

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

**CRM-A No. 2693-MA of 2018 (O&M)
Date of Decision: 13.02.2019**

Union Territory of Chandigarh

..... Appellant

Versus

Ram Chander

..... Respondent (Juvenile)

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

Present: Mr. Lalit K. Gupta, Additional Public Prosecutor, U.T. Chandigarh
for the appellant.

JASWANT SINGH, J.

CRM No. 42951 of 2018

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **106 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **106 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 2693-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 25.05.2018 passed by the Additional Sessions Judge-cum-Judge Special Court, Chandigarh.

2. In nutshell, the facts of the prosecution case are that an F.I.R No. 52 of 24.03.2017 under Sections 363, 366, 376 IPC & Section 4 & 6 of

at Police Station Maloya, Chandigarh, against the respondent on the allegations that the younger daughter of complainant aged about 12 years had left the house on 23.03.2017 at about 1.00 P.M. Suspecting that respondent who was neighbour of the complainant might have enticed or allured her, the complainant moved an application to the local police. On the basis of the complaint, initially the case under Sections 363 & 366-A, IPC was registered against the respondent on 10.04.2017. Victim and respondent were recovered from village Katra Maha Rani, Amethi. After recovery of victim, an application was moved to the doctor, for getting her medically examined but victim refused to get her medically examined. Her statement under Section 164 Cr.P.C. was also recorded by the Duty Magistrate. Thereafter, on completion of investigation formalities, the report was presented by the prosecution in the Court against the respondent for commission of offences under Section 363, 366-A, 376 IPC and Sections 4 & 6 of POCSO Act.

3. On appearance before the trial Court, the respondent was supplied the copies of challan and he was also charge-sheeted for the commission of offences. To strengthen its case against the respondent, the prosecution has examined as many as six witnesses, which are as under:-

Prosecutrix as PW1, Dr. Satyam Tyagi as PW2, Ram Bilas as PW3, ASI Satya Pal as PW4, SI Dharam Singh as PW5 and Nirmal Singh as PW6.

4. 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 pleads his innocence and

false implication.

5. 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.

6. We have heard the learned Additional Public Prosecutor, Union Territory, Chandigarh and we have also gone through the paper-book very carefully with his assistance.

Learned Additional Public Prosecutor has argued that the trial Court has erroneously ignored the evidence of prosecution witnesses. The case of the prosecution is fully supported and by the victim and her statement was fully corroborated by other ocular evidence on the record. The trial Court has failed to consider that victim was a minor girl of aged about 12 years 8 months at the time of occurrence. The offence under Section 363 of IPC is itself established on the basis of the fact that the respondent took the minor girl out of the lawful custody of her parents and in this regard the real father of the complainant lodged the F.I.R. Further, the victim was recovered from the possession of the respondent and her consent was immaterial to prove the offence of rape and the trial Court has wrongly ignored this aspect of the case of the prosecution. At last, he has prayed that appeal of the State be accepted after allowing the application for grant of Leave to Appeal.

7. The trial Court has recorded its finding on the basis of statement of victim and on careful examination of statement of victim, there leaves no manner of doubt that victim herself refused to get her medically examined and she also failed to prove her age. During cross-examination, the victim has demolished the case of prosecution by testifying the fact that

respondent did not commit any wrong act with her. We are of the view that when the key witness of the prosecution herself has said nothing against the respondent with regard to commission of offence of rape, the trial Court has rightly concluded that prosecution has failed to prove its case beyond doubt. Also, in the wake of fact of missing of any Medical Report to establish the offence of rape, the view of the trial Court is correct. Further, in the absence of proving the correct age of the victim at the time of alleged crime, it can be said that offence of kidnapping could not be proved by the prosecution because right from the very beginning, victim herself has claimed that she herself went with the respondent and left her house at her own. In view of the evidence available on the file, the Trial Court was justified in coming to the conclusion that prosecution has failed to prove that victim was minor at the time of alleged commission of offence. Statement of complainant is totally insignificant to prove the commission of offence of kidnapping alleged to be committed by the respondent particularly in the absence of proving the correct age of the victim at the time of alleged commission of offences. From the prosecution case, it is not established that it was the respondent who had kidnapped the victim from the lawful guardianship of her parents. The statement of other witnesses on the record also does not inspire any confidence to the Court to establish the guilt against the respondent.

8. 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 or 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.

9. 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 trial Court is hereby affirmed and is maintained.

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

(JASWANT SINGH)
JUDGE

February 13, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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