

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

**CRM-A No. 1256-MA of 2017 (O&M)
Date of Decision: 09.07.2019**

State of Haryana

..... Appellant

Versus

Deepak and others

..... Respondents

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

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

Mr. Akshay Bansal, Advocate for
Mr. Johan Kumar, Advocate
for all the respondents.

JASWANT SINGH, J.

1. The applicant-appellant/State has filed an application bearing **CRM No. 19345 of 2017** under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **488 days** in filing the appeal.

2. It is averred in the aforesaid application that the District Attorney, Jind, vide its letter dated **21.11.2015**, has opined to Superintendent of Police, Jind, to file an appeal against the judgement of acquittal dated **28.10.2015** of the accused-respondents, passed by learned Additional Sessions Judge, Jind; **thereafter**, the District Magistrate, Jind, vide its letter dated **14.12.2015**, has forwarded the case to the office of Advocate General, Haryana **and in response**, the office of Advocate General, Haryana, Chandigarh, vide its letter dated **07.04.2017**, asked the Superintendent of Police, Jind, to supply affidavit with application for

condonation of delay for filing the appeal against the acquittal of accused.

3. Application bearing **CRM-A No. 1256-MA of 2017** has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to file the Appeal against the judgment of acquittal dated 28.10.2015 passed by learned Additional Sessions Judge, Jind, whereby respondents/accused have been acquitted for offences under Sections 148 and 307 read with Section 149 IPC.

4. Briefly stated the facts of the prosecution case are that the complainant **Dharambir son of Tilak Ram** got registered the F.I.R. against one **Sombir** and **Deepak** along with other 7/8 boys with the allegations that his nephew **Rahul** was studying in Polytechnic College at Village *Pathri* and he was residing in the village in a room as a tenant. On 18.07.2010, his another nephew *Virender* alongwith *Kumar Gaurav* went to see *Rahul* and at about 11.00 a.m., *Rahul* came at the bus stand and thereby was waiting for the conveyance. Meanwhile, 8/10 boys also came on the bus stand of *Anchra Kalan* and out of them, one proclaimed that he would teach a lesson to *Rahul* for having dispute with his brother *Deepak* and thereafter all the boys started giving beatings to *Rahul* and when his nephew tried to rescue *Rahul* from the clutches of the accused, they started hurling abuses to him and after giving injuries on the head and back of *Rahul*, the assailants ran away. *Rahul* was removed to *P.G.I.M.S. Rohtak* by *Kumar Gaurav* and *Virender* and he was made aware by them on telephone. *Rahul* was admitted in Trauma Centre at Delhi because his condition was very serious. He also came to know about the name of the assailants as *Sombir and Deepak sons of Mukesh* and the remaining assailants were not known to him. On the basis

of this, an F.I.R. was registered against the accused/respondents and investigation was commenced.

After completion of necessary formalities of investigation, the report under section 173 Cr.P.C. was presented by the prosecution in the Court against the respondents/accused. Thereafter, the case was committed to the Court of Sessions. Copies of challan were supplied to the accused free of cost and on the basis of *prima facie* case, the accused were charge-sheeted by the Court for commission of offences under ***Sections 148 and 307 read with Section 149 IPC.***

To prove its case against the respondents-accused, the prosecution has examined as many as fourteen (14) witnesses, which are as under:-

“ Sumer Singh, Halka Patwari as PW-1, Pala Ram MRC, PGIMS, Rohtak as PW-2, Ranjit Lakra as PW-3, Injured Rahul Tyagi as PW-4, Dharambir (complainant) as PW-5, Virender Tyagi as PW-6, Dharambir Singh retired SI as PW-7, SI Ram Karan as PW-8, Dr. Ashok Chauhan as PW-9, Dr. Sunil Lamba as PW-10, DSP Subhash Chander as PW-11, Om Parkash, retired SI as PW-12, Dr. P.N. Pandey as PW-13 and SI Bhag Singh as PW-14.”

On completion of prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents-accused were put to them and they pleaded their innocence and false implication. No defence evidence was produced.

On the basis of weak evidence led by the prosecution, the

Sessions Court has acquitted the respondents-accused for the commission of

offences for which they have been charge-sheeted.

5. We have heard the learned counsel for the parties and have also gone through the paper book very carefully.

The case of the prosecution is based upon the direct evidence, but the direct evidence produced by the prosecution does not inspire any confidence and is not dependable evidence. On the meticulous examination of the statement of prosecution witnesses, namely, ***Rahul Tyagi-injured (PW-4), Dharambir-complainant (PW-5) and Virender Tyagi (PW-6)***, there is nothing on the record to prove that *Rahul* was given beatings by these respondents. No doubt, the F.I.R. was registered by the police on the statement of complainant, but that statement was given by the complainant with delay and delay has not been properly explained to rule out possibility of fabricated story. As per the stand of the prosecution, *Rahul* was immediately removed to P.G.I.M.S, Rohtak, then it was natural for prosecution to register the case on the basis of medical “*Rukka*”. The trial Court has rightly observed the discrepancies in the case of the prosecution and contradictions in the statement of prosecution witnesses to disprove the case of the prosecution. As per the statement of material prosecution witnesses, it also transpires that they have changed the place of occurrence as recorded in the statement by the complainant. As such, we are of the view that the trial Court has rightly acquitted these respondents for lack of sufficient evidence.

6. 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 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.

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, has rightly held that the prosecution has failed to prove its case against the accused-respondents 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.

8. The averments made in the application (*CRM No. 19345 of 2017*) for condonation of delay do not have any merit in the eyes of law. The delay being insufficiently explained is not liable to be condoned. Apart from this, the appeal is also meritless.

9. Accordingly, the **application** for condonation of **delay** stands **dismissed** and, as a consequence, the **application**, seeking leave to appeal, stands **dismissed as barred by limitation as well as on merits**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

July 09, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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