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

+ CRL.L.P. 144/2017 & Crl.M.A. 4203/2017

STATE (GOVT OF NCT OF DELHI) ..... Petitioner

Through Mr.M.S. Oberoi, APP.

versus

UMESH KUMAR YADAV ..... Respondent

Through Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE P.S.TEJI**

**ORDER**

% **20.03.2017**

Arguments heard.

The present application under Section 378(1) of the Cr.P.C. has been filed by the State for leave to appeal against the judgment dated 30.08.2016 passed by the Court below in Sessions Case No.57468/2016 arising out of FIR No.461/2013, under Sections 376/506 IPC, Police Station Kirti Nagar.

An application Crl.M.A. 4203/2017 has been filed by the State under Section 5 of the Limitation Act for condonation of delay in filing the appeal.

In the application for condonation of delay, the ground taken is that after the passing of impugned judgment dated 30.08.2016, the matter was reported to the Public Prosecutor (West) who forwarded the matter to the Chief Prosecutor and then the file was forwarded to Law Department. The ground taken causing delay was that there was

procedural delay which was beyond the control of the State.

Apparently, there is delay of 97 days in filing the instant appeal. The submission of the learned APP for the State is that the matter took time to take approval from various authorities which caused the delay in filing the appeal. It has been seen in various cases that the State does not prefer appeal within the stipulated time and takes defence of tedious procedural delay in obtaining approval. The State does not have the right to file the appeals at belated stage seeking ground that of a procedural delay. The State is expected to expedite the matter in case they want to prefer against the order/judgment of acquittal or conviction. In the considered view of the Court, no proper explanation has been given by the State which caused the delay in filing the instant appeal.

Vide judgment dated 30.08.2016, the accused/respondent has been acquitted by the trial court while observing that the relations between the prosecutrix and accused were consensual and while extending the benefit of doubt he has been acquitted.

Arguments advanced by the learned APP for the State are that the prosecutrix has duly supported the case of the prosecution in her testimony before the Court that the accused had committed rape upon her several times under threat. It is further argued that the prosecutrix even in her statement under Section 164 Cr.P.C. supported the case of the prosecution. In her cross-examination before the trial court, she has reiterated the allegations and refuted the defence of the accused that relations between them were consensual.

I have heard the arguments advanced by the learned APP for

the State and have gone through the material available on record.

The first point of consideration is that whether the accused had committed the rape upon the prosecutrix and that too under any threat or whether the relations between them were consensual. It is also to be seen that whether the testimony of the prosecutrix is reliable and trustworthy or not.

In her testimony before the Court, the prosecutrix had stated that the accused used to live in her neighbourhood and offered to give tuitions in Maths as she was weak in Maths and she was studying in Class X in February, 2013. On the first day, accused had given her tuition. On the next day when she went to the house of accused to take tuition, he had committed rape upon her. She did not disclose the incident to anybody due to fear as the accused had extended threat to her that he would kill her and her father. Thereafter, the accused kept on assaulting her sexually for 3-4 days. Thereafter, the accused had gone to his village in Bihar and returned in June, 2013. Accused called her and assaulted her sexually for 2-3 days. Thereafter, the prosecutrix stopped going out of her house. In the end of November 2013, her father asked her mother to take the prosecutrix to some doctor as she had protruding tummy. She was taken to a doctor and she was diagnosed with seven months pregnancy. She did not disclose about commission of rape by accused to her parents due to fear of the accused. When her father insisted, then she disclosed all the facts regarding rape committed by the accused on her. Her father called the accused and asked him about the same and also gave him 2-3 slaps. The accused blamed the prosecutrix for whatever happened

with her. Accused told the father of the prosecutrix that it was she who used to call him. She further deposed that her father called Kuldeep Sir as her father had an acquaintance with him. He made enquiries from the prosecutrix and when she told all the facts, he took the accused with him.

During cross-examination, the prosecutrix stated that she used to go to jhuggi of the accused for taking tuition. She further stated that she used to go to the terrace of the jhuggi of the accused from the first floor of her jhuggi. She admitted that prior to the first incident of rape, she used to talk to the accused frequently. The accused had studied upto class 12<sup>th</sup> and was working as a helper on a vehicle. He was not educated enough to impart tuitions. He was not a professional tutor. It has not been brought on record by the prosecution that apart from the prosecutrix, the accused was giving tuitions to anyone else or not. It has also come in the testimony of the prosecutrix that the accused did not charge any fee from her for giving tuitions. It has also come in her testimony that on one occasion, the accused gave money to the prosecutrix with which she purchased gifts for valentine day and had given the same to the accused. It is also apparent from her testimony that she was allegedly raped on the second day of her tuition and later on, on the same day she was taught by the accused for 1- 1½ hours. Similar was the position as on the next day i.e. second day of commission of alleged rape. She was called on the next day by the accused i.e. third day and on that day also, accused committed rape upon her and on that day, she was threatened by the accused. She had also stated that accused

had removed her clothes and had not offered anything to drink. She categorically admitted that no threat was given to her by the accused on the first and second day of rape. She further stated that she had gone to the police station on 03.12.2013 for making the complaint and she was accompanied by her father and Head Constable Kuldeep who was known to her father. She further stated that she had taken tuition from the accused for about one year. She admitted that accused had gone to his native village in March, 2013 and they did not have any physical relations in April, 2013. She admitted that she did not disclose about the incidents to her parents and that too when accused went to his native village. She also admitted that in the end of October, 2013 when her pregnancy was showing, she still did not disclose about the incidents to anyone including her parents. She admitted that when her father threatened to commit suicide by hanging himself, then she told him everything regarding her physical relations with the accused. She admitted that her father had cordial relations with HC Kuldeep and it was on his advise that the present case was lodged. She stated that HC Kuldeep was posted in Police Station Kirti Nagar. She also stated that after his return from his native village, accused had physical relations with her once in the month of June, 2013. She further stated that accused had threatened her when he had forcibly established physical relations with her, he had a knife with which he had threatened her.

It is an admitted case of the prosecution itself that the prosecutrix was a major girl aged about 22 years at the time of alleged incident of rape. The testimony of the prosecutrix does not inspire

confidence of this Court for the reasons that her testimony is not natural. She had made material improvement and contradiction in her testimony to the effect that rape was committed upon her forcibly and that too on the point of knife. In her statement made to the police, she had not stated that accused threatened her with knife.

The testimony of the prosecutrix also does not inspire confidence for the reasons that in her testimony, she stated that the accused was working as a helper on a vehicle; accused had not been giving tuitions to anyone else except the prosecutrix; he had not been charging any fee from the prosecutrix and had given money to the prosecutrix on one occasion to buy a gift which was ultimately given by the prosecutrix to the accused himself.

Her testimony is also not natural for the reasons that she had stated that on the first day of alleged commission of rape, she was taught for about 1-1½ hours after being raped and then she was called on the next day on which, the same thing happened with her. She was also called on the third successive day and allegedly raped by the accused. As per her testimony, she was not forcibly raped by the accused on those three days. It was only on the third day when the alleged threat was given to her. It has also come in her testimony that she lodged the FIR of the present case only when her father threatened to commit suicide by hanging.

There is another flaw in the case of prosecution to the effect that it has come in the testimony of the prosecutrix that her father was having cordial relations with one Head Constable Kuldeep and on his advice, she made complaint to the police. The prosecution had

neither cited HC Kuldeep nor examined him as a witness in the Court to corroborate the testimony of the prosecutrix.

*The legislature was wise enough while enacting Section 378 Cr.P.C. by giving six months time to the State to prefer an appeal against the judgment of conviction or acquittal, as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the delay. The State is expected to file the appeal well within the time prescribed in the statute. If any delay is caused, the person responsible for the same is to be enquired and departmental action is required to be taken against him. Only in exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned, that too by explaining the delay of each and every day supported by documentary evidence.*

In view of the above mentioned facts and circumstances, this Court is of the considered opinion that the prosecution has failed to make out any ground for leave to file the appeal against the acquittal of the accused/respondent and the same is dismissed being barred by limitation.

Application CrI.M.A. 4203/2017 is also dismissed.

**P.S.TEJI, J**

**MARCH 20, 2017**  
**dd**