

(2017) 05 DEL CK 0156

In the Delhi High Court

Case No : 322 of 2017

STATE NCT OF DELHI

APPELLANT

Vs

ELIAZER KINDO @ ANUP

RESPONDENT

Date of Decision : 24-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 164](#), [Section 378](#)/
[Section 378\(1\)](#) - Saving of inherent powers of High Court - Recording of confe

Citation : (2017) 05 DEL CK 0156

Hon'ble Judges : P.S.Teji

Bench : SINGLE BENCH

Advocate : Kewal Singh Ahuja

Final Decision : Dismissed

Judgement

CrI. M.A. No.8831/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CrI. M.A. No.8830/2017 (Condonation of delay)

1. By this application filed under Section 5 of Limitation Act read with Section 482 of Cr. P.C., the petitioner seeks condonation of delay of 179 days in filing the accompanying petition for seeking leave to appeal under Section 378(1) of Cr. P.C. against the order dated 19.08.2016 whereby the accused has been acquitted from the offence under Section 365/370/376 of IPC.

2. Heard the submissions made on behalf of the State.

3. In the application for condonation of delay, the ground taken is that after the passing of impugned judgment, the matter was sent to the various authorities and after passing through various channels the file of the case alongwith opinion

was sent to Department of Law, Justice and Legal Affairs. The APP of the trial court gave opinion dated 31.08.2016 that the case was not fit for appeal, to which the Chief Prosecutor (West) has also endorsed on 01.09.2016 followed by the endorsement dated 05.09.2016 of the Directorate of Prosecution. However, after examining the matter in detail, it was considered by the office of the Hon"ble Lt. Governor to file an appeal in the matter. Accordingly proforma for appeal was attached on 02.03.2017 and forwarded to the Directorate of Prosecution and then to the office of the Standing Counsel, Delhi high Court on 04.03.2017. certain documents got translated and due to other personal difficulties of the Public Prosecutor including medical treatment of family member in the month of March, change in roster in the month of April the appeal could not be drafted on time. The ground taken causing delay was that there was procedural delay which was beyond the control of the State.

4. Apparently, there is delay of 179 days in filing the instant appeal. The aforesaid submissions made by the learned APP for the State is that the matter took time to take approval from various authorities and due to change in opinion with regard to filing the appeal against the impugned judgment by the authorities, which caused the delay in filing the appeal.

5. While dealing with the application on behalf of the State for

condonation of delay, this court deems it fit to scrutinise the impugned judgment to find out the merit in the appeal preferred by the State.

6. On perusal of the impugned judgment dated 19.08.2016, this court observes that the learned Additional Sessions Judge in para 6 of the judgment recorded that the prosecutrix never made any complaint regarding sexual assault caused by the accused to anybody at any occasion and she made allegations of sexual assault in her statement under Section 164 of Cr. P.C. before the Magistrate only. It has come in the statement of PW-10 that PW-5 and new employer Ms. Bhatia talked with each other and PW-5 also talked with prosecutrix and thus the chances of being tutored of prosecutrix in connivance with PW-9 cannot be ruled out to make such statement before the Magistrate against the accused. The learned Additional Session Judge further recorded that here it is to be noted that PW-12 i.e. first Investigating Officer in the present case has deposed that after recovery of the prosecutrix the accused was relieved from PS on 27.12.2014 as by that time no allegation of rape came on record. While recording further, learned Additional Session Judge has observed in his judgment that if that was the position, the version of prosecutrix that prosecutrix was inquired and thereafter it came on record that rape was committed by accused after abducting her becomes doubtful as even after this inquiry in the evening at 7/8 PM on 27.12.2014, the accused was allowed to go and was arrested only on the next day. It is further observed in judgment that corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Relying on the judgment of Supreme Court, in Rang Bahadur Singh vs. State of U.P., 2000 II AD

(SC) 103, the learned Additional Session Judge quoted the relevant portion of the judgment as "that the time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be based on the accused. A criminal court cannot afford to deprive liberty of the appellants, life-long liberty, without having at least a reasonable level of certainty that the appellants were the real culprits."Accordingly, the Respondent in the present leave petition was acquitted from the offence with which he was charged as it was held that the prosecution has failed to prove its case under Section 366, 370 and 376 of IPC against the respondent beyond reasonable doubt.

7. After going through the contents of the leave petition and the impugned judgement, this court does not find any illegality or infirmity in the judgment passed by learned Additional Sessions Judge and finds no merit in the appeal.

8. Now coming to the application for condonation of delay, it has been seen in various cases that the State does not prefer appeal within the stipulated time and takes defence of tedious procedural delay in obtaining approval. The State does not have the right to file the appeals at belated stage seeking ground that of a procedural delay. The State is expected to expedite the matter in case they want to prefer against the order/judgment of acquittal or conviction. In the considered view of the Court, no proper explanation has been given by the State which caused the delay in filing the instant appeal.

9. The legislature was wise enough while enacting Section 378 Cr.P.C. by giving six months time to the State to prefer an appeal against the judgment of conviction or acquittal, as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the delay. The State is expected to file the appeal well within the time prescribed in the statute. If any delay is caused, the person responsible for the same is to be enquired and departmental action is required to be taken against him. Only in exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned, that too by explaining the delay of each and every day supported by documentary evidence.

10. In view of the above mentioned facts and circumstances, this Court is of the considered opinion that the prosecution has failed to make out any ground for leave to file the appeal against the acquittal of the accused/respondent and the same is dismissed being barred by limitation.

11. Application is accordingly dismissed.

12. As a result, leave petition bearing Crl.L.P. No.322/2017 is also dismissed being barred by limitation.