

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

CrI LP(D) No. 18/2023
CrIM No. 437/2023

Union Territory of J&K through Sub-Divisional
Police Officer (East), Jammu

....Appellant/Petitioner(s)

Through :- Mr. Amit Gupta, AAG

V/s

Ramkesh S/o Udhay Raj, R/o Nakah,
District Sant Kabir Nagar, Uttar Pardesh,
At present Deeli, Jammu

....Respondent(s)

Through :- None

**Coram: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT(ORAL)
08.05.2024**

Atul Sreedharan-J

CrIM No. 437/2023

1. This is an application seeking condonation of delay in filing the application seeking leave of the Court to file the appeal.

2. In the view what has been stated in the application, the same is allowed.

The delay of 101 days in filing the aforesaid application is condoned.

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3. The present application seeking leave of the Court to file acquittal appeal has been filed by the Union Territory, which is aggrieved by the judgment dated 24.09.2022 passed by the Court of learned Presiding Officer Fast Track Court,

Jammu, whereby the respondent was acquitted of the offences under Sections 363/376 RPC.

4. The brief facts of the case are as follows:

5. Upon a verbal report, an FIR bearing No. 12/2018 under Section 363 RPC was registered at Police Station Channi Himmat, Jammu, mentioning therein that the grand-daughter of the complainant had gone missing. Pursuant to the investigation, she was recovered along with the respondent herein. Thereafter, she was medically examined, where the doctor has opined that there were no recent signs of sexual intercourse. During the course of the trial, the prosecutrix has turned hostile and was cross examined by the prosecutor.

6. In cross examination, she has stated that she voluntarily went with the respondent and lived with him as his wife in the house of the sister of the respondent. She also said that her relations with the respondent are such that exist between a husband and wife. She has stated that there was no force or coercion extended by the respondent and she willingly went with him and she wants to stay and live with him as his wife. Thus, the statement of the prosecutrix before the trial Court disclosed her consent.

7. The only question that needs to be seen is whether she was a minor or major. If she was a minor at the time of the incident, her consent was of no avail to the respondent. The learned trial Court has dealt with the same at paragraph 27 of the judgment. In this case, the prosecution relied upon the Xerox copy of the School Leaving Certificate of Tiny Heart Public School, Trikuta Nagar Extn. 1-A, Jammu, issued by the Principal of the said school and countersigned by the Chief Education Officer, Jammu.

7. The trial Court has come to the finding that the prosecution failed to produce any witness to prove the genuineness of the Xerox copy. It also held that the Investigating Officer in this case was never summoned by the prosecution or examined as a witness and that he was one, who could have explained better as to why he has not annexed the original School Leaving Certificate with the challan. It has also held that no evidence was provided by the prosecution and that it failed to prove that who had entered the date of birth of the victim at the time of admission in the school and the basis on which the document of disclosure was given by anybody which led to the production of the Xerox copy of the School Leaving Certificate reflecting the date of birth of the prosecutrix. It also held that the date of birth is presumed to be correct, as per the School Leaving Certificate, if the prosecution was able to prove the School Leaving Certificate by adherence to the procedure. This Court may add in addition to the observations of the learned trial Court that a Xerox copy could only have been introduced as a secondary evidence for which there is a procedure to be followed by the prosecution, where it has to show why the original could not be produced in the first instance. From the order of the learned trial Court it does not appear that any such application for production of secondary evidence was ever moved by the prosecution. Under the circumstances, the Xerox copy produced by the prosecution was as it is inadmissible and could not have been considered and was rightly discarded by the learned trial Court.

8. Under the circumstances, as the consent is apparent on the record, as stated by the learned trial Court and it is not disputed by learned counsel for the appellant herein, and the fact that the age of the prosecutrix could not be proved as minor and, therefore, incapable of giving consent, this Court is of the opinion

that the trial Court has rightly arrived at the conclusion that the minority of the prosecutrix had not been proved by the Union Territory.

9. Under the circumstances, far being perverse, we find that the learned trial Court has dealt with the case appropriately and marshalled and appreciated the evidence in true perspective. Therefore, leave to file appeal against the impugned judgment is declined. The application is, accordingly, dismissed. Consequently, the appeal which has not been numbered yet shall also stand dismissed.

(Rajesh Sekhri)
Judge

(Atul Sreedharan)
Judge

Jammu:
08.05.2024
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: No

