

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

**CRM-A No. 2072-MA of 2016 (O&M)
Date of Decision: 13.03.2019**

Mandeep Kaur

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Ms. Eshjyot Walia, Advocate
for the appellant.

Mr. H.S. Grewal, Additional Advocate General, Punjab
for respondent No. 1/State.

Mr. Manbir Singh Basra, Advocate
for respondent No. 2.

JASWANT SINGH, J.

CRM No. 37070 of 2016

Present application has been filed under section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **25 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **25 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 2072-MA of 2016

1. Present application has been filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment of acquittal dated 18.07.2016 passed by

learned Additional Sessions Judge, Gurdaspur. Vide this judgment,

respondent No.2/accused person (Kulwinder Singh) has been acquitted of the charge for commission of offence under Sections 376, 366, 354-D, 506 of Indian Penal Code (IPC).

2. Tersely put the facts of the prosecution's case are that on 27.07.2015 at about 11.00 a.m., when victim-'X' [*name of the victim to prevent her social victimization is not being indicated in view of judgment passed by Hon'ble Supreme Court in case Premiya @ Prem Parkash Versus State of Rajasthan, 2008 (4) RCR (Criminal) 539 : 2008 (5) Recent Apex Judgments (RAJ) 490*] was alone in her house, accused/respondent No. 2-Kulwinder Singh, by riding on his motorcycle, came to her house and forcibly entered into her house. By forcibly entering into her house, he committed sexual intercourse with her without her will and consent. It is also alleged version of the prosecution that mother of accused/respondent, namely, **Harjit Kaur** also arrived there on hearing the cries of victim and after committing rape, Kulwinder Singh and his mother, while leaving the house of victim, extended threat to her life, that in case, she would narrate this episode to anybody, she will be done to death. Mother of respondent/accused also instigated the victim to accompany respondent/accused as he would marry her and then Kulwinder Singh/respondent-accused forcibly made her to sit on his motorcycle and took her to the house of her aunt-**Piar Kaur** at village Dayalgarh near Batala, whereupon respondent/accused proclaimed that he had married the victim and on the same day in the evening, he also took her to Metro Hotel, Batala, where he again committed rape with her and thereafter he took her to the house of Piar Kaur where they stayed for one day, but she managed to escape from there and arrived to her parental house. Then Victim-'X' was

also medically examined. Respondent/accused was also subjected to medical examination. After completing the formalities of investigation, report under section 173 Cr.P.C. was presented before the trial Court.

3. On appearance before the trial Court, the respondent-accused was supplied the copies of challan and he was also charge-sheeted for the commission of offences under Sections 376, 366, 354-D and 506 of IPC. To strengthen its case against the respondent, the prosecution before the trial Court has examined as many as **11 (Eleven)** witnesses, which are as under:-

“PW-1 is prosecutrix 'X', Dr. Raj Masih as PW-2, LC Paramjit Kaur as PW-3, SI Shanti as PW-4, Dr. Jyoti Mahajan as PW-5, Amarjit Kaur as PW-6, Sh. Rajinderpal Singh Gill, JMIC, Gurdaspur as PW-7, PHC Kashmir Singh as PW-8, Parshotam Lal as PW-9, ASI Harpinder Singh as PW-10 and SI Baljit Singh as PW-11.”

On completion of prosecution evidence, the statement 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.

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

4. Learned State Counsel has argued that impugned judgment of acquittal of the lower Court is palpably wrong on both the facts and law. The trial Court has misread the evidence produced by the prosecution and has wrongly concluded that prosecution has failed to prove the offence of rape. The victim in her statement recorded in the Court has stated in single

voice that accused/respondent, facing the trial, ravished her against her will and consent.

Learned counsel for the applicant has argued that the trial Court has erred in coming to the conclusion that victim was consenting party to the act of sexual intercourse. As a matter of fact, her consent was obtained by the respondent/accused under threat and the consent under these circumstances given by the prosecutrix/victim cannot be treated as lawful. On the basis of evidence produced by the prosecution, the prosecution proved its case beyond doubt that the offence of rape has been committed by the respondent/accused but the trial Court has wrongly disbelieved the evidence produced by the prosecution and has wrongly given the undue weightage to the stand of defence. At last, he has prayed that prosecution be granted leave to file the appeal against the judgment of acquittal.

5. We have heard the counsel for parties and have also gone through the paper-book very carefully with their assistance.

The trial Court has mainly given the stress to the factum that there was continuous relationship between the victim and the respondent and for this, it can be considered that the alleged sexual intercourse performed by the respondent with the victim was not without her will and consent. Victim was extensively cross-examined by the defence and during her cross-examination, it came into the light that she wrote letters to the respondent vide Ex.DA. Much emphasize has also been given by the trial Court to the photographs vide Ex.D-1 to D-6. Thus, it is manifest clear that in the photographs, the prosecutrix/victim was found with the respondent/accused.

There are material improvements in version of prosecutrix. Photographs of prosecutrix and accused-respondent posing comfortably and it can be inferred that she was knowing to the respondent/accused prior to the alleged incident and she also travelled with the accused at different places as mentioned by the victim in her statement recorded in the Court and there is nothing on the record to show that she raised any hue and cry to show any protest against the respondent. The testimony of the victim cannot be taken as gospel truth on its face value. There is no mark of scuffle either on her body. It is also claimed by the prosecutrix that accused/respondent took her to the house of her aunt Piar Kaur. We fail to understand that why she did not raise any alarm to show her resistance to have company of the accused. We are of the view that naturally the house of aunt-Piar Kaur was not secluded or isolated from other inhabited area. In case of hue and cry, the neighbours would have come for her rescue alongwith habitants of the house. In this manner, we are of the view that the trial Court has rightly observed that prosecution has failed to establish the commission of offence of rape alleged to be committed by the respondent/accused.

6. It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Hon'ble Supreme Court in case ***Mahamadkhan Nathekhan Versus State of Gujarat, 2014 (5) Recent Apex Judgments (R.A.J.) 502: (2014) 14 SCC 589***, while reiterating the basic principles, has specifically held that in case of acquittal, there is a double presumption of innocence in favour of the accused it stands reinforced, reaffirmed and strengthened by acquittal by the trial Court.

7. 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 is made out for any kind of interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

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

9. We have noticed in the judgment, under question, that the trial Court has mentioned the name of the victim in some portion of the judgment. As such, we hereby direct the trial Court not to mention the name of the victim of rape in the judgment in future and the dictum of law laid down by Hon'ble Supreme Court in case ***Premiya @ Prem Prakash Versus State of Rajasthan, 2008 (4) R.C.R. (Criminal) 539*** has to be followed in letter and spirit. The necessary directions be also issued to all the District and Sessions Judges of States of Punjab, Haryana and U.T. Chandigarh to bring the same to the notice of all the Judicial Officers working in respective Sessions Divisions for strict compliance.

Registry is directed to take necessary steps in this regard.

(JASWANT SINGH)
JUDGE

March 13, 2019

'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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