the accused beyond reasonable doubt. Age of the victim was fully proved. The learned trial Court framed the following four questions to be decided:-

- A) Whether on dated 01.01.2017, at about 04:00 p.m., the prosecutrix a major girl, was abducted by the accused?
- B) Whether the prosecutrix was raped by the accused in the manner she alleged?
- C) Whether the prosecutrix was illegally confined by the accused between 02.01.2017 till 08:00 a.m. in the morning on dated 03.01.2017 in the Kothra?
- D) Conclusion.

By considering the evidence available on record, the age of the prosecutrix was found to be 19 years and she was known to the accused. There were contradictions in the statement of the prosecutrix and it was found that she was not the trustworthy witness. She remained in company of the accused for a longer period. As per MLR Ex.PW, which was duly proved by PW-12 Dr. Shivangi Prashar, no injury was seen on the person of the prosecutrix. The story of abduction as projected by the prosecutrix was not believed by the trial Court and ingredients of Section 366 IPC were also not proved on the basis of evidence recorded during trial. It could not be proved that it was a case of rape committed upon the prosecutrix by the accused as projected in the complaint. The prosecutrix remained in the company of the accused without any resistance and no hue and cry was raised by her. Neither the scientific evidence supported the claim of the rape nor story of the prosecutrix of committing repeated rape was established on the basis of the statement as well as circumstances. The story of abduction was also found to be improbable by the trial Court. Meaning thereby, it could not be established that the rape was committed as it could not be proved beyond reasonable doubt.

Even in case of illegal confinement, the prosecution failed to prove its case that the prosecutrix was locked in the room as she remained in the company of the accused and did not make any effort to leave that room. Accordingly, ingredients of Section 342 IPC were also not proved. Ultimately, the respondent-accused was acquitted of the charges as the prosecution had failed to prove the allegations against him beyond

reasonable doubt.

As per recent judgment of the Apex Court in case ***Munishamappa and others Vs. State of Karnatka 2019 (1) Scale 721***, it has been held that High Court should not interfere with the order of acquittal merely on the ground that two views are possible. The interference should only be in such cases where appreciation of evidence by trial Court is capricious or its conclusions are without evidence or acquittal is not in accordance with law or the approach of trial Court has led to miscarriage of justice. Similarly, it has been held in judgment of Division Bench of this Court in case ***Ranjit Kaur Vs. State of Punjab and others 2008 (22) RCR (Criminal) 848*** that in case two views are possible, the view taken by trial Court in favour of the accused person while recording acquittal, be taken as possible view.

Hon'ble Apex Court in a case reported as ***2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr.*** held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in the case of Arulvelu v. State rep. by the Public Prosecutor. In the case of Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand), this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. Rathinam @ Rathinam v. State of Tamil Nadu and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra.”

A Division Bench of this Court, in a case reported as **2016(2) Law Herald 1603 Mithlesh vs. State of Haryana and another**, while upholding acquittal of an accused charged with committing rape, noticed the following facts which are identical to the present case :-

“It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant.”

Hon'ble the Apex Court in the case of **Murugesan and others Vs. State through Inspector of Police 2013 AIR (SC) (Cri) 126** has laid down certain principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal and the same are reproduced as under:-

- (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an

appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, 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.

(5) If two reasonable conclusions 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."

In view of the facts and law position as discussed above, in absence of any manifest illegality, perversity or miscarriage of justice, the judgment of acquittal passed by the trial Court may not be interfered by the High Court in exercise of his appellate jurisdiction. There is no merit in the contentions raised by learned counsel for the applicant.

Accordingly, the application for leave to appeal is dismissed on the ground of delay as well as on merit.

(DAYA CHAUDHARY)
JUDGE

03.05.2019
sunil yadav

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No