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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-A-1108-2023 (O&M)

Date of decision: 31.07.2024

Desh Raj

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parveen Chauhan, Advocate  
for the applicant.

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HARPREET SINGH BRAR, J.(ORAL)

CRM-33029-2023

1. Present application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 395 days in filing the application under Section 378(4) Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').
2. In view of the averments made in the application, same is allowed and delay of 395 days in filing the application under Section 378(4) Cr.P.C. is condoned.

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3. Present application under Section 378(4) Cr.P.C. is preferred against judgment of acquittal dated 05.01.2022 passed by learned Additional Sessions Judge (Special Court), S.B.S. Nagar in the case stemming from FIR No.131 dated 16.12.2014 under Section 354-A of the Indian Penal Code, 1860 (for short 'IPC') and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for 'POCSO Act'), registered at Police Station Balachaur.

4. Briefly, the facts are that on 12.12.2014, around 08.00 PM, the victim, a 13 years old girl, had gone to the shop to fetch some milk, when respondent No.2-accused, under the influence of alcohol, caught her by the arm. Respondent No.2 dragged the victim towards the garage constructed in his '*wara*', pulled down the shutter and began touching her private parts. The cousin brother of the victim, who had seen the accused dragging the victim, informed his family of the same. Thereafter, the nephew and sister-in-law of the complainant rushed to the spot to rescue the victim, however, the accused had fled by then.

5. Having heard learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that in her statement under Section 164 Cr.P.C., the victim had stated that respondent No.2 took her in a shop, while pressing her mouth and when the children playing outside raised alarm, her family members arrived and the accused fled

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away. However, the story put forward by the applicant-complainant presents a completely different story, which raises serious concern regarding the case of the prosecution. Further, the alleged incident occurred on 12.12.2014, while FIR (*supra*) was registered on 16.12.2014. No explanation for the delay of 04 days in reporting the incident has been put forward by the prosecution.

6. Additionally, PW3 Pawan has categorically denied seeing respondent No.2 dragging the victim to his garage or informing Lakhwinder Kaur regarding the same. Similarly, PW2 Lakhwinder Kaur, aunt (*chachi*) of the victim also denied arriving the spot of the alleged occurrence or seeing the accused do any acts outraging the modesty of the victim. Since both PW2 and PW3 failed to support the prosecution case, on the request of learned Additional Public Prosecutor, they were declared hostile. As such, it appears that the prosecution case is laden with lacunae, which does not instill any confidence in this Court.

7. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (See ***H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram Vs. State of H.P., 1973 (2) SCC 808 and Chandrappa***

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*and others Vs. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others passed CRM-A No.3 of 2022 decided on 06.07.2023* has held that presumption of innocence further gets entrenched on the acquittal of accused by learned trial Court.

8. In view of the discussion above, this Court finds that learned counsel for the applicant has failed to point out any perversity or illegality in findings recorded by learned Court below, which warrants any interference at the hands of this Court. Accordingly, leave to appeal is denied.

9. All the pending miscellaneous application(s), if any, shall stand disposed of.

[ HARPREET SINGH BRAR ]  
JUDGE

31.07.2024  
vishnu

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No