

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

**CRM-A No. 59 of 2019 (O&M)
Date of Decision: 12.03.2019**

State of Haryana

..... Appellant

Versus

Aabadi

..... Respondent

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

Present: Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 928 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 **423 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **423 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 59 of 2019

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 dated 25.07.2017 passed by learned Additional Sessions Judge, (Exclusive Court), Nuh.

2. It is the alleged version of the prosecution that a written complaint dated 09.11.2015 was moved by Victim-'X' in the police station,

she was on the way to go to her village, meanwhile, two persons who were riding on the motorcycle came there and they forcibly made her to sit on the motorcycle and took her away to Ferozepur Jhirka in a house wherein **Fajru S/o Jasmal** was already present. Kasam S/o Fajru, Aabadi S/o Karim Khan and Mahmooda and Fajru took her away from the house and in the secluded place, they committed rape upon her one by one. After committing rape upon her, Mahmooda and Aabadi (respondent herein) took her to number of unknown places by riding on the motorcycle and remained on to commit rape upon her repeatedly. She identified respondent-Aabadi, who was found present at bus stand Ferozepur Jhirka, and on seeing him, she started raising noise and accused/respondent managed to escape but he was apprehended by the people present on the spot and they also gave him beatings. She was also given in the custody of her father and uncle who were searching her whereabouts. On the basis of this complaint Ex.PW8/A, an F.I.R. No. 31 dated 09.11.2015 under Sections 342, 365 and 376-D of IPC was registered against the accused persons.

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

On appearance before the trial Court, the respondent-accused was supplied the copies of challan and he was also charge-sheeted for commission of offences under Sections 342, 365 and 376-D of IPC. To strengthen its case against the respondent, the prosecution has examined the following witnesses, which are as under:-

PW-1, Ct. Virender Singh, Dharampal, Draftsman as PW-2, Ct. Jamil as PW-3, L/Ct. Saroj as PW-4, Ct. Sarita as PW-5, Inspector Krishna Devi as PW-6, Dr. Anil Kumar as PW-7, S.I. Santosh as PW-8, Complainant/Victim as PW-9, Akbar Son of Wali Mohd. as PW-10, Dr. Neelam Rani as PW-11, Abdul Son of Isha as PW-12, Anil Tewatia, Reader to JMIC, Nuh as PW-13 and learned JMIC, Sh. Ravi as PW-14.

On completion of prosecution evidence, the statement of accused 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/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 present respondent, he has been acquitted of the charges for commission of offences under Sections 342, 365 and 376-D of IPC.

3. Learned State Counsel has argued that impugned judgment of acquittal of the lower Court is palpably wrong on both 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. At last, he has prayed that prosecution be granted leave to file the appeal against the judgment of acquittal.

4. We have heard the learned Assistant Advocate General, Haryana and we have also gone through the paper-book very carefully with his assistance.

5. The statement of Victim-'X' has highlighted the fact that no rape was committed upon her against her wish and consent. It is also evident that she was mature and was married to one Khalid S/o Sattar. During cross-examination, she stated that she remained at Village Silkho for 19 days. It is also alleged version of the Victim that she was forcibly made to sit on the motorcycle by the accused/respondent, but we fail to understand that if she was forcibly made to sit on the motorcycle and she along with accused also travelled on the motorcycle to commute the distance from the place where she was allegedly made to sit on motorcycle till the house of Fajru, then why she did not raise any alarm to attract the persons/public those who were passing and re-passing on the road at the relevant time. Medical evidence has also brushed aside the case of prosecution, while appearing in the witness box Dr. *Neelam Rani as PW-11*, who opined that there was no evidence of sexual intercourse alleged to be committed with victim-'X'.

6. On careful examination of her (Victim) statement Ex. PW-9/B , it also transpires that she did not raise any alarm while she was subjected to rape. As such, on the basis of statement of the Victim, it can be concluded that no rape was committed upon her and she was not forcibly taken away by the accused. At the most, we can say that, in case, she was subjected to any sexual intercourse, (although it is not so as per the medical evidence), yet she was consenting party to the act of rape.

7. 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.

8. 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.

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

(JASWANT SINGH)
JUDGE

March 12, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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