

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

**CRM-A No. 1690-MA of 2018 (O&M)
Date of Decision: 05.07.2019**

State of Haryana

..... Appellant

Versus

Shiv Kumar @ Shibbu

..... Respondent

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

Present: Mr. Randhir Singh, Additional Advocate General, Haryana
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 29148 of 2018

Present application has been filed under Section 5 of the Limitation Act for condonation of delay of **256 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **256 days** in filing the application for grant of Leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 1690-MA of 2018

1. Present application has been filed under section 378 (3) of the Code of Criminal Procedure, 1973 (in short "the Code") for grant of Leave to Appeal against the judgment of acquittal dated 18.08.2017 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crime Against Women), Kurukshetra (in short "Trial Court).

2. In nutshell, the facts of the prosecution case are that a written complaint was moved on 24.06.2016 in Police Station, Pehowa, by Victim-X' to the effect that on 21.03.2016 she was raped by the respondent/accused without her wish and consent. She also refused to oblige the proposal of the accused to marry with him. Moreso, the respondent/accused remained continue to commit rape with her under the threat that in case she would disclose the matter to anybody, she would face the dire consequences. Later on, she divulged this matter to her family members. On the basis of these allegations, an F.I.R. against the accused was registered. Initially, investigation was initiated by lady ASI Ramandeep Kaur. Place of crime was inspected by her and she also prepared the rough site plan. The Investigating Officer also recorded the statement of witnesses under Section 164 Cr.P.C.

On 25.06.2016, the victim was subjected to medical examination and her statement under Section 164 Cr.P.C. was also got recorded. Accused/respondent was arrested and he was also subjected to medical examination. Thereafter, on completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Area Magistrate.

Copies of challan were supplied to accused free of cost as envisaged under Section 208 of Cr.P.C. Thereafter, the case was committed to the trial Court. The trial Court finding a *prima facie* case and thereby charge-sheeted the respondent for the commission of offence under Sections 452 & 506 IPC and 5 (1) of the Protection of

Children from Sexual Offences (POCSO) Act which is punishable under Section 6 of the said Act.

To strengthen its case against the respondent, the prosecution in support has examined the following witnesses:-

“ PW-1 Victim, PW-2 Neena, mother of the victim, PW-3 SI Sudeep Kumar, Draftsman, who prepared the scaled site plan of the place of occurrence, PW-4 W/SI Ramandeep Kaur, Investigating Officer, PW-5 Karam Chand, Computer Clerk, M.C. Thanesar, who brought the summoned record and proved his report Ex.P18, PW-6 EHC Rajesh Kumar, who deposited the parcels with FSL, Madhuban, PW-7 E/HC Dharam Singh, the MHC, with whom the parcels deposited, PW-8 Dr. Anuj Sharma, Medical Officer, PHC, Ramgarh, who medically examined the accused and prepared MLR Ex.P22, PW-9 Dr. Shalki Sharma, Medical Officer, CHC, Pehowa, who medically examined the victim and prepared MLR Ex.P31.”

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

3. We have heard learned counsel for the appellant-State at length and have gone through the paper book very carefully.

It is apparent on perusal of the statement of the victim recorded in the Court that respondent/accused was known to her and he was on regular visiting to her house. The trial Court has observed in the impugned judgment that accused has offered to marry with

victim and the factum was also admitted by the victim in her statement in the Court that she was interested to get herself marry with accused. This fact was also disclosed by her to her parents that she was interested to marry with accused and this proposal was brought into the notice of the parents of the accused, but neither the accused nor his parents accepted this proposal. Meaning thereby, the sexual relationship which took place between victim and accused were nothing, but of consensual. Whatever has been stated by the victim in her statement under Section 164 Cr.P.C. cannot be considered as a sub standard piece of evidence in the absence of her stating in the Court that she was forcibly subjected to sexual intercourse by the accused. In the absence of proving of correct date of birth of the victim, to bring her case within four corners of the POCSO Act, the trial Court has rightly opined that the prosecution has failed to prove its case also under the POCSO Act.

As such, when the star witnesses of the prosecution have failed to prove the case beyond doubt, the statement of the other witnesses of the prosecution pales into insignificance.

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 the 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, had rightly held that the prosecution had 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.

The **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

July 05, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No