

Court No. - 42

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 333 of 2025

Appellant :- State of U.P.

Respondent :- Deepak And Others

Counsel for Appellant :- Patanjali Mishra

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

Re: Civil Misc. Delay Condonation Application

1. Heard Sri Rahul Asthana, learned A.G.A. appearing for the State and perused the record.
2. Stamp Reporter has reported latches of 110 days in filing of the present appeal.
3. No counter affidavit has been filed. Cause shown is sufficient. The application is allowed and the delay in filing the appeal is condoned.
4. Office is directed to give regular number to the appeal.

Re: Criminal Misc. Application (Leave to Appeal)

1. Heard Sri Rahul Asthana, learned A.G.A. and perused the record in support of aforementioned government appeal.
2. This is a government appeal under Section 419(3) of B.N.S.S. through e-mode assailing the validity of the judgment and order dated 12.12.2024 passed by Additional District and Sessions Judge / Special Judge POCSO Act, Court No. 15, Saharanpur in Special Session Trial No. 1066 of 2025 (State of U.P. vs. Deepak and others) arising out of Case Crime No. 308 of 2020, under Sections 363, 366, 376, 120B IPC and Sections 5th/6, 3/17 of POCSO Act, Police Station Sadar Bazar, District Saharanpur, whereby the accused has been acquitted.
3. Prosecution case in brief is that on 24.06.2020, the informant gave a typewritten complaint at Sadar Bazar Police Station to the effect that the informant is a r/o Mohalla Abhishek Nagar, Nawada Road, P.S. Sadar Bazar, Saharanpur and Deepak alias Deepu, S/o-

Bir Singh, a resident of the informant's locality, Kamal Vihar, P.S. Sadar Bazar, Saharanpur. It is mentioned that Deepak alias Deepu used to tease and misbehave with the informant's minor daughter, aged around 17 years, while coming and going, about which the informant had also complained to his family members. On 25.05.2020 at around 5:00 pm, the informant's minor daughter went from home to a medical store to get medicine. When the informant's minor daughter did not return home till night, the informant started searching for his daughter everywhere. Since it was a girl's case and due to the lockdown, he continued searching for the girl on his own. The informant also visited the police station but no action was taken due to the lockdown. On 20.06.2020 at around 1:00 pm the informant was searching for his daughter when he met Pramod Kumar and Saavan who told him that his daughter was seen lying in an unconscious state at Lakdi Ka Pul near Choti Line, Saharanpur with Deepak alias Deepu, Rajat s/o Ganesh, Bhola s/o Dharajit, Buntty s/o Vicky and Dharmendra s/o Ashok, residents of Abhishek Nagar Colony, P.S. Sadar Bazar, Saharanpur. After some time, a van came and these people took the victim in it. The informant immediately went to their house and told the entire thing to their parents. The families assured the informant and his wife that they would find the victim and hand her over to them by the evening of 21.6.2020 but this did not happen. On the morning of 22.6.2020 the informant went to their house along with his neighbour Shivkumar and his wife. Their parents flatly refused to give the girl to them and told the informant that do whatever you want to do; you cannot harm us. If you take any action against our boys, the consequences will be bad, and they also threatened that we have connections with the police station and higher officials, and you will face repercussions in the police station. Deepak alias Deepu, Rajat, Bhola Buntty and Dharmendra have conspired among themselves and kidnapped my minor girl. The informant suspects that these people may do wrong things to my girl and kill her. Due to fear of the opposite party, the informant did not go to the police station but gave an application to the Women Police Station on 22.6.2020 and is giving the application on the instructions of the Women Police Station. Therefore, present first information report has been lodged.

4. To bring home the charges the prosecution produced following witnesses, namely:-

(i) Informant as P.W.-1, (ii) Victim as P.W.-2, (iii) Sri Sachin Kumar, Principal of M.P.S. Inter College as P.W. 3, (iv) Pramod ad P.W.-4, (v) Sri Riyayat Hussain, Sub Inspector (Retired) and (vi) Sri Radheyshyam Bhart, Sub Inspector as P.W.-6.

5. From the side of the prosecution, the prosecution has relied upon the documents, which were exhibited during the trial as under:-

(i) Typed Tehrir as Ext. Ka-1, (ii) Statement under Section 164 Cr.P.C. as Ext. Ka-2, (iii) S.R. Register as Ext. Ka-3, (iv) High-school Mool Gazette as Ext. Ka-4, (v) Entrance Form as Ext. Ka-5, (vi) High-school marksheet as Ext. Ka-6, (vii) F.I.R. as Ext. Ka-7, (viii) G.D. as Ext. Ka-8, (ix) Naksha Najri as Ext. Ka-9, (x) Arrest memo of Deepak as Ext. 10 and (xi) Charge-sheet as Ext. 11.

6. After concluding the prosecution, witnesses and their respective statements under Section 313 Cr.P.C. of the accused respondents were recorded, who have denied from the charges and have submitted that they have falsely implicated in the present case and they are innocent. Still they insisted to be tried by the learned trial court.

7. After hearing rival submissions of the parties learned trial court examined the entirety of the facts and after giving reasoning has acquitted the accused persons.

8. The trial court passed the judgment of acquittal on the ground that the victim has not supported the prosecution version in her statement recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. and it is only when she appeared as prosecution witness before the court she supported the prosecution case by saying that she was forced to make previous statements. The trial court further noticed that during the period when the victim was missing she had filed one Complaint Case No. 6801 of 2020 in the court of Chief Judicial Magistrate, Saharanpur on 30.6.2020 under Section 506 IPC and appeared before the court and the stand taken in the complaint case was that she married the accused-Deepak to which the parents did not agree and for this reason she has filed the complaint case. The time and manner of recovery was also disputed. The trial court further noticed that there was considerable delay in lodging of first information report of about 25 days from the date of incident. The alleged incident of taking the victim away took place on 25.5.2020, whereas the first information report was lodged on 24.6.2020. The trial court further noticed that in his cross-examination the informant-father of the victim (PW-1) stated that he had lodged the first information report after about 7 days. As per high-school certificate the date of birth of the victim is 5.6.2002 and in any case the first information report was lodged after 7 days after the victim went missing then her age as per high-school certificate would be 18 years and 12 days and as such she was major. It is also noticed that in the statement recorded under

Section 161 Cr.P.C. and Section 164 Cr.P.C. she had categorically stated that she willingly left with the accused-Deepak on 25.5.2020 and got married and she wants to go with him. In the statement recorded under Section 161 Cr.P.C. she had also stated that she was scolded by her parents and she had left her home on her own. In the totality of circumstances, benefit of doubt was given to the accused persons and they have been acquitted.

9. Challenging the impugned judgment submission of learned A.G.A. is that the judgment of acquittal is against the weight of evidence on record and the same is not sustainable in the eyes of law. It is next submitted that the victim in her statement recorded as prosecution witness she had stated that she was force to give statements under Section 161 Cr.P.C. and Section 164 Cr.P.C. in favour of the accused persons. It is next submitted that as per the first information report on the date of alleged incident she was less than 18 years of age, therefore, she was minor.

10. We have considered the submissions and have perused the record.

11. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

12. In the case of **Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790**, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities"

13. In **Jayamma vs. State of Karnataka, 2021 (6) SCC 213**, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a 'possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions

drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

14. In a judgement of this Court in **Virendra Singh vs. State of UP and others, 2022 (3) ADJ 354 DB**, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).

13. In Sheo Swarup and Ors. King Emperor AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the

credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

14. The aforesaid principle of law has consistently been followed by this Court. (See: *Tulsiram Kanu v. The State* AIR 1954 SC 1; *Balbir Singh v. State of Punjab* AIR 1957 SC 216; *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200; *Khedu Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).

15. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of Uttar Pradesh v. Banne alias Baijnath & Ors.* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal v. State by Public Prosecutor, Madras* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

11. Hon'ble Apex Court in the case of *Ramesh Babulal Doshi vs. State of Gujarat* (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.

12. The aforesaid judgments were taken note of with approval by Supreme Court in the case of *Anwar Ali and another vs. State of Himachal Pradesh* (2020) 10 SCC 166, *Nagabhushan vs. State of Karnataka* (2021) 5 SCC 222, and *Babu (supra)* in *Achhar Singh vs. State of Himachal Pradesh* (2021) 5 SCC 543."

15. Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471.

16. We have gone through the impugned judgment carefully. The striking features in the present case are that as per the first information report the date birth of the victim is 5.6.2002 and the first information report was registered on 24.6.2020 and as noticed in paragraph 49 of the impugned judgment the trial court has noticed the fact that the informant-father of the victim (PW-1) had stated in his cross examination that the first information report was lodged after 7 days when the victim went missing and as such her age would be 18 years and 12 days and there is nothing contrary on this issue. Coupled with the fact that earlier statements made under Section 161 Cr.P.C. after her recovery recorded on 4.8.2020 she had not supported the prosecution and had stated that her parents scolded her, therefore, she on her own left her house and was living in maternal aunt's house with her situated at Kashiram Colony and when she came to know that some false case has been registered by her parents against someone she returned and stated that nobody took her away and she by her own left the house in anger and when she was standing at Kashiram crossing to go to her home, the police brought her to Sadar Bazar police station and nothing wrong had happened to her. Similarly, under Section 164 Cr.P.C. she had stated that on 25.5.2020 she left her home on her own and prior to that she had married the accused-Deepak on 5.2.2020 and at present she is living with Deepak and wants to go with her husband-Deepak. The contradictions had surfaced only during trial and there is material improvement on that, therefore, this witness is not of sterling quality. It is also noticeable that when the victim was missing she filed one Complaint Case No. 6801 of 2020 in the court of Chief Judicial Magistrate, Saharanpur against her parents under Section 506 IPC and she appeared before the court as well.

17. We, therefore, find that relying on the judgment of Hon'ble Apex Court in the case of **Narendra Kumar vs. State (NCT of Delhi) 2012 AIR SCW 3391 SC** the court below has taken a possible view of the matter.

18. In such view of the matter, we are unable to connect any material on record so as to involve the accused in this offence.

19. Under such circumstances, we are of the considered opinion

that the learned trial court has rightly assessed the testimonies and material on record in correct perspective. Taking into account the totality of circumstances, we do not feel that there is any legal infirmity in the impugned judgment. The judgment is based on sound reasoning and proper application of law. Accordingly, we restrain ourselves in dislodging the finding of learned court below. This government appeal is devoid of merit and not worth granting any leave to appeal.

20. Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is rejected.

Re: Government Appeal

1. Consequently, since the Criminal Misc. Application (Leave to Appeal) is rejected by order of date, the government appeal is also dismissed.

Order Date :- 22.7.2025

Lalit Shukla