

214 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-17556-2023 in/and
CRM-A-486-2023
Date of Decision: 22.01.2025

STATE OF HARYANA

.....Applicant

Versus

NAVEEN KUMAR DAGAR

.....Respondent

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

Present: Mr. Anant Kataria, DAG, Haryana
 for the applicant.

* * * * *

DEEPAK MANCHANDA, J. (Oral)

1. This is an application (CRM-17556-2023) seeking condonation of delay of 277 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 277 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. The applicant is seeking leave to appeal against the judgment of the trial Court dated 28.03.2022 whereby the respondent has been acquitted in case FIR No.22 dated 19.01.2021 registered under Section 6 read with Section 18 of POCSO Act, 2012, in alternative Sections 376, 511, 323 and 506 of IPC at Police Station Civil Lines, Sonapat.

8. The brief facts emanated from the pleadings of the case are that on 19.01.2021 a complaint was received in police station from the office of Superintendent of Police, Sonapat written by victim A and victim B (name not disclosed in order to protect their identities) aged 17 years and 15 years respectively alleging therein that they were residing with their grandparents and a divorce case is pending between their parents. Their father is habitual drunkard and drug addict. It was further alleged that their father has committed wrong acts/attempted to commit wrong acts with them for past 4-5 months and used to beat them and their grandparents also used to support their father and gave beatings to them. It was further alleged that on 14.01.2021 at about 11.00 p.m. their father attempted to commit rape upon them, but somehow they managed to escape and went to the house of their friend Preeti in order to save their honour. On the basis of said complaint, FIR no.22 dated 19.01.2021, under Sections 6 and 18 of POCSO Act and Sections 376, 511,



323 and 506 of IPC was registered at Police Station Civil Lines, Sonapat.

9. The prosecution examined as many as 15 witnesses and relied upon Ex. P-1 to Ex. P-38. Subsequently, the public prosecutor closed the prosecution evidence, wherein the accused pleaded innocence and claimed to have been falsely implicated; however, the accused led his defence evidence by examining two witnesses i.e. DW 1 and DW2 and tendered two exhibits i.e. Ex.D1 and Ex.D2/DW1 to Ex.D10/DW1, and closed his evidence. The accused's statements were recorded in consonance with the spirit of Section 313 Cr.P.C, wherein he denied the allegations levelled against him by the prosecution and pleaded his false implication in the present case.

10. The DW1, Kartar Singh, father of the respondent/accused, and DW2, brother of the victims, were examined as defence witnesses. Based on the evidence presented, the accused/respondent was acquitted on 28.03.2022 by the learned Additional District and Sessions Judge/Fast Track Court, Sonapat, which the state has now challenged through the present appeal.

11. The learned counsel for the appellant/State contends that the trial Court did not appreciate the evidence produced by the prosecution and acquitted the accused/respondent based on conjectures and surmises. The material witnesses had duly supported the prosecution version, which had not been objectively considered in its proper perspective. The trial Court, however, erroneously proceeded to acquit the accused/respondent on the ground that the prosecution failed to establish the case against the respondent/accused beyond the shadow of reasonable doubts. He, therefore, contends that leave be granted to file an appeal against the respondent's

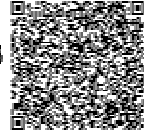


acquittal.

12. We have heard learned counsel for the applicant/appellant and have reviewed the Lower Court record.

13. The sole question before this court is whether the impugned judgment of acquittal dated 28.03.2022 requires interference after perusal of the impugned judgment and the evidence placed on record. As per the complaint, Ex. P-10 allegations made therein against the accused were that he forcibly attempted to rape his daughters, the Victim-A and Victim -B on 14.01.2021 at night around 11 p.m., but somehow they managed to escape and went to the house of their friend Preeti in order to save their honour. The contents of the complaint Ex. P-10 would show that on 14.01.2021, the respondent/accused came drunk and started sexually abusing Victim-A, i.e, PW-2, who pulled her pants as well as her inner wear and also strangulated her with his hands, but she pushed back the respondent/accused, who fell on her younger sister, i.e. Victim B, who immediately woke up. After learning about the incident, their grandmother instructed them to remain silent. Thereafter, both left their grandparents home and went to the house of their friend Preeti, where they narrated the entire incident to her and her mother. The next day, 15.01.2021, they lodged their complaint with the police, as per Exhibit P-10.

14. The learned trial court in the impugned judgment observed that during the cross-examination of PW-2, the victim revealed the matrimonial dispute of her parents and that a divorce case was filed against the respondent/accused by their mother after the filing of the complaint, Ex. P-10.



Whereas in the complaint, Ex. P-10 it was mentioned that the divorce case was already pending between the parents of the victim; however, in contrast, PW-2 stated in her testimony that it had been filed after the incident was reported Ex. P-10. The trial court also observed that the cross-examination of PW-2, the victim, revealed that on the date of the alleged occurrence, she did not have a mobile phone. Still, Ex. P-10 shows that a mobile number, 87684xxxx, was mentioned by the victims, along with the particulars, and they admitted that their grandfather had given the same to PW-2, the Victim, in July.

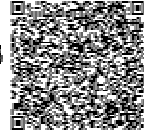
15. Learned trial court after examining the witnesses reached on the conclusion that the testimony of PW-2 i.e Victim-A, suffered from several improvements where the specific allegations were made by both the Victims A and B as PW-2 and PW-3, deposed against the respondent/accused regarding physically exploitation but as per MLR Ex. P-11, which pertains to PW-2, indicates that there were no external injuries. The trial court further observed that had the accused tried to strangle the victim with his hands, some marks might have occurred, but the doctor gave no such medical opinion.

16. The learned trial court also observed that the credibility of both victims was impeached due to inconsistencies in their testimonies, as well as the improvements made by them, which suggests that the foundational facts established by the prosecution were established beyond a reasonable doubt. After reviewing the impugned judgement as well as the evidence of material witnesses mentioned therein, we also share the same view that in a criminal case, the guilt of the accused must be proved beyond a reasonable doubt.



There should be no other possible inference that will be taken except the guilt of the accused, which are not the circumstances in the present case. This court cannot lose sight of the fact that the present case was registered by PW-2, the Victim-A and PW-3, the Victim-B by giving complaint EX. P-10, however, during the testimony, contrary depositions were made by them as alleged in the complaint EX. P-10 where several improvements were made by discrediting the testimonies, which impeached their credibility. The relevant para of the impugned judgement is reproduced here in below:-

“61. Further, this Court fails to understand as to how such an occurrence can take place with the Victim-A and Victim-B when they have been sleeping with their grand mother and how a son can stoop so low to ravish her own minor daughters in the presence of his own mother. There are no allegations of accused having pulled the pants and inner wear of Victim-A in the complaint Ex.P10 but the same has been deposed by her in her testimony. For the first time such allegations has surfaced of accused having removed the pants of PW2 Victim-A when her statement Ex.P2 under Section 164 Cr.P.C. has been recorded on 19.01.2021 and even in this statement there are no allegations of accused having removed inner wear of the PW2 Victim- A. Even in the statement Ex.P4 of PW3 Victim-B recorded under Section 164 Cr.P.C., she has deposed about accused having removed the pants of Victim-A but the said fact is not incorporated in the complaint Ex.P10. Also, on this i.e. 19.01.2021 date when both the Victims were medico legally examined such history has been given on 14.01.2021 that accused under the influence of liquor removed the pants of Victim-A as is evident from the MLR Ex.P11 of Victim-A as well as MLR Ex.P22 of Victim-B respectively. Even in the MLRs no where removal of inner wear has been mentioned by

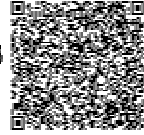


the Victims. For the first time during their testimonies before the Court as PW2 Victim-A and PW3 Victim-B respectively have deposed about accused having pulled the pants of Victim-A and having removed her inner wear, thereby showing the improvements in the case of the prosecution.”

17. Learned trial Court mentioned that the statements made under section 164 Cr.P.C. by both the complainants were contrary to the complaint Ex.P-10. Even the allegations of rape were also falsified after medico-legally examination i.e. MLR Ex P-11 and P-12 of both the Victims, where there were no sign of fresh external injury on the bodies of the Victims and medical evidence did not support the allegations made by the Victims regarding rape. Moreover, the prosecution failed to establish the presumption that the respondent/accused had committed the offence under the POCSO Act. Accordingly, the trial court examined all the evidence and witnesses and concluded that the accused/respondent was falsely implicated.

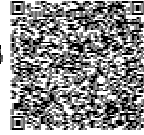
18. After reviewing the pleadings and the impugned judgment, we believe that the examination of prosecution witnesses does not match the allegations against the respondent/accused, and the evidence placed on record does not support such allegations. Therefore, the findings recorded by the trial Court do not suffer from illegality or perversity. In a criminal matter, whenever doubt is cast upon the prosecution's case, the accused is entitled to the benefit of such doubt. After examining the depositions of the prosecution and defence witnesses, the trial Court held that the prosecution had failed to prove the charges levelled against the accused and acquitted them.

19. In an appeal filed against an acquittal, the appellate court must



examine whether the findings of the Court are perverse and prima facie illegal. Once the appellate Court finds that the grounds on which the judgment is based are not depraved, the scope of the appeal filed against acquittal is limited, considering that the trial court's finding further strengthens the legal presumption of the accused's innocence. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein it has been observed as follows:

“8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and



adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.....”

20. Similarly, in the case of ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, the Hon'ble Supreme Court reiterated the same view and the relevant extract of the said judgment reads as follows:

“78. On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled principles of law. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable”.

21. Thus, the judgment of acquittal is to be interfered with only for compelling and substantial reasons. In case the impugned judgment is clearly unreasonable, it would be a compelling reason for interference but where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. This is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and/or compelling grounds.

22. In view of the above, we do not find any illegality or perversity

CRM-A-486-2023 (O&M)

2025:PHHC:012000-DB



in the findings recorded by the trial Court. Therefore, the application seeking grant of leave to appeal stands dismissed and leave to appeal declined.

(DEEPAK MANCHANDA)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

22.01.2025
sandeep

Whether Speaking/Reasoned :
Whether Reportable :

Yes/No
Yes/No