

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Criminal Appeal No.524 of 2011

Decided on : 31st May, 2012

STATE Appellant

Through: Mr. Sunil Sharma, APP for the State.

Versus

AJAJ AHMED Respondent

Through: Mr. Nitesh Mehra, Ms. Angel Bhardwaj &
Mr. Sanjeev Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

Crl. M.A. No.4993/2011

1. This is an application under Section 5 of the Limitation Act seeking condonation of 269 days' delay in filing the leave to appeal.

2. The State has sought condonation of delay in filing the appeal against the judgment and order of sentence dated 26.5.2010 on the ground that approval to file the appeal was obtained on 19.4.2011 and the period prior to that was consumed by the normal processes of office procedure in

obtaining the permission to appeal. No formal reply to the application has been filed.

3. The learned counsel for the respondent/accused has vehemently contested the application seeking condonation of delay by urging that no sufficient cause for condonation of delay has been shown and, therefore, the delay being substantial, it may not be condoned. He has relied upon *State (Govt. of NCT) of Delhi vs. Shashi Shekhar @ Neeraj @ Raju; 154 (2008) DLT 678 (DB)* in support of his submissions.

4. I have carefully considered the submissions made by the respective sides and gone through the judgment of Shashi Shekhar's case (*supra*). The law regarding condonation of delay has got substantially changed from the stage of *Ram Lal, Chotte Lal & Moti Lal vs. Rewa Coal Field Pvt. Ltd; AIR 1962 SC 361* case where it was observed by the Apex Court that while seeking condonation of delay, the party concerned has not only to explain as to why the appeal was not filed on the last date of hearing, but it must also explain each day's delay

thereafter. This law has been toned down substantially to the extent that now the quantum of delay has not been considered to be material. What has been considered to be material is the *bona fides* of the parties in pursuing the appeal/application or taking the steps for filing the appeal/application. It has also been observed by the Apex Court that while condoning the delay, the Court must adopt a pragmatic and practical approach and more so, when the appeal is being filed by the State, certain amount of delay in taking a decision by the various level of the Government functioning is inevitable. It has also been observed in some of the decided cases that *prima facie*, the appeal must also show that it has some merit for consideration, before the delay could be condoned. Reliance in this regard can be placed on the following judgments: *Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.*; **AIR 1987 SC 1353**, *State of Haryana vs. Chandra Mani & Ors.*; **AIR 1996 SC 1623** and *State (NCT of Delhi) vs. Ahmed Jaan*; **(2008) 14 SSC 582**.

5. Keeping in view the above broad parameters, I feel that there is *prima facie* merit in the appeal itself which persuades the court to consider the appeal on merit rather than dismiss the same on technicalities of being barred by time. The merit in the appeal is that *ex facia* the sentence to which the respondent/accused was sentenced, in a heinous crime of rape, is grossly inadequate.

6. Having regard to the totality of circumstances, in my opinion, as 'sufficient cause' was shown, the delay of 269 days in filing the appeal is condoned.

7. The application is allowed.

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8. Now comes the question of merit of the order of sentence dated 26.5.2010 passed by the learned Sessions Judge.

9. The main submission of the learned APP for the State is that the respondent/accused was convicted for an offence under Section 376/312 IPC and was sentenced by the learned

Sessions Judge to a grossly inadequate sentence. It has been stated that the sentence which has been imposed on the respondent/accused under Section 376 IPC is rigorous imprisonment for a period which is already undergone by him during the trial of the case with a fine of Rs.75,000/-. The period of rigorous imprisonment, which the respondent/accused has undergone, is only 15 days. Therefore, in effect, it means that the respondent/accused was sentenced to 15 days of rigorous imprisonment and a fine of Rs.75,000/-, in default, simple imprisonment of one year. So far as offence under Section 312 IPC is concerned, similarly, he was let off on the period undergone and a fine of Rs.25,000/-, in default, six month's simple imprisonment. The entire amount of fine was to be paid as compensation to the victim.

10. The learned APP has contended that the respondent/accused has been held guilty of the most heinous crime of rape on an innocent victim. It has been

stated by him that the respondent/accused was working as a driver of a van which was used for ferrying the children to the school and back to their homes. Sometimes, teachers also used to travel by the same vehicle. It has been alleged that the respondent/accused had not disclosed his marital status to the victim and on 1.1.2007, on which day, the festival of Eid fell, the respondent/accused took the prosecutrix to Nizamuddin Mosque on the pretext of offering prayers and thereafter, took her to Old Fort and committed rape upon her against her consent. This nefarious act was repeated by the respondent/accused on two other occasions, that is, on 17.2.2007 and 5.5.2007. It has also been stated that the victim had become pregnant because of this illicit relation established by the respondent/accused and thereafter, the respondent/accused, firstly, persuaded the victim to terminate the pregnancy but as she did not accede to the suggestion, the respondent/accused, in a surreptitious manner, took the victim to the doctor and gave some medicines by misrepresentation because of which she suffered bleeding and the foetus had to

be aborted. It has been contended by the learned APP that the respondent/accused, during the course of trial and after the examination of the victim, had seen the writing on the wall and accordingly, pleaded guilty to the charges against him. Having done so, it is contended that the learned Sessions Judge had fallen into grave error by sentencing the respondent/accused to a rigorous imprisonment of 14 days only, as the period having been undergone, apart from fine of Rs.75,000/- to be paid to the victim. The learned APP has contended that the reasons given by the learned Sessions Judge for this mild sentence are totally bereft of any merit, erroneous and show misplaced sympathy to the offender. It is, therefore, contended by him that the respondent/accused deserves to be sentenced to a most deterrent punishment so that such like persons are deterred from committing similar offences, as the crimes against the women are increasing.

11. As against this, the learned counsel for the respondent/accused has raised the question that the plea of

guilt by the respondent/accused was doubtful. It has been stated that the respondent/accused had not pleaded guilty to the charges but it was only in his statement under Section 313 Cr.P.C. that the respondent/accused is stated to have pleaded guilty. The said plea of guilt by the respondent/accused in his statement under Section 313 Cr.P.C. cannot be considered to be a plea of guilt by the court. It is contended that the respondent/accused could not have been convicted at all. Reliance in this regard has been placed on a case titled *Gamdoor Singh vs. State of Punjab*; **1981 CrL. L.J. 1912**.

12. So far as the question of enhancing the sentence of plea of guilt is concerned, it has been stated by the learned counsel that any enhancement of sentence on the accused would be violative of Article 21 of the Constitution of India. In this regard, the respondent/accused has placed reliance on a case titled *Thippaswamy vs. State of Karnataka*; **AIR 1983 SC 747**. Extending this argument further, it was contended by the learned counsel that adequate and special reasons for

imposing punishment, which is lesser than the one which is sought to be imposed on the respondent/accused, has to be considered sufficient to meet the ends of justice. It has also been stated by the learned counsel for the respondent/accused that by enhancing the punishment of the present petitioner, it will not do any service to the society and, therefore, there is absolutely no necessity of enhancing the sentence to further incarceration. It is also contended that so far as the respondent/accused is concerned, he has already compensated the victim by paying a sum of Rs.1 lac or so.

13. I have carefully considered the submissions made by the respective sides. I have also gone through the impugned order. I do not agree with the submissions of the learned counsel for the respondent/accused that the plea of guilt of the respondent, during the recording of statement under Section 313 Cr.P.C., cannot be said to be a plea of guilt. In this regard, no doubt, the learned counsel has placed reliance on the Single Bench judgment of the Punjab and Haryana High

Court. I have gone through the said judgment. No doubt, there are observations made to that effect in the judgment but, I do not feel that this is correct legal position with regard to the question of plea of guilt and the imposition of sentence. I do not agree that law makes any distinction between the plea of guilt recorded at the time of framing of the charge or at the time of recording of the statement under Section 313 Cr.P.C. or subsequent thereto. In the instant case, no doubt, the respondent/accused had pleaded not guilty to the charge but thereafter, the Prosecution adduced its evidence. The prosecutrix appeared and her statement was recorded wherein she fully supported the case Prosecution case, but the respondent/accused, seeing the writing on the wall, decided not to contest the matter and pleaded guilty. The learned ASJ recorded the statement of the respondent/accused and it satisfied himself fully that the statement was being made by him voluntarily without any threat, coercion or inducement. Therefore, this has to be treated as a plea of guilty notwithstanding the fact that it was not said before the learned

trial court. I accordingly feel, so far as this submission made by the learned counsel for the respondent is concerned, it is bereft of any logic or merit. The respondent/accused, in the instant case, has admitted his guilt without any fear, coercion or inducement immediately when he saw the writing on wall inasmuch as the statement of the prosecutrix have been recorded, who had given a graphic description about the incident which had taken place and was done by the respondent/accused. The judgment of Gamdoor Singh's case (*supra*) is not applicable to the facts of the present case.

14. So far as the sentencing is concerned, no doubt, the offence of rape under Section 376 IPC is punishable with imprisonment not less than seven years, which may be for life or for a term which may extend to ten years; and the offence of abortion of an unborn child under Section 312 IPC is punishable with imprisonment of either a term which may extend to three years or with fine or with both.

15. It is stated by the learned counsel for the respondent/accused that both these offences may not be visited with heavy punishment as the respondent/accused is the only bread-earner. It is also stated that he has two daughters and old parents and, therefore, the learned Trial Court had taken a lenient view.

16. The Apex Court in case titled *State vs. Krishnappa*; **AIR 2000 SC 1470**, has observed as under:-

"Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity – it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."

17. On the contrary, the mandate of the Apex Court repeatedly in different judgments has been that the offence of rape requires an exemplary treatment and adopting of liberal

attitude by imposing meager sentences or taking too sympathetic view, merely on account of lapse of time, in respect of which the respondent/accused has been charged, will be counter productive meaning thereby the Apex Court has expressed its consent that the court must impose adequate punishment on the offender so as not only to deter him but also to deter the like minded persons. The Apex Court has also held that while sentencing an offender under Section 376 IPC, it is the nature and gravity of the crime but not the criminal, which is germane for consideration of appropriate sentence in a criminal trial. Leniency in matters involving sexual offences is not only undesirable and it goes against the public interest. Such types of offences are often dealt with severity so as not only to show deterrence qua the victim but also against the general public.

18. Reliance in this regard is placed on *State vs. Parasram & Anr.*; **2005 SC 3629** and *State vs. Makhmal Khan*; **AIR 2005 SC 3667**.

19. In the instant case, the learned Sessions Judge has given an erroneous reason for imposing lesser punishment. The first consideration with which the learned Sessions Judge has got swayed is the fact that the respondent/accused has two brothers, a wife, two children and old age parents and he is the sole bread earner. These factors are not directly responsible. On the contrary, it is a case where, if facts are kept in mind, the respondent/accused has not only misrepresented to the victim that he was unmarried but has tricked her into physical relationship by misusing his position as a driver of a school van. Even on one occasion, he has given her edibles laced with sedatives and then subjected her to rape. The respondent/accused has made even the unfortunate victim pregnant, which was then surreptitiously got terminated. On account of this episode, in the life of the victim, not only she had gone into depression, but the entire family was devastated. She has also been removed from the job and had become not only financially and economically but also morally destitute as noted by the learned ASJ. These

considerations, as a matter of fact, should have been a ground for sentencing the petitioner to most severe punishment rather than it has been made as a ground for taking a lenient view of the matter by the learned Sessions Judge. Erroneously, the respondent/accused has acted in most calculated manner to satisfy the lust.

20. In my considered opinion, this is an erroneous and a perverted reasoning given by the learned Sessions Judge in sentencing the respondent/accused to inadequate punishment. I do not agree with the contention of the learned counsel for the respondent/accused that enhancing the sentence of the respondent/accused would result in violation of his rights under Article 21 of the Constitution of India or that adequate and special reasons for enhancing the sentence need to be recorded. In totality of circumstances, I feel that the sentence which has been imposed on the respondent/accused is grossly inadequate and makes mockery of the processes of law, in case the same is permitted to stand. No amount of

compensation, which is paid by the offender to the victim, can compensate her for the loss of her honour and prestige or for that matter, do away the scar which she has suffered.

21. I, accordingly, set aside the order of sentence dated 26.5.2010 passed by the Sessions Judge and enhance the sentence of the respondent/accused to a period of seven years rigorous imprisonment apart from the fine imposed by the learned ASJ for an offence under Section 376 IPC. Similarly, for the offence under Section 312 IPC, he is sentenced to rigorous imprisonment of one year and the fine already imposed. Both the sentences are to run concurrently. The respondent/accused be accordingly taken into custody.

22. The appeal accordingly stands allowed.

23. A copy of the order passed by this court be supplied to the respondent/accused free of cost.

V.K. SHALI, J.

MAY 31, 2012
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