

(2021) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Condonation Criminal No. 7 Of 2019, Criminal Miscellaneous No. 13 Of 2019, Special Leave Application No. 8 Of 2019

State Of Jammu And Kashmir

APPELLANT

Vs

Ghulam Nabi

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 343, 366, 376, 376B

Citation : (2021) 04 J&K CK 0002

Hon'ble Judges : Sanjay Dhar, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : Aseem Sawhney

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The order of acquittal of the accused dated 20.01.2018 is sought to be challenged by the appellant-State in accompanied appeal. As the appeal has been filed after the expiry of period of limitation, application on hand has been filed seeking condonation of delay in its filing. The appellant has also filed an application seeking special leave of this Court to file the appeal against the acquittal.

2. The brief case of the prosecution is that on 23.04.2012, the father of the prosecutrix lodged a report in Police Station, Billawar contending therein that his daughter had been missing from his house at Kohag since 15.04.2012 and acting on the same, the police concerned had registered missing report. On 19.04.2012, it was informed by the complainant that the respondent had kidnapped his daughter and as a result of this information, FIR No.49/2012 for commission of offence punishable under Sections 366/109 RPC was registered. During the course of investigation, the statements of witnesses were recorded and the prosecutrix was recovered from custody of accused from Gadbal,

Kokarnag District Anantnag. Subsequent to which the respondent was arrested. The challan in the aforesaid FIR was presented before the Court of Judicial Magistrate, Ist Class, Billawar and the same was committed to the Court of learned Principal Sessions Judge, Kathua. Charges were framed against the accused by the learned trial court for the offences under section 343/366/376 RPC on 23.08.2012 to which he pleaded not guilty and claimed trial. The prosecution produced the evidence of as many as eight (08) witnesses including the prosecutrix and the trial Court after having considered the evidence so produced, found that the prosecution has failed to prove the charge against the accused and as such the accused/respondent herein was acquitted of all the charges by the learned trial Court.

3. Before dealing with the application seeking condonation of delay it would be appropriate to examine the impugned judgment to find out as to whether or not any interference is warranted therewith, so that injustice may not occasion merely because of lapse on the part of the appellant-State in filing the appeal within the prescribed period of limitation.

4. We have heard learned counsel appearing for the parties and carefully perused the material on record. The grounds inter alia taken by the appellant in the memo of appeal are that the prosecution has established the case against the respondent and there was sufficient material on record to convict the respondent but the learned trial Court has not appreciated the law, facts and evidence in its true and correct perspective.

5. The prosecutrix being the most material witness in the present case deposed that she was divorced by the accused on the basis of a written divorce deed. She was abducted by the accused while she was going to the house of her sister at Dharamkot and was taken by him in a bus full of passengers to Udhampur despite her protest. She had also made hue and cry but was of no avail. Thereafter the accused forced her to board a Sumo vehicle and took her to Srinagar. The accused took her to his house at Kokernag where she was raped by him thrice during the night.

6. Mr. Aseem Sawhney, learned AAG vehemently argued that Section 376-B would attract to the facts of the case in hand as it is a case of forced sexual intercourse during the separation. It is further submitted that the prosecutrix was under constant threat and trauma, therefore, she was unable to attempt an escape from the clutches of the accused.

7. It emerges from the testimony of the prosecutrix that even after her divorce with the accused she was in constant touch with him, which becomes clear from her conduct in accompanying the accused on the day of her alleged abduction from Dharamkot to Kokernag, that too in a bus and a Sumo vehicle full of passengers. Her statement that she made a hue and cry but nobody paid heed to her cries during her journey, is opposed to common sense, difficult to comprehend and raises serious suspicion on the credibility of her testimony.

8. In case of sexual assault the testimony of prosecutrix has to be tested on the touch stone of her conduct. When she was allegedly abducted by the accused and taken to Kokernag where she spent about 8/9 days in the company of accused, it is surprising to know that she did not reveal anything to any person there. This casts a serious doubt over the veracity of her story because she accompanied the accused without protest and without trying to escape during the whole episode.

9. So far as the medical evidence tended by PW-7 Dr. Anshu Charak is concerned, the report EXT-P7 regarding the examination of the prosecutrix shows that there is no evidence of recent intercourse.

10. On reading of the evidence of prosecutrix in totality of the circumstances along with other evidence, her deposition does not inspire the confidence of this Court so far it concerns with the conviction of the accused.

11. It is well settled in law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the trial Court is a reasonable view of the evidence on record and the findings recorded by the trial Court are not manifestly erroneous, contrary to the evidence on record or perverse. [See Ram Swaroop and others vs State of Rajasthan, (2002) 13 SCC 134; Vijay Kumar vs State by Inspector General, (2009) 12 SCC 629 and Upendra Pradhan vs State of Orissa, (2015) 11 SCC 124].

12. So far as the application seeking to condone the delay in filing the Criminal Acquittal Appeal is concerned, a perusal of the file reveals that there is 255 days delay in filing the appeal. The judgment impugned came to be delivered on 20.01.2018. In the application, the State has not mentioned as to when it had applied for obtaining certified copy of the judgment. It is revealed that sanction to file the appeal was given on 09.03.2018 and the appeal came to be filed only on 04.01.2019. The applicant has failed to give any cogent reason for this delay, let alone explain day-to-day delay in filing the appeal. Delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect, is not sufficient cause to condone the delay. The Hon'ble Supreme Court in SLP (Civil) Diary No(s).19846/2020 titled as Union of India Vs. Central Tibetan Schools Admin & Ors., decided on 04.02.2021 while dismissing it on account of delay observed as under:-

"We have repeatedly been counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we

are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]...."

13. For the foregoing reasons, we do not find any merit in the application and as such the application seeking condonation of delay deserves to be rejected and accordingly, the same is dismissed. Resultantly, in light of dismissal of condonation of delay application, the application seeking special leave to appeal as well as the Criminal Acquittal Appeal shall also stand dismissed, being time barred.