

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

**CRM-A No. 272 of 2019 (O&M)  
Date of Decision: 10.07.2019**

Geeta

..... Appellant

**Versus**

State of Haryana and another

..... Respondents

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

Present: Ms. Manpreet Kaur, Advocate as Legal Aid Counsel (HCLSC)  
for the applicant-appellant.

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**JASWANT SINGH, J.**

**CRM No. 1896 of 2019**

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **66 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **66 days** in filing the application for grant of leave to appeal is condoned.

**Application stands disposed of accordingly.**

**CRM-A No. 272 of 2019**

1. Present application has been filed on behalf of the applicant-appellant-Geeta (guardian of the victim) under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to file the Appeal against the judgment of acquittal dated 04.08.2018 passed by learned Additional Sessions Judge, Palwal, whereby respondent No. 2/accused (Rajender) has been acquitted for offences under Sections

451/506(II) IPC & Section 6 of Protection of Children from Sexual Offences Act, 2012 ( in short “POCSO Act”).

2. Facts of the prosecution case are that prosecutrix/victim was sleeping in the house of her aunt who was at that time away to Faridabad. Due to summer, the door of the house was kept open and taking advantage of this, **accused-Rajender (respondent No. 2 herein)** and one Rakesh (who was held to be a juvenile) entered in the room of the prosecutrix. Her mouth was gagged by them, at the time of their turn, to commit sexual intercourse with her against her wish and consent. She made her level best to save herself from the clutches of the accused but she could not save herself and her grandmother (PW-2) also woke up on hearing the noise, but the accused taking the advantage of old age of grandmother managed to escape. On 28.06.2017, the matter was disclosed to the aunt of the prosecutrix on her return from Faridabad and her aunt went to the house of both the accused to reprimand them for their misdeeds, but the parents of the accused and the accused did not pay any heed to the matter and whereupon on 18.08.2017, the matter was reported to the police. The local police recorded the F.I.R. under Sections **376-D/452/506/34 of IPC as well as Section 6 of POCSO Act, 2012.**

Investigation was started and after completion of necessary formalities of investigation, the report under section 173 Cr.P.C. was presented by the prosecution for the commission of offences under Sections 376-D/452/506/34 of IPC as well as Section 6 of POCSO Act, 2012. 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 Court being designated Special Court for trial of heinous offences against women and

children, for commission of offences under **Sections 451/506(II) IPC and Section 6 of POCSO Act, 2012.**

To prove its case against the respondents-accused, the prosecution has examined as many as fifteen (15) witnesses, which are as under :-

**“ Victim as PW-1, Chanda as PW-2, Dr. Shiv Shankar as PW-3, Dr. Mahender as PW-4, L/Ct. Aarti as PW-5, ASI Sharwan Kumar as PW-6, HC Shobha as PW-7, L/Ct. Dalwanti as PW-8, Ct. Heera Lal as PW-9, Ct. Ajeem as PW-10, ASI Anita as PW-11, Dr. Varuna Gaur as PW-12, L/Ct. Vandana as PW-13, L/Ct. Pooja as PW-14 and Sandeep as PW-15.**

On completion of prosecution evidence, the statement of accused-Rajender (respondent No. 2 herein) under Section 313 Cr.P.C. was recorded 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 led by the prosecution, the Special Court has acquitted the respondent-accused for the commission of offences for which he has been charge-sheeted.

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

Firstly coming to the point of the weakness of the prosecution that there is unexplained delay in registration of the F.I.R. As per the stand of the prosecution, the alleged episode occurred on 17.06.2017 and the matter was made aware to the aunt by victim on 28.06.2017, despite of all

this, the matter was reported to police on 18.08.2017. No doubt in such type

of incidents which concerns the reputation and honour of the family and victim, the matter is not opened immediately to all out of fear of stigma which will be attached with the girls who are ravished, but in the instant matter, there is an inordinate delay in reporting of the matter to the police and delay has not been properly explained, for which the case of the prosecution has to be disbelieved.

Further, during medical examination of the prosecutrix/victim, no injury was noticed by the medical expert on her body. In case any force was used by the accused/respondent(s), at the time of alleged incident, there were every chances of receiving of minor or superficial injuries by the prosecutrix on her body. The presence of no injury on the body of prosecutrix rules out the possibility of any forcible act of rape alleged to be committed by the accused on the prosecutrix.

The trial Court has rightly observed that in order to settle the old scores with the respondent/accused, he has been been implicated in the present matter. Furthermore, prosecutrix, while appearing in the witness box did not dispute the fact of convening of *Panchayat* with regard to the alleged matter. We are of the view that if *Panchayat* was convened and the matter came into light in the public, then there was no hitch for the prosecutrix or her relatives to report the matter immediately. The statement of other prosecution witnesses is not dependable to prove the case of the prosecution.

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 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 No. 2 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 10, 2019  
'dk kamra'

( LALIT BATRA )  
JUDGE

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