

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

**Criminal Acquittal Appeal No.50/2005**

**Date of decision : October 21, 2008**

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**State of J & K                      V/s                      Kuldeep Singh**

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Coram:

**Hon'ble Mr. Justice Virender Singh, Judge**

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**Appearing Counsel:**

For the Appellant(s)        :        Mr. S.C. Gupta, Addl. Adv. General  
For the Respondent(s)     :        Mr. V. Bhushan Gupta, Advocate.

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Vide impugned judgment of learned Sessions Judge, Baderwah dated 30-06-2008, respondent Kuldeep Singh son of Maan Singh resident of Doda (hereinafter to be referred to as accused), who was charged for the offences punishable under sections 376/511 RPC, has earned acquittal for the said charge. Aggrieved of the same, the State has preferred the instant appeal.

Record reveals that the present appeal was admitted in September, 2005. At one stage, the respondent did not cause his appearance and, therefore, his presence was secured throughailable warrants. This consumed a considerable period. Ultimately, he was produced by one of his relatives in the Court. Mr. V.B. Gupta learned counsel for the respondent, made a statement that he was suffering from chronic ailment of Kidney (Nephrology) and that one of his kidneys was removed by surgical intervention. Even the second kidney was also having lot of complication, which resulted into swelling in his entire body. He is stated to be of the age of 60 years. Seeing his physical condition, his personal appearance was exempted and the

earlier order vide which warrants of arrest were issued to secure his presence was also recalled.

I have heard learned counsel for both the sides and perused the trial Court record.

I do not feel the necessity of reproducing the entire prosecution case once again as the same is depicted in detail in the impugned judgment itself.

In my view, there are many flaws in the case of the prosecution. There is some delay in lodging the FIR. No doubt, the delay in such type of cases by itself cannot be said to be a serious flaw so as to dislodge the prosecution case, but if the case set up by the prosecution is on slippery footing, in that eventuality, delay in lodging the FIR also assumes importance. Evidence reveals there are inherent infirmities in the statement of the prosecutrix herself as she made an attempt to improve her statement from the one which was initially made by her under section 161 Cr. PC. She even went to the extent of stating on oath that the rape was committed upon her, which fact is falsified by the medical evidence. Even otherwise, the medical evidence produced by the prosecution does not lend support to the case of the prosecution. Non-examination of the Investigating Officer by the prosecution can also be considered as one of the vital flaws under the present set of circumstances. In fact, in my view, coining up a new story in the Court changes the entire complexion of the prosecution case and engulfs it with thick clouds of doubt. Medical opinion

declaring the accused to be impotent also dents the prosecution case to a great extent. So after re-scanning the entire case of the prosecution in its right perspective, in my view, there is no compelling or substantial reason, which would ask for disturbing the well-reasoned judgment of acquittal.

Even otherwise, yardstick for appreciating the case of acquittal by the Appellate Court is entire different, as held by Apex Court in **State of Madhya Pradesh Versus Bacchudas alias Balaram and Ors., 2007 Criminal Law Journal 1661**, in which their Lordships have held that no doubt there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. But generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. It is then observed that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. Their Lordships further observed that miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent and the principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interference only when there are compelling and

substantial reasons for doing so. As already observed hereinabove, there are no compelling and substantial reasons for setting aside the impugned judgment.

The net result is that finding no substance in the instant State appeal, the same is hereby dismissed.

**Jammu**  
**October 21, 2008**  
T.Arora, CS

*(Virender Singh)*  
*Judge*