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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AD No. 476 of 2019 (O&M)
Date of Decision: 23.09.2019

Harbans Singh

..... Appellant

Versus

State of Punjab and another

..... Respondents

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

Present: Mr. M.S. Virdi, Advocate
for the appellant.

****

JASWANT SINGH, J.

CRM No. 22164 of 2019

Present application has been filed under Section 5 of the Limitation Act for condonation of delay of **43 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit of the applicant, the delay of **43 days** in filing the appeal is condoned.

Application stands **disposed of** accordingly.

CRA-AD No. 476 of 2019

1. Challenge in this appeal, preferred by the appellant, is to the judgment of acquittal dated 21.11.2018 passed by learned Sessions Judge, Sangrur, whereby respondent No.2/accused ***(Gurpal Singh @ Gurpreet Singh)*** has been acquitted for offences under Sections 376 and 306 of Indian Penal Code (IPC).

2. Tersely put the facts of the case of the prosecution are that the **complainant (Iqbal Singh)** made his statement before ASI Darshan Singh,

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to the effect that he was a student. The victim (deceased) was his elder sister aged about 20 years and she was studying in ITI Sunam. On 15.09.2016 at about 9.00 a.m., his sister left the house to attend the ITI Sunam by riding on her Activa Scooter, but she did not come back to her home as per her routine and thereafter he made frantic search of her whereabouts and also came to know from his cousin *Manjinder Kaur* that victim/deceased was present in the ITI Sunam at about 1.00 p.m. and thereafter the victim was not seen in the institution. On 16.09.2016 at about 10.00 p.m., a telephonic message was received from Chandigarh Police to the effect that his sister *(since deceased)* was admitted in Government Medical College and Hospital, Sector-32, Chandigarh. On receiving this information, he along with his father reached Government Medical College and Hospital, Sector-32, Chandigarh, where his sister was found admitted in the hospital and she divulged to them that on previous date i.e. on 15.09.2016, a man and a woman gave her juice mixed with some substance and thereby, she lost her senses and became unconscious. She was thrown at *"Tribune Chowk"* and from where, she was removed to hospital by Chandigarh Police in unconscious condition. During treatment, the victim died on 16.09.2016 at about 5.00 p.m. The complainant further alleged that his sister was abducted by a man alongwith a lady by administering her some poisonous substance in order to kill her.

On the basis of these allegations, an F.I.R. under Sections 364-A, 328, 302 and 34 of Indian Penal Code was registered. The investigation was commenced and call details of the mobile phone of victim/deceased were obtained by the police. As per call details, Gurpal Singh (respondent/accused) had talked with victim on 15.09.2016 at about

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10.00/11.00 p.m. On 19.09.2016, the Investigating Officer alongwith other officials reached *"ITBP Training Centre"* and accused was joined in the investigation. Accused was formally arrested by the police. During his interrogation, the accused/respondent admitted that he was having affair with the deceased/victim, but her parents were not accepting this affair and were not ready to get him married with deceased. The accused was engaged by his parents with other girl and on receiving this information, the victim was mentally upset. As a result of which, victim committed suicide by consuming some poisonous substance. On 05.11.2016, complainant Iqbal Singh further made a supplementary statement before the Investigating Officer in the manner that he had come to know from Manjinder Kaur @ Manju that on 15.09.2016, the victim went to Chandigarh to see *Gurpreet Singh @ Gurpal Singh* (respondent No. 2). He backed out from his promise to marry her. She also disclosed to him that about 8/9 months back. she (Manjinder Kaur @ Manju), the cousin of complainant alongwith victim/deceased went to Bathinda to see Gurpreet Singh @ Gurpal Singh, who took them in a house, where he had physical relationship with the victim. The aforesaid Gurpal Singh used to rape his sister by giving her allurement of marriage. The victim had committed suicide by consuming poisonous substance due to engagement of Gurpal Singh with some other girl.

The Investigating Officer also recorded the statement of other witnesses under Section 161 Cr.P.C. After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Illaqa Magistrate. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to the respondent-accused free of costs.

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Since case was exclusively triable by Court of Sessions, hence, the case was committed to the Court of Sessions by the Illaqa Magistrate.

Finding a *prime facie* case, the accused/respondent was charge-sheeted for the commission of offences under **Sections 376 and 306 of Indian Penal Code.**

To prove its case against the respondent-accused, the prosecution has examined the following **Ten (10) witnesses**, which are as under:-

> ***Iqbal Singh-complainant*** *as PW-1,* ***Manjinder Kaur*** *as PW-2, Head Constable* ***Kewal Singh*** *as PW-3, Inspector* ***Partap Singh****, Volleybal Coach, ITBP Traning Centre, Bhanu, District Panchkula as PW-4, Head Constable* ***Hardeep Singh*** *as PW-5, Head Constable* ***Shamsher Singh*** *as PW-6,* ***Harbans Singh*** *as PW-7, Sub Inspector* ***Rajinder Singh*** *as PW-8, ASI* ***Darshan Singh****, Investigating Officer as PW-9 and* ***Dr. Amandeep Singh****, Associate Professor, Department of Forensic Medicine, Government Medical College and Hospital, Sector-32, Chandigarh as PW-10.*

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded by the Sessions Court 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 produced by the prosecution against the respondent-accused, he has been acquitted of the charges for the commission of offences under **Sections 376 and 306 of Indian Penal Code.**

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

We are of the view that the story put forth by the prosecution has to be rejected outrightly. Initially, the case was projected by the prosecution that on reaching in the hospital by the complainant (PW-1-Iqbal Singh) and his father, the victim made a statement that she was taken away by a man and a woman in a car and she was offered juice laced with some intoxicant, thereby she lost her senses and was thrown at the *"Tribune Chowk"* from where she was removed to hospital by the police. It is also admitted case of prosecution that PW-2 (Manjinder Kaur) has not supported the case of the prosecution. In the absence of proving the love affair between respondent and the deceased, the story of the prosecution is totally worth less and is not to be relied upon. ***PW-2 (Manjinder Kaur)*** has turned hostile and she has not uttered a single word in her statement to prove that there was love affair between victim and the respondent (Gurpal Singh @ Gurpreet Singh). As such, prosecution has failed to prove its allegations against the respondent-accused that there was any love affair between victim/deceased and respondent/accused. Prosecution has also failed to prove that the victim was ravished by respondent before her death. Although medical evidence is available on the record that victim was subjected to sexual intercourse before her admission in the hospital, but it is not established by the prosecution that in fact that sexual intercourse was committed by this respondent with the victim.

The prosecution has also projected its case that on 15.09.2016 the date of incident, the accused/respondent had telephonic call with the victim/deceased. We are of the view that if respondent/accused was with the

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victim/deceased, then what was the necessity for him to have a telephonic call with the deceased. The tower location of the mobile phone of the accused/respondent also indicates that he was not available near to the place of crime. The evidence available on record of other witnesses is also not having any value to connect this respondent/accused with the crime.

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

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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

September 23, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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

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