

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

**CRM-4290-2018 in/&  
CRM-A-276-MA-2018  
Judgement reserved on : 12.07.2022  
Date of Decision: 28.07.2022**

State of Haryana

--Petitioner

Versus

Raju

--Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.**

Present:- Mr. Kirpal Singh, A.A.G., Haryana.

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**RAJESH BHARDWAJ.J**

**CRM-4290-2018**

This is an application seeking condonation of delay of 42 days that has occurred in filing the accompanying application for leave to appeal.

It has been contended by learned counsel for the applicant-appellant that the aforesaid delay occurred in the present case is a procedural one and the file remained in process of filing the appeal up to 15.9.2017. Thereafter, it was sent to the S.P., Sirsa and then to the D.M., Sirsa and again remained in process till 23.9.2017. Thereafter, it was sent to the office of Advocate General, Haryana on 28.9.2017 and from where it was opined to be filed on 1.12.2017. It is contended that in the process there occurred a delay of 42 days which is an administrative and procedural delay.

In view of the averments made by learned State counsel, application is allowed. Delay of 42 days in filing the accompanying appeal is condoned.

Main Application

This is an application for leave to appeal preferred by the State against the order passed by the learned Addl. Sessions Judge, Sirsa dated 10.8.2017 wherein the respondent accused was acquitted of the charges framed against him.

Learned State counsel contends that a complaint (Ex.P-4) was filed by Keli Devi i.e. mother of the victim. The occurrence in question took place on 8.8.2015. As per the allegations in the complaint, it was alleged that complainant is a house hold lady and her eldest daughter i.e. the victim is 8 years old. The complainant and her husband Pankaj Yadav were sleeping. At about 2 PM Mamta came to them and told that somebody had taken away her daughter i.e. the victim in the Kotha of Chaff and she saw that some unknown person had firmly held her in the Kotha. She further told that Mamta went there running and got the victim released from the clutches of the accused and slapped him. Mamta further told that accused was under the influence of liquor and he told his name as Raju son of Dashrath. The victim was under panic and she told the complainant that the accused fled away taking advantage of the situation. On the basis of the complaint FIR was lodged and the investigation commenced. Accused was arrested on the same day i.e. on 8.8.2015. After completion of investigation charge was framed by the learned Addl. Sessions Judge, Sirsa under sections 363, 366, 354-A(i) IPC and Section 10 of POCSO Act. The accused pleaded not guilty and claimed trial. The prosecution in its support examined 11 prosecution witnesses besides the other documentary evidence. When confronted with the incriminating material, accused

pleaded false implication in his statement recorded under Section 313 Cr.P.C.

Learned State counsel has submitted that the material witnesses examined by the prosecution were PW-1, Mamta, PW-10 complainant Keli Devi i.e. mother of the victim, PW-3 Naveta, Principal of the school, PW-5 Pankaj Yadav i.e. father of the victim, PW-6 Dr. Deepak, who medico legally examined the victim and PW-8 SI Krishan Kumar, IO. He submits that the prosecution witnesses i.e. PW-1 Mamta, who is the eye witness, PW-10 mother of the complainant and PW-11 victim herself duly supported the case of the prosecution. However, learned Trial Court has misread the evidence and thus illegally acquitted the respondent/accused from all the charges framed against him. He submits that the victim is 8 years old child and the accused committed a heinous offence in the daylight but the learned Trial Court failed to appreciate the overwhelming evidence adduced by the prosecution and thus the conclusion arrived at by the Trial Court being perverse, deserves to be set aside. He further submits that the respondent accused be convicted for the offences he was charged.

I have heard learned State counsel at length and have gone through the record carefully.

Though, the prosecution has examined 11 prosecution witnesses, however, the material witnesses are the victim i.e. PW-11, PW-1 Mamta and PW-10 Keli Devi i.e. mother of the victim. On appreciation of evidence of these material witnesses, it is apparent that PW-1 Mamta was the first witness, who saw the occurrence and brought the same to the notice of the parents of victim. The complaint was filed by PW-10 i.e. mother of

the victim Keli Devi. A perusal of the examination-in-chief of Mamta would show that the same does not corroborate the allegations made in the complaint Ex. P-4. Victim (PW-11) stated that the accused came while she was playing and gave money to her brother and sent him to purchase some eatables. A close scrutiny of the deposition of PW-10 and PW-11 shows that there are contradictions regarding catching hold of the victim by the accused. The allegations regarding the injuries are also not corroborated from the deposition of Dr. Deepak (PW-6). He deposed that there was no fresh injury or assault on the person of victim and his report is Ex. P-10. PW-1 Mamta had stated that when she tried to rescue PW-11 she was given a brickbat blow on her left leg by the accused. However, there was no such allegation in the complaint Ex.P-4. Besides this, there is no medico legal examination for the corroboration of the alleged injury caused to Mamta by the accused. From the appreciation of the evidence of PW-10, PW-5, their presence also becomes doubtful as no independent witness from the neighborhood was examined. It was deposed that when they rushed to the scene of crime the neighbors had gathered there but the prosecution did not examine any neighbor in support of the allegations made. It was stated by PW-1, PW-5, PW-10 and PW-11 that accused was under the influence of liquor at the time of occurrence, whereas the IO stated in his cross-examination that the accused was not under the influence of liquor. He was not even medicolegally examined by the investigating agency to support the allegations. Upon conjoint reading of the complete evidence adduced by the prosecution on record the material contradictions were found and the accused was given the benefit of doubt and consequently the learned Trial

Court acquitted him of the charges levelled against him. On re-appreciation of the evidence, this court finds no infirmity or perversity in the findings arrived at by the learned Trial Court. The law relating to the appeal against acquittal rests upon a different pedestal than an appeal against the conviction. The appellate court can interfere only when there is perversity in the findings. Once the accused is acquitted there lies double the presumption of innocence in his favour. The appellate court cannot intervene in the case of acquittal in a cavalier manner. The interference can be in a situation when there are perversities in the findings arrived at by the Trial Court. If there are two views possible then the one favouring the accused should be adopted. The Appellate Court should refrain from interfering in the acquittal in a mechanical manner and it is only in the case of perversity that the appellate Court should interfere. It has been reiterated by the Apex Court time & again that after acquittal, there lies double the presumption of innocence in favour of the accused. ***In Jafarudheen and others vs State of Kerala 2022 SCC Online SC 495***, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

*“While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures*

*in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”*

Keeping in view the overall facts and circumstances of the case and evidence adduced on record on the anvil of the law settled, this Court finds no infirmity in the conclusion arrived at by the learned Trial Court in acquitting the accused and hence the application for leave to appeal being devoid of merit, is hereby declined.

**(RAJESH BHARDWAJ)**  
**JUDGE**

**28.07.2022**

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| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |