

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CrI LP(D) No. 46/2023

CrIM No. 1173/2023

Union Territory Through SHO Police
Station, Ramnagar.

...Petitioner(s)/Appellant(s)

Through: Mr. Raman Sharma, AAG.

V/s

Makhan Lal@ Makhnu S/o Hans Raj
@Puttu R/o Kanha Tehsil Ramnagar,
District Uthampur.

.... Respondent(s)

Through: Mr. Ankesh Chandel, Advocate.

**CORAM: HON'BLE MR.JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

ORDER (ORAL)

25.11.2024.

(Sanjeev Kumar-J)

CrIM No. 1173/2023

There is a delay of in as many as 42 days in filing the appeal, and therefore, this application by Union Territory of Jammu and Kashmir seeking condonation of delay.

The application for the reasons stated therein and also for the reason that the respondent has not opposed it, is allowed and delay of 42 days in filing the appeal is condoned.

Application is '*disposed of*'.

CrI LP(D) No. 46/2023

This is an application seeking leave to file appeal against the judgment of acquittal dated 31.03.2023 passed by the Principal Sessions Judge, Udhampur (trial Court) in the case of "*Union Territory of Jammu and Kashmir Vs. Makhan Lal alias Makhnu*", (FIR No. 192/2018) of Police Station Ramnagar for offences under Sections 450,376 RPC.

Having gone through the judgment sought to be challenged and heard the arguments made by Mr. Raman Sharma, learned AAG appearing for the Union Territory, we find it a fit case for consideration. The application is, thus, allowed and leave to file appeal is granted.

Registry is directed to diarize and register the appeal.

CrIA (AD) No. 20/2024

1. Heard Mr. Raman Sharma, learned AAG.
2. This appeal by the Union Territory of Jammu and Kashmir is directed against the judgment of acquittal dated 31.03.2023 passed by the learned Sessions Judge, Udhampur [‘trial Court’] in File No. 23/Sessions in case titled, ***“Union Territory of Jammu and Kashmir Vs. Makhan Lal @Makhnu”***, whereby the trial Court has acquitted the respondent of the charge under Sections 450, 376 RPC in reference to FIR No. 192/2018 of Police Station, Ramnagar.
3. Briefly stated the prosecution case as was laid before the trial Court is that the mother of the prosecutrix filed a written complaint in the Police Station, Ramnagar that she resides with her mother and daughter in Village Kanha. That on 13.12.2018 at about 12 midnight, someone knocked at their door from outside. The complainant opened the door. One unknown person came inside and dragged the mother outside the room. On her crying, her mother Shanno Devi came to rescue her but the said unknown person pushed her also and she fell in the compound.
4. It is further stated that the said unknown person forcibly took complainant’s daughter (the prosecutrix) to the nearby forest area and committed rape with her and fled away. She further submitted in her complaint that she tried to find out the name and whereabouts of the said person but could not get the details. She further stated that the said person was of the age of 24-25 years and wearing head gear and black colour jacket and trousers. On the basis of this

complaint, FIR No. 192/2018 under Sections 450/376 RPC was registered in the Police Station Ramnagar and the investigation was entrusted to SI Shamsher Singh. The Investigating Officer visited the spot, prepared the site plan and recorded the statement of witnesses under Section 161 Cr. P.C. The Medical examination of the prosecutrix was got conducted in SDH Ramnagar and the report was obtained. The Statement of prosecutrix under Section 164-A Cr. P.C was also got recorded from the Court of JMIC Ramnagar. The accused was arrested and was subjected to potency test. Upon completion of the investigation, the offences alleged against the respondent were proved, and accordingly, the challan was produced before the competent Court of law which was later on tried by the trial Court. With a view to prove its case, the prosecution examined the prosecutrix, PW-Dwarka Devi, PW-Darshana Devi, PW-Loku Devi, PW-Dev Raj.

5. The learned trial Court was of the opinion that it was a case of no evidence and therefore, the further proceedings in the challan were truncated and the matter was considered on merits.

6. The trial Court after hearing both the sides came to the conclusion that the prosecution had miserably failed to prove its case and connect the respondent/accused with the commission of offences with which he was charged. Vide judgement of acquittal (impugned in this appeal) the respondent was acquitted of all the charges. It is this judgment of the trial Court which is called in question before us in this acquittal appeal.

7. Heard learned counsel for the parties and perused the material on record, we are of the considered opinion that in view of the fact that the prosecutrix who was allegedly raped by the respondent has not supported the charge and also that the prosecution has not led any scientific or medical evidence to prove that the victim was subjected to a sexual assault, the judgement of acquittal passed by the

trial cannot be found fault with. It is rightly concluded by the trial Court that it was a case of no evidence.

8. The prosecutrix in her deposition has clearly stated that the person who knocked at the door on the date of occurrence could not be recognised by her nor was she subjected to any sexual assault. Even the complainant, who is the mother of the prosecutrix, has stated so in her complaint as well as in the deposition before the trial Court. It is also inexplicable as to why the prosecution did not examine the doctor.

9. The prosecutrix has categorically denied having been subjected to any sexual assault. There is no evidence on record to prove that prosecutrix was subjected to sexual assault, that too, by the respondent nor is there an *iota* of evidence to demonstrate that it was the respondent who had knocked at the door of the house of the prosecutrix and her family on the date of occurrence. Viewed from any angle the judgment passed by the trial Court, which is in complete conformity with evidence on record cannot be found fault with.

10. In view of the aforesaid, we do not find any merit in this appeal and the same is, accordingly, ***dismissed***.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
25.11.2024
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