
(2014) 08 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : COD No. 300/2014, IA No. 301/2014 and Acq. Appeal No. 26/2014

State of J&K

APPELLANT

Vs

Firdous Ahmad Chopan

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 197

Hon'ble Judges : Mohammad Yaqoob Mir, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Allau-ud-din Ganai, Dy. AG, Advocates for the Appellant

Judgement

Mohammad Yaqoob Mir, J.—Dissatisfied with the judgment dated 04.11.2013 passed by the Court of Id. Sessions Judge, Bandipora,

where-under respondent has been acquitted, appellant-State has chosen to file the appeal after prescribed period of limitation. For so filing, has

filed one application seeking leave, another seeking Condonation of delay of 179 days. In order to ascertain as to whether there is any merit in the

stand of the appellant so as to grant permission and also to condone the delay, we have heard learned Dy. AG, appearing for the appellant.

Unnecessarily State has chosen to prefer the appeal. There is no scope of its success. It being so, to grant permission and then to condone the

delay shall be a futile exercise.

2. Registration of the case as Crime No. 232/2009 P/S Bandipora for commission of offences punishable under Section 366, 376 RPC culminated

in filing charge sheet (challan) against the respondent-accused. Trial thereof culminated in acquittal.

3. Police machinery was set in motion by the complainant by complaining that on

06.12.2009 his minor sister (prosecutrix) went to a shop for purchasing purposes but did not return back. She was allegedly abducted by the respondent-accused with the aid of two persons, namely, Bashir Ahmad Dar and Abdul Rashid Ganai, thereafter she was subjected to sexual intercourse against her will. On investigation, it surfaced that the prosecutrix was major. Furthermore, as against other two persons no evidence was available, therefore, during investigation it was concluded that the accused had abducted the prosecutrix and subjected her to forcible sexual intercourse.

4. Prosecution out of listed 15 witnesses has produced and examined only 04 witnesses. PW Mohammad Rafiq Bhat has stated that he has no knowledge about the occurrence, was declared hostile but nothing favourable to prosecution has been elicited from him in the cross examination.

5. PW Gh. Rasool Malla (uncle of the prosecutrix) has stated that he is not eye witness to the occurrence.

6. PW Asif Iqbal (brother of the prosecutrix) has stated that on the date of occurrence prosecutrix had gone to her maternal uncle for fetching milk but did not return as a result whereof report was lodged, police party recovered the prosecutrix from the custody of the accused. In the cross examination has qualified that he was not available at home so cannot say when the prosecutrix was kidnapped.

7. The star witness of the case i.e. the prosecutrix has demolished the edifice of the prosecution case as in examination-in-chief has stated that she was on way to the house of her sister when accused met her and asked her to accompany him. Thereafter accused took her to Sopore where they stayed in a hotel for three days. The accused performed Nikah with her forcibly. Thereafter on way back, police party accompanied by her brother apprehended them and brought them to police station. After medical examination, she was handed over to her family. In the cross examination she has stated that the accused is known to her for last five years but they did not have any love affair. Accused met her on the road.

Then said she and accused met abruptly and straightway went to Sopore. Both travelled in a bus up to Sopore. Many passengers boarded the bus. She and accused boarded the bus at bus stop where many passengers were waiting but she did not count as to how many passengers were

waiting there. It took them at least one hour to reach to Sopore. She did not divulge to any passenger or conductor of the bus that the accused is

taking her to Sopore. On reaching Sopore they straightway went to a hotel. At bus stand there were many people and vehicles. After three days

they left the hotel and straightly went to the house. Then has qualified ""that the accused neither committed any force on her nor teased or harassed

her. Accused did not touch her, however, he forcibly performed Nikah with her"".

8. Taking the statement of the prosecutrix on face value, the only inescapable conclusion is that the prosecutrix has given a lie to the whole

prosecution case.

9. PW Dr. Naseema has stated that the prosecutrix was examined by her, no marks of violence were noticed on her private parts, hymen was

ruptured. In her opinion intercourse was done. In the cross examination has stated there can be other causes for rupture of hymen but the nature of

rupture of hymen in case of intercourse is different than other causes. She cannot say whether it was with consent or not. The intercourse has been

done before 24 hours.

10. Prosecutrix in her statement has qualified that the accused neither has committed any force on her nor teased or harassed her and even did not

touch her. There remains no question of commission of offence. The statements of prosecution witnesses as have been produced and examined,

more particularly the statement of the prosecutrix is enough to reject the case of the prosecution, as has been rightly done by the trial court.

11. In the backdrop of the statements of the prosecution witnesses more particularly of the prosecutrix coupled with the acquittal, there is no scope

to interfere with the judgment impugned. The merit of the judgment impugned, as noticed hereinabove, would suggest that it shall be useless to

grant permission for filing appeal. Under such circumstances neither delay in preferring the appeal is condonable nor allowing the application

seeking leave to prefer appeal is warranted, both the applications, as such, are dismissed. Resultantly, appeal is also dismissed. Copy of the

judgment be sent to the trial court for information.