

State Vs. Rahul .

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Court : Delhi

Decided On : Dec-22-2010

Judge : Anil Kumar. ; S.L.Bhayana, Jj.

Acts : Indian Penal Code (IPC) - Sections 363/366/376; Code of Criminal Procedure (CrPC) - Sections 161, 164, 313

Appeal No. : Crl. L.P. No. 429/2010

Appellant : State

Respondent : Rahul .

Advocate for Pet/Ap. : Mr.Lovkesh Sawhney, Ads.

Judgement :

This is an application by the petitioner seeking condonation of delay in filing the petition seeking leave to appeal. The applicant has contended that after the judgment dated 18th February, 2010 was passed by the Trial Court acquitting the respondent, the public prosecutor and chief prosecutor recommended the case for filing of appeal which was done after obtaining the true copy of the judgment. The applicant contended that the matter was considered by various authorities including Law Secretary, Govt. of NCT and the Law Department, which gave approval for filing the petition seeking leave to appeal where after the matter was entrusted to the standing counsel of the Delhi Govt. which resulted into a delay of 154 days in filing the petition seeking leave to appeal. The applicant has relied on

Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., (1987) 2 SCC 107 and State of Nagaland v. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical deflection of sufficient causes for explaining every day's delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants hence it cannot be put on the same footing as an individual.

Considering the facts and circumstances and the law relied on by the applicant, there is sufficient cause for condonation of delay in filing the petition for leave to appeal. Consequently, the delay of 154 days in filing the petition for leave to appeal is condoned and the application is allowed.

The petitioner/State has filed this petition seeking leave to appeal against the judgment dated 18th February, 2010 passed in Sessions Case No. 131/2008 titled as State v. Rahul arising out of FIR 449/2008, PS Najafgarh, under Sections 363/366/376 of IPC, acquitting the respondent of the charges made against him. Brief facts as propounded by the prosecution are that Mithlesh, wife of Radhey Shyam lodged a report on 6th August, 2008 about her daughter, named, Malti aged about 13 years that she is missing. On 9th August, 2008, three days after lodging the missing person report, the complainant lodged a complaint that her daughter had returned back and she was taken away by the respondent on the pretext of marrying her. The complaint was investigated and the statement of the prosecutrix, namely, Malti was recorded under Section 161 of the Crl. Procedure Code and after she was medically examined, her statement was also recorded under Section 164 of Crl. Procedure Code. On completion of investigation, charge sheet was filed against the respondent under Section 363/366/376 of IPC and the charges were framed on 14th May, 2009 for offences punishable under said sections to which the respondent pleaded not guilty and claimed trial. During Trial, the prosecution examined 14 witnesses including the prosecutrix Malti and the statement of the respondent under Section- 313 of Crl. Procedure Code was also recorded. The accused/respondent stated that he has been implicated falsely,

however he did not adduce his evidence in defence.

The Trial Court considered the testimony of PW-5, Malti, prosecutrix and her statement recorded under Section-164 of Criminal Procedure Code before the Metropolitan Magistrate. On perusal of said statement, it transpired that no allegations were made against the respondent. The said witness, however, before the Court, deposed that the respondent had promised to take her to Gujarat and had forced her to marry him under the threat to kill her father. She stated that she had accompanied the respondent to Meethapur, Badarpur, where she was kept in a house for two/three days and was raped by the respondent. She deposed that when the respondent was taking her from Badarpur to other place, her uncle Keshav raised an alarm and they were apprehended. Considering the testimony of PW-5 Malti, the Trial Court noted various contradictions and omissions and held that her testimony was not trustworthy as in her statement under Section 161, she had stated that the respondent was known to her and he used to come to her house while in her statement before the Metropolitan Magistrate under Section-164 of Cr. Procedure Code, she stated that the respondent was known to her one month prior to the incident, however, in the cross-examination in the Court, she contended that the accused was not known to her prior to the incident. The fact that the respondent had threatened her to kill her father and she had accompanied him under the threat was not disclosed in her statement under Section-161 of Crl. Procedure Code. The Trial Court also noted the unreliable conduct of the prosecutrix as she did not raise any alarm while travelling in bus or scooter to Meethapur, Badarpur and even stayed with the respondent for 2-3 days as per her version without making any attempt to take help on any neighbor. She did not try to attract the attention regarding her kidnapping. The Trial Court noted the absence of any allegation of rape in the statement made before the Metropolitan Magistrate under Section-164 of Crl. Procedure Code, which was exhibited as Ex. PW-11/B. The reliance was also placed on the MLC. There were no injury marks noted on the genital of the prosecutrix and the hymen rupture was also found to be old. The MLC did not reflect any abrasion and bleeding and the report indicated that rape was not committed on the prosecutrix. Only ossification test was done to ascertain the age of the prosecutrix and on account of margin of 3 years in such test, it was held that prosecution had failed to prove that the prosecutrix was minor

on the date of alleged incident. In these circumstances and for these reasons, the Trial Court has held that the prosecutrix was neither enticed nor taken away against her wishes and consent and she was a consenting party to the elopement and acquitted the respondent.

This is no more *res integra* that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favor. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held 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 favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based

and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal. This Court has heard the learned counsel for the State, Mr. Sawhney, learned Additional Public Prosecutor in detail and have also perused the Trial Court Record, especially the statement of the prosecutrix under Section-161 of Cr. PC, statement recorded before the Magistrate under Section-164 and the statement recorded before the Court.

The learned additional public prosecutor, though, has tried to contend that the statement of the prosecutrix recorded before the Court is reliable, however, no plausible explanation has been given regarding various contradictions and major inconsistencies in the three statements.

This has not been denied and cannot be denied that the prosecutrix travelled to Meethapur, Badarpur by public transport or by scooter. There were ample opportunities to the prosecutrix to attract the attention of others that she has been kidnapped. Her version that she was threatened that her father would be killed, is also not reliable in the facts and circumstances and consequently, the inferences drawn by the Trial Court that the prosecutrix was not enticed away and was a consenting party to go with the respondent cannot be termed to be unsustainable or contrary to the evidence on record. The learned additional public prosecutor has not been able to point out any such evidence which has not been taken into consideration, the consideration of which would have led the Trial Court to different inferences.

In the circumstances, the findings of the Trial Court cannot be termed to be unsustainable or perverse in any manner. Even this Court, on perusal of the evidence is of the opinion that the prosecutrix was not enticed away and she was a consenting party to elopement. The learned additional public prosecutor has also not been able to show any cogent evidence on the basis of which it can be inferred that the prosecutrix was a minor on the date of incident.

In the circumstances, the petitioner has failed to raise any such grounds on the basis of which leave to appeal should be granted to the petitioner against the judgment dated 18th February, 2010 acquitting the respondent. Therefore, in the

totality of facts and circumstances, there are no grounds to grant leave to appeal to the petitioner. The petition for leave to appeal is without any merit and it is, therefore, dismissed.

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