

**CRM-37324-2023 in/and CRM-A-1161-2023**

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
261****CRM-37324-2023 in/and CRM-A-1161-2023**

Date of decision : 15.01.2025

State of Haryana

... Applicant/appellant

Versus

CCL "V" Vakil

.. Respondent

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present:- Mr. Deepak Bhardwaj, DAG, Haryana.

Anupinder Singh Grewal, J. (Oral)

This is an application (**CRM-37324-2023**) seeking condonation of delay of 210 days in preferring the appeal against acquittal.

2. Learned State counsel submits that the case was considered by several officials as to whether it would be a fit case for filing the appeal and therefore, the delay had occurred in filing the appeal.

3. Heard.

4. The application preferred by the applicant for condonation of delay is weak and nebulous.

5. It is apparent that as proper explanation has not been set out in the application, there is no sufficient cause to condone the delay in preferring an application seeking leave to appeal against the judgment of acquittal.

6. Consequently, we do not find any good ground to condone the delay of 210 days in preferring the application seeking leave to appeal against the judgment of acquittal and the same stands dismissed. However, having heard learned State counsel at some length, we deem it appropriate to consider the merits of the appeal as well.

7. Learned State counsel submits that although the complainant and other material prosecution witnesses have turned hostile but there was cogent evidence in the form of statement of the complainant under Section 164



Cr.P.C. and the DNA report which would raise presumption under Section 29 of the POCSO Act which has not been rebutted and therefore, the respondent (CCL “V”) ought to have been convicted and sentenced under the POCSO Act. He has relied upon the judgment of the Supreme Court in the case of **Jyoti Prakash Rai @ Jyoti Prakash versus State of Bihar, 2008(15) SCC 223** wherein it has been held that in the event of no conclusive proof regarding the proof of age, the medical report should be relied on under those circumstances.

8. Heard.

9. It was the case of the prosecution that the complainant-victim, who was about 15 years of age, had gone out of her house on 19.12.2020 at 7:30 pm to answer the call of nature when accused Tohid along with an unknown person [respondent (CCL “V”)] had forcibly made her sit on a motorcycle and took her to a nearby jungle area where both of them had sexually assaulted her and thereafter, she did not know what had happened, and at around 1:00 am, her brother came there and brought her home. She disclosed the entire occurrence to her brother and she got the FIR registered which had also been recorded in the statement under Section 164 Cr.P.C. before the Magistrate wherein she had reiterated that she had been sexually assaulted by Tohid and the respondent (CCL “V”). The prosecution had examined the complainant-victim as PW-3, her mother as PW-4 and her brother as PW-5. However, in the witness box, the complainant-victim did not support the prosecution case and had stated that although she had been assaulted but the respondent (CCL “V”) was not the person, who had assaulted her. The other material prosecution witnesses who include the brother and the mother of the complainant did not support the



CRM-37324-2023 in/and CRM-A-1161-2023

-3-

prosecution case qua the involvement of the respondent(CCL “V”). The complainant-victim was medically examined by Dr. Rameshwari PW-12 who had proved the MLR which did not suggest any external or internal injury on the person of the complainant-victim. The samples from the person of the complainant as well as her clothes were sent for FSL examination. As per the FSL report, human semen was not detected on vaginal swabs and vulval swab, however, it was detected on salwar of the complainant-victim. The DNA report indicated that the DNA on the swabs obtained from the person of the complainant did not match with the profile of the respondent. However the DNA profile of seminal stains obtained from the salwar of the complainant-victim had matched with the DNA profile of the respondent(CCL ‘V’) but it would be difficult to convict the accused primarily on this score.

10. It is, therefore, manifest that the material prosecution witnesses, who include the complainant-victim (PW-3), her mother (PW-4) and her brother (PW-5) did not support the prosecution case qua the involvement of the respondent. The MLR also does not support the prosecution case to the extent that there were no internal or external injuries on the person of the complainant. The FSL and the DNA report indicate that no semen was detected on the swabs taken from the person of the complainant, although the DNA profile generated from the seminal stains obtained from the salwar of the complainant matched with the DNA of the respondent (CCL ‘V’). However, in view of all the material witnesses including the complainant, turning hostile, it would not be safe to base the conviction of the respondent only on the basis of matching of DNA profile on the cloth of the complainant.



CRM-37324-2023 in/and CRM-A-1161-2023

-4-

11. Furthermore, in her complaint before the police as well as in her statement under Section 164 Cr.P.C., the complainant had not named or identified the respondent (CCL 'V') and stated that accused-Tohid along with some unknown person had assaulted her. Accused Tohid had been tried separately in the instant FIR and he had also been acquitted at the end of the trial. The respondent, who was 17 years of age at the time of the occurrence, had been tried by the Special Court after the Juvenile Justice Board had opined that the respondent was mature enough to know about the consequences of his action and therefore, could be tried as an adult. The judgment relied on by the State counsel **Jyoti Prakash Rai @ Jyoti Prakash versus State of Bihar (supra)** is distinguishable on the facts as in that case the appellant therein had produced on record a forged and fabricated school certificate to substantiate his claim of juvenility which is not the case in the instant appeal. There is no dispute regarding the age of respondent(CCL 'V') being 17 years old at the time of the alleged occurrence.

12. The age of the victim has been taken by the trial Court as 15 years on the basis of ossification test conducted by the Board of Doctors. However, there does not appear to be any documentary evidence with regard to her date of birth. It is trite that there could be a variation of 02 years on either side in the 'age' determined on the basis of the ossification test. Reference can be made to **Modi's Medical Jurisprudence and Toxicology**, 26th Edition under the Chapter-'Personal Identity' and the relevant extract thereof is reproduced hereunder:-

"In Suchita Srivastava . Chandigarh Administration, while deciding the issue of termination of pregnancy by a woman who was mentally retarded, Court took as conclusive the age determined as above 19-20 years through



ossification test. There can be a variation of a year or two on either side in the opinion regarding age based on ossification test. It cannot be laid down as a rule of law that in all cases, the test of ossification must be performed for determining the age of a girl in cases of rape, though it is desirable, where possible. Even ossification test leaves much room for speculation and does not give a sure indication as to the age, particularly when it is in border region.”

13. In view of the above, we are of the considered view that as the material prosecution witnesses did not support the prosecution case qua the involvement of the respondent(CCL ‘V’) and the factum of his identity has not been established, the prosecution case against the respondent could not be proved beyond reasonable doubt.

14. It is well settled law that by an order of acquittal, the presumption of innocence is reinforced. Interference would be called for only when there is manifest illegality or perversity in the judgment resulting in a miscarriage of justice. Even if another view is possible while appreciating the evidence, the Appellate Court should refrain from such interference. Reference can be made to the judgment of the Supreme Court in the case of **Chandrappa and others vs. State of Karnataka (2007) 4 SCC 415**. The relevant extract thereof is reproduced hereunder:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The [Code of Criminal Procedure, 1973](#) puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an



appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

15. Therefore, we do not find any merit in this appeal against acquittal which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

January 15, 2025
sonia gugnani

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