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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A No. 1887-MA of 2017 (O&M)
Date of Decision: 16.10.2019

Union Territory, Chandigarh

..... Appellant

Versus

Amit Kumar @ Rachu and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Ms. Ashima Mor, Additional Public Prosecutor, U.T., Chandigarh
for the applicant-appellant/U.T., Chandigarh.

Mr. Sanjeev K. Arora, Advocate
for respondent No. 1-Amit Kumar @ Rachu.

Application for leave to appeal stands dismissed
qua respondent Nos. 2 to 4 vide order dated 18.07.2018.

JASWANT SINGH, J.

CRM No. 27600 of 2017

Present application has been filed under Section 5 of the
Limitation Act read with Section 482 Cr.P.C. for condonation of delay of
53 days in filing the appeal.

Upon notice, counsel for respondent No. 1 has filed a reply
dated 27.05.2019 to the present application.

After hearing counsel for the parties, the delay of **53 days** in
filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

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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 of acquittal dated 30.01.2017 passed by

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learned Additional Sessions Judge-cum-Judge Special Court, Chandigarh, whereby respondents/accused have been acquitted for the offences under **Sections 363, 366, 120-B, 376-D, 342 Indian Penal Code (IPC).**

2. Tersely put the facts of the case of the prosecution are that **PW-2 (Pappu son of Munshi Ram, father of the prosecutrix/victim)** moved a complaint to the local police wherein he stated that his **daughter (prosecutrix)** was found missing. He also alleged in the complaint that on 30.10.2015 at about 11/12 P.M. she went to attend a 'Jagran' but she did not come back to the house till morning. He made her frantic search but he failed to find out any clue of her whereabouts. Later on, he came to know that four boys, namely, **Amit, Suraj, Kannu and Vikas (respondents/accused)** abducted her in a car bearing Registration No. CH-01-AR-6944. On the basis of this complaint, a formal F.I.R. (Ex. P-17) was registered under Sections 363, 366, 120-B IPC. During investigation, all the accused were arrested and prosecutrix was also recovered. Her statement under Section 164 Cr.P.C was got recorded by the Investigating Officer. Accused were medically examined and prosecutrix was also subjected to medical examination.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Judicial Magistrate and thereafter, the case was committed to the Court of Sessions. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to the respondents/accused free of cost.

Finding a *prime facie* case, the accused/respondents were charge-sheeted for the commission of offences under **Sections 376-D, 366, 342 read with Section 120-B of Indian Penal Code.**

To prove its case against the respondents/accused, the prosecution has examined the following **Ten (10) witnesses**, which are as under:-

Prosecutrix as PW-1, Pappu, complainant/father of the prosecutrix as PW-2, HC Gulzar Singh as PW-3, HC Yash Pal as PW-4, Dr. Parijat as PW-5, Sonu as PW-6, Dr. Chandrani as PW-7, ASI Rajvir Singh as PW-8, Constable Sonu Kumar as PW-9 and Sandeep Garg as PW-10.

On completion of prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents/accused were put to them and they pleaded their innocence and false implication. Accused-Amit Kumar @ Rachu in a statement under Section 313 Cr.P.C. put forth a stand that he has been falsely implicated by the parents of the prosecutrix, as there was love affair between the prosecutrix and him and the family members of the prosecutrix, in order to teach him a lesson, have concocted this false case. Chance of defence was given by the trial Court to the respondents/accused but no defence evidence was produced.

On the basis of weak evidence produced by the prosecution against the respondents, they have been acquitted of the charges for the commission of offences under ***Sections 376-D, 366, 342 read with Section 120-B of Indian Penal Code.***

3. We have heard learned counsel for the parties and have also gone through the paper-book very carefully with their assistance.

We are of the view that the prosecutrix in this case was neither kidnapped nor abducted. The story of the prosecution put forward in the

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Trial Court looks to be highly improbable. The defence version is probable. Admittedly, the prosecutrix was running about more than 18 years of her age at the time of alleged incident. As per the alleged case of the prosecution, the prosecutrix was abducted by the accused from '*Jagran*' at the knife point and the accused further took her to a hotel situated in Sector-42, Chandigarh. It is not established by the prosecution that how from assembly/crowd of '*Jagran*', the accused could manage to abduct her. It is not the case of prosecution that '*Jagran*' was concluded at around 11/12 P.M. As such, the prosecutrix was supposed to sit in the gathering of '*Jagran*' till its conclusion. It is not cleared by the prosecutrix how she came in the company of the accused and how the accused branded a knife on her in order to abduct her.

Further, prosecutrix has testified that she was kept confined in a '*Jhuggi*' for two days. If the prosecutrix was wrongly confined at the house of accused *Shanti wife of Balwant Singh* for about two days, she should be the first person to raise hue and cry. It is not the case of prosecution that prosecutrix was given any intoxicant, by virtue of which, she lost her senses for two days and was not in a position to raise noise. Therefore, in the absence of any intoxication, the prosecutrix was able to raise hue and cry in case she kept confined forcibly in the house of *Shanti* for two days. Medical examination has also highlighted that there was no injury on any part of the prosecutrix. Medical Expert PW-5 (**Dr. Parijat**) has stated that there was chances of recent sexual intercourse with the prosecutrix. In cross-examination, this Medical Expert has testified that no injury on the private part of the prosecutrix was noticed. Meaning thereby, the doctor did not find any injury on the person of the prosecutrix, from which, it can be inferred

that she was a consenting party to the sexual intercourse. There is no corroborative evidence to the testimony of the prosecutrix that she was victim of rape. Her testimony had not stood the test of credence and in these circumstances, we inclined to extend the benefit of doubt to the respondents. The statement of other witnesses is formal in nature. The contradictions, as observed by the Trial Court in the impugned judgment, are itself sufficient to discard the case of the prosecution in toto.

As such, the Trial Court has not committed any mistake in giving the benefit of doubt to the accused for want of cogent and convincing evidence.

4. 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

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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.

5. 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, has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. Thus, no case for any kind of interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

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

(JASWANT SINGH)
JUDGE

October 16, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>