

**State of Uttarakhand Vs. Irfan and Others**

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**Court :** Uttaranchal

**Decided On :** Dec-24-2012

**Judge :** The Honourable Chief Justice Mr. Barin Ghosh & U.C. Dhyani

**Appeal No. :** Special Leave to Appeal No. 94 of 2012 In Government Appeal No. 32 of 2012 With Delay Condonation Application No. 1197 of 2012

**Appellant :** State of Uttarakhand

**Respondent :** irfan and Others

**Judgement :**

Barin Ghosh, C. J. (Oral)

1. Respondents have been served. Learned Advocates, Mr. Navneet Kaushik and Mr. Mohd. Umar, have filed Vakalatnama on behalf of the respondents. Their names are appearing in the list, but they are not appearing.

2. There has been 84 days delay in preferring the appeal and, accordingly, an Application for condonation of delay has been filed. No one is seeking to object the said Application. We have perused the averments made in the Application for condonation of delay and have found that the reason for the delay was delay in granting permission to prefer appeal. What could be done when the same was done, could also be done within the time by which the same was required to be done. Therefore, though there is no good reason for the delay; but, having regard to the fact that the Government is required to depend on discharge of duties by

Government servants and, it is because of the laches on the part of the Government servants that there has been delay in preferring the appeal, we condone the delay and, thereby, allow the Application for condonation of delay, inasmuch as, for the laches on the part of the Government servants, a good cause for the Government should not be permitted to be rejected on technical ground.

3. Heard on the merit of the Application for leave to prefer appeal.

4. In the instant case, respondents were charged for having committed offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, inasmuch as, they allegedly kidnapped victim Shamshida, who deposed as PW1, and raped her. It was alleged that the victim was less than the age permitting her to give consent to have sexual intercourse. This, the prosecution failed to prove. The doctor, who examined PW1 and deposed as a prosecution witness, stated that, upon medical examination of PW1, he was of the view that she was within the age of 17 to 18 years. Therefore, proceeding on the basis that PW1 was about 18 years old at the time of the incident, is not interferable. PW1 stated, in course of tendering evidence, that she had intercourse with one of the respondents, but, as would be evidenced therefrom, the same suggested consensual. PW1 remained with the respondents, as stated by her in course of tendering evidence, for a period of about a month and, during that period, was not confined. She was free to move and she moved freely. Having regard to the said state of affair, the court below has not been able to convince itself that the prosecution has been able to make out a case punishable under Sections 363, 366 and 376 of the Indian Penal Code. The nature of evidence is such, and particularly the evidence of PW1, as recorded by the court below, is such that, on the basis thereof, it is not possible to convict the respondents under any of the said Sections and, accordingly, grant of leave to prefer appeal will be an idle formality.

5. We, accordingly, reject the Application seeking leave to prefer appeal. Consequentially, the Government Appeal stands dismissed.

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