

State Vs. Rajender and anr.

State Vs. Rajender and anr.

SooperKanoon Citation : sooperkanoon.com/907692

Court : Delhi

Decided On : Dec-15-2010

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

Acts : Limitation Act - Section 5; Indian Penal Code,(IPC) - Sections 373/511/323/368/363/365/366/366A/372/376/506; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 164, 313

Appeal No. : Crl. L.P. No. 385/2010

Appellant : State

Respondent : Rajender and anr.

Advocate for Pet/Ap. : Lovkesh Sawhney, Adv.

Judgement :

This is an application seeking condonation of delay under Section 5 of the Limitation Act in filing the petition for leave to appeal against the judgment dated 19th April, 2010.

The applicant has contended that he has a prima facie case and the petition seeking leave to appeal has been delayed on account of many factors. According to the applicant, considerable time was taken for procuring the certified copy of the judgment. Thereafter, time was taken in preparing a report recommending the filing of the petition for leave to appeal and perusal of the recommendations by the director of prosecution and by Secretary, Law and Justice. The applicant has

contended that 80 days delay occurred on account of various steps taken in finalizing the decision to file the petition seeking leave to appeal and in the circumstances, it is contended that there is sufficient cause in the facts and circumstances to condone the delay in filing the petition for leave to appeal.

The applicant has relied on *Collector of Land Acquisition v. Katiji*, (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 defection of sufficient causes for explaining every days 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 law cited by the applicant, there is sufficient cause in condoning the delay of 80 days in filing the petition for leave to appeal. Therefore, the application is allowed and the delay of 80 days is condoned in filing the petition for leave to appeal.

The petitioner has filed the present petition for leave to appeal against the judgment dated 19th April, 2010 acquitting the respondents in Sessions Case No. 37/2010 titled as *State vs. Rajender & Ors.* arising out of FIR No. 89/2009 under Sections- 373/511/323/368/363/365/366/366A/372/376/506 of IPC, PS Najafgarh.

The case of the prosecution is that on 27th February 2009 the accused Ranjeet had kidnapped the prosecutrix, Sitara from her house and after making her unconscious took her to a room for illicit sexual intercourse with a further intent to sell her to accused Rajender in complicity with Mahender Rana. Initially the allegations were made by Ranjeet against Mamta, alleging that she had kidnapped his wife and FIR No.89 under Section 365 and 366 was registered on 28th February, 2009. During investigation of the said FIR, at the instance of Ashok, brother of Mamta, prosecutrix was recovered from village Tonk and was brought to Delhi, where her statement was recorded. On the basis of the statement made by prosecutrix, further investigation was carried out. Believing the statement of the

prosecutrix the complaint lodged under FIR No. 89 was abandoned.

The allegations were that Ranjeet had kidnapped the prosecutrix on 27th February, 2009 after making her unconscious and thereafter had taken her to a room with the purpose of seducing her to have illicit intercourse with Rajender. The charge for selling the prosecutrix to accused Rajender was also made besides the charge under Section 506 of IPC for extending threats to her that in case she would leave the place, her parents would be killed. Against accused Rajender, charge under Section 373 for purchasing the prosecutrix from accused Ranjeet and Mahender Rana and under Section 368 for keeping the prosecutrix at his residence knowing that she had been abducted, was also framed. Accused Rajender was also charged under Section 376 of IPC r/w Section 511 of IPC for attempting to commit rape of prosecutrix and under Section 323 of IPC for causing simple hurt with belt to the prosecutrix during her stay with accused Rajender.

The statement of prosecutrix under Section 164 of Crl. Procedure Code was recorded where she deposed that she is a resident of the village Tonk in Rajasthan. In her house Ranjeet used to reside as a tenant who had an evil eye on her jewellery. According to her, when she was coming back from the bathroom Ranjeet had placed a cloth on her face, which made her unconscious and when she regained consciousness, she found herself in Delhi. When the prosecutrix expressed desire to go back to her parents, she was threatened and told that henceforth she would not go back to her house otherwise she and her parents would be killed. She also deposed that Ranjit used to beat her and have sexual intercourse, resulting into prosecutrix getting pregnant and he used to kick her on her stomach. She denied that she had married Ranjeet. According to her, she and Ranjeet were at Delhi residing in the house of Rana Mahender who also had an evil eye on her. She was pressurized to marry Rana Mahender Singh or some other person.

According to the prosecutrix, Ranjeet and Rana Mahender Singh afterwards left her in the village Khondla with accused Rajender. She was told that Ranjeet has sold her to Rajender and Ranjeet also tried to rape her and used to beat her. However, later on, the prosecutrix was left at Tonk at a place Pahari and one

Ashok left her at the house of her uncle from where she was recovered by the Police. It was also contended on behalf of the prosecution that the prosecutrix was 15 years old.

The charges were framed against Rajender on 31st July, 2009 that he purchased the prosecutrix Sitara @ Laxmi, who was below 18 years of age on 26th February, 2009 from Ranjeet and Rana Mahender Singh with the intent to employ her for prostitution and illicit intercourse and thus, committed an offence punishable under Section 373 of IPC. He was also charged for the offence punishable under Section 376 of IPC as allegedly on 26th February, 2009 accused Rajender tried to rape the prosecutrix. Charge under Section 323 of IPC was also framed on account of beating the prosecutrix with a belt and causing simple hurt to her from 26th February, 2009 till March, 2009 and under Section 368 of IPC for keeping the prosecutrix at his residence knowing that she had been abducted by Ranjeet for committing illicit sexual intercourse. The accused Rajender pleaded not guilty and claimed trial. The charges were framed against the accused Ranjeet on 6th August, 2009 that 4-5 months prior to 27th February, 2009, he made the prosecutrix unconscious and kidnapped her from the lawful guardianship of her father Mohammudin and thus committed an offence punishable under Section 363 of IPC and wrongfully confined her at Delhi and committed an offence punishable under Section 365 of IPC and under Section 366 for abducting the prosecutrix with the intent or knowledge that she would be forced to have illicit intercourse with the accused Ranjeet and under Section 366A of IPC for inducing the prosecutrix to have illicit intercourse with another accused Rajender and under Section 372 of IPC for selling the prosecutrix to accused Rajender with the intent or knowing that she would be employed for illicit sexual intercourse and that he would also try to rape her. The charges were also framed under Section 376 for raping the prosecutrix for 4-5 months prior to 26th February, 2009 and for threatening the prosecutrix that if she would leave, she and her parents would be killed under Section 506 of IPC. The accused Ranjeet pleaded not guilty and claimed trial. During trial the prosecution examined 19 witnesses and the statements of accused Ranjeet and Rajender under Section 313 of Cr.P.C. were also recorded. After the statements were recorded under Section 313 of Cr.P.C., the Trial Court considered the statement of the prosecutrix under Section 164 of the Cr.P.C and

her deposition before the Court and found them to be totally inconsistent and the two statements could not be reconciled. The deposition of the prosecutrix was found to be unreliable. The Trial Court observed that on the one hand the prosecutrix had taken the stand that she was under the threat of Mamta and Ashok to give a particular statement and that is why she had given the statement before the police as was dictated by Mamta against Mahender Singh Rana, however, when Mamta appeared as PW-8, she was cross-examined on the lines as was deposed by the prosecutrix before the Court. It was also noticed from the cross-examination of Mamta that she was not present at the time of recovery of prosecutrix from the house of her uncle which fact was also corroborated by the prosecutrix deposing that Mamta was not present. Thus, it was inferred that the prosecutrix was alone when she was recovered and brought by police from her uncles house, which was found to be contrary to the prosecution version that Mamta and prosecutrix were brought together from the house of the uncle of Mamta. The Trial Court has also relied on the fact that as per the case of prosecution, Ranjeet had stated in his complaint that Mamta had taken away his wife but no investigation was made regarding the allegations made by the accused Ranjeet. The Trial Court also inferred that though the prosecutrix is a Muslim and Ranjeet is Hindu, however, she adopted a Hindu name, which reflects that the stay of the prosecutrix with Ranjeet was in the nature of a permanent stay and that is why she changed her name and used to address Mamta as Mummy, which was also admitted and stated by her in her cross-examination.

The plea of the prosecution that the prosecutrix was a minor was also disbelieved. Though her brother admitted that there is a ration card which includes the name of the prosecutrix, which ration card was neither produced by the brother of the prosecutrix nor was recovered by the Police, which could have proved the age of prosecutrix. As per the bone-age X-ray and the report Ex. PW-1A, her bone age was found to be 15-17 years. If she was more than 16 years of age she was competent to give consent for sexual intercourse. The Trial Court also relied on the cross-examination of PW-1 Dr. L.R. Richhela, who admitted that meeting of proximal end of tibia, which is just fusing, would reflect that the age of the prosecutrix is more than 17 years. It was inferred that if a particular bone is fusing and the process of fusing starts only after 17 years, then, the age is bound to be

more than 17 years. Taking into consideration the margin of two years, it has been inferred that the age could be more than 19 years and thus, it was concluded that the prosecution has failed to prove that the prosecutrix was a minor. While acquitting the respondents, the Trial Court also relied on the fact that the prosecutrix herself got her pregnancy terminated and while doing so, though she had ample opportunity to lodge complaint, she opted not to do so. The incident of kidnapping her sex was also disbelieved as she had changed her initial version that she was made unconscious to the version that she was put under a spell by Ashok who was engaged in the business of jadu tona. She also deposed that later on she was taken in a bus and despite being in presence of many persons in the bus she did not attempt to attract the attention of others or tried to tell anyone that she has been kidnapped and being taken away against her will and wishes. Though she was shifted from the house of Mamta to another house and then to the house of Mahender Singh Rana, where the prosecutrix stayed for more than six months, however, she did not attempt to intimate anyone or complain to anyone during her stay that she has been kidnapped and being held against her will and wishes. On the basis of testimonies of the witnesses, it has also been noticed that she remained with Rajender for more than 15 days and with Ashok for more than seven days, however, she did not complain to anyone or tried to flee or take help of some one. Reliance was also placed on the testimony of PW-7 Habib-ul-Rehman with whom she was left and from where she was recovered, however, the prosecutrix did not even tell him that she had been kidnapped. Sh. Habib-ul-Rehman, who was her uncle, was not told by the prosecutrix about her kidnapping and thus making her version that she was kidnapped and raped against her wishes extremely doubtful. The prosecutrix herself denied her sale by Ranjeet to Rajender and her purchase by Rajender. Rather she deposed that Rajender did not commit any wrong act with her. She even admitted that Rajender did not know that she had been kidnapped and he had told Ranjeet that he should not keep her at his residence. In the cross-examination of the prosecutrix she denied that Ranjeet and Mahender Singh Rana had colluded and Rajender had tried to rape her. She rather denied that Ranjeet had placed a cloth on her mouth to make her unconscious, instead she stated that she was put under a spell by Ashok. The examination-in-chief of the prosecutrix was found to be completely at variance with

the case set up by the prosecution. In the case set up by the prosecution, it is contended that Ranjeet was a tenant and he had an evil eye on her, however in her statement before the Court, she denied that Ranjeet had any evil eye on her and that she had complained about this fact to her parents and that Ranjeet had begged pardon from her father. She also denied Ranjeet had left her at the house of Ashok.

In her cross-examination, the prosecutrix admitted that Ranjeet used to leave for work in the morning and used to return back in the evening and she used to be alone and when she used to be alone, she used to visit the house of Mamta and in the circumstances despite having ample opportunity for the prosecutrix to leave or to narrate her tale to nearby residents or go to police, she did not do anything which reflects of her consent and her willingness.

Forcible sexual intercourse was also ruled out in the facts and circumstances. Perusal of her MLC, does not show any wound CLW or abrasion on her body. MLC also rules out any forcible sexual intercourse or beatings to the prosecutrix by belt or any other type of beatings. At the time of MLC, no history of rape or the person who allegedly raped the prosecutrix was given. The version of the prosecution witness Mamta, PW-8 also negates the allegations of the prosecution, rather the entire version as given by the prosecutrix is denied by another prosecution witness. The Trial Court has also noticed that if Ranjeet and prosecutrix were missing and the prosecutrix had not married Ranjeet, it would be difficult to believe that her parents would not lodge any complaint. The fact that no complaint was lodged was admitted by the prosecutrix as PW-2 and her brother, Sh. Mohd. Saeed as PW-9. Reliance was also placed on the statement of PW-9 brother of the prosecutrix that when she was in great difficulty she had given her ring to the accused Ranjeet to save her. From this deposition, it has been inferred that if accused Ranjeet had been asked to save her, no misconduct can be attributed to him. Perusal of the testimony of PW-9 also reveals that accused Ranjeet was not coming to their house in a drunken state nor did he have an evil eye on his sister. The brother rather categorically denied that Ranjeet forcibly had sexual intercourse with his sister, the prosecutrix.

The Trial Court taking these inconsistencies in the statements of witnesses and other factors into consideration has acquitted the accused. This is settled law 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 in detail and has perused the Trial Court Record, specially the testimonies of the relevant witnesses

including the prosecutrix. The learned additional public prosecutor is unable to deny the statement of the prosecutrix being substantially at variance with the case set up by the prosecution resulting into prosecutrix being declared hostile. In her cross-examination, she has absolved Rajender of raping or trying to rape her and has also denied that Ranjeet had placed a cloth on her mouth which made her unconscious. Rather she stated that Mamta had compelled her to make such a statement. She denied that Ranjeet had any bad intentions towards her or that he used to look at her with an evil eye. The relevant cross-examination of PW-2, is as under:- " ..It is correct that my statement was recorded before a Magistrate U/s.164 Cr.P.C. It is correct to suggest that I stated therein that Ranjeet and accused Mahender Rana had colluded amongst themselves. Rajender had not tried to commit rape on my person. I have stated before the police that he had tried to commit rape on being compelled to do so by Mamta. It is incorrect to suggest that when I was returning back after attending the call of nature, accused Ranjeet placed a cloth on my mouth or that I became unconscious thereafter. Volunteered: it is Mamta, who had compelled me to make such statement. It is incorrect to suggest that Ranjeet had bad intentions towards me or that he used to look towards me with an evil eye or that I complained about this fact to my father or that Ranjeet begged pardon in this regard from my father nor I had stated so before the police. It is incorrect to suggest that accused Rajender told me that he had purchased me from Mahender Rana and Ranjeet nor I had stated so before the police. It is incorrect to suggest that accused Rajender left me at the house of Ashok on 5.3.2009. It is incorrect to suggest that I am deposing falsely and not fully supporting the case of the prosecution in order to save accused Ranjeet and accused Rajender from serious charges.

Court Question: Are you under pressure or threat from anybody? Answer: I am not under any threat, pressure or coercion from anybody and making this statement voluntarily.

XXX by Ms. Kanta Rana, Advocate from Legal Aid for accused persons.

I used to call Mamta as Mummy as Mamta used to tell me to call her Mummy. Mamta had named me as Laxmi. It is correct that Ranjeet used to leave for work in

the morning and used to return back in the evening. It is correct that in the absence of Ranjeet, I used to be alone at the house and Mamta used to call me at her house.

At the time I reached Delhi from Tonk, I was wearing earrings (Bali) which were given to me in my engagement at Tonk. The said earrings are now in possession of Mamta, Ashok, Pinnu and Rajender. I have a Ration Card. It remains at my house. My younger sister is since married with the person to whom I was engaged. It is incorrect to suggest that I am 21 years in age. At the time I made statement before the Magistrate, Mamta had forced me to make a particular statement before the M.M as otherwise, I will also remain behind Bars with her. Volunteered: we both were in the police Lock-Up at that time."

Also on perusal of the statement of PW-9 Sh. Mohd. Saeed, who is the elder brother of the prosecutrix the entire case of the prosecution is completely ruled out. If the prosecutrix and her brother have categorically admitted that she was not abducted and she was not made unconscious and that she was not raped nor was there any attempt to rape, the findings of the Trial Court cannot be termed to be unsustainable or perverse in any manner or not based on evidence. The learned public prosecutor has also failed to point out any evidence which has not been considered or any findings of the Trial Court which are based on mis-appreciation of evidence or ignoring some material evidence.

On perusal of the testimony of the witnesses, even this has to be inferred that the case made out by the prosecution has not been made out from the testimonies of the witnesses specially the testimony of the prosecutrix, her elder brother Pw-9; Dr. L.R. Richhela Pw-1 and from the MLC of the prosecutrix. In the circumstances there are no grounds to grant leave to appeal to the petitioner. The petition, in the circumstances, is without any merit and the judgment of the Trial Court dated 19th April, 2010 acquitting the respondents cannot be termed to be perverse or unsustainable so as to be interfered by this Court. In the facts and circumstances, the petition seeking leave to appeal is without merit and is, therefore, dismissed.