

(2009) 11 AHC CK 0261**Allahabad High Court****Case No:** None

State of U.P.

APPELLANT

Vs

Bablu Singh

RESPONDENT

Date of Decision: Nov. 4, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 161
- Limitation Act, 1963 - Section 5
- Penal Code, 1860 (IPC) - Section 354

Hon'ble Judges: Uma Nath Singh, J; S.N.H. Zaidi, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

1. This leave to appeal has been filed with an inordinate delay of 1 year two months and 24 days.

2. In reply to the application for condonation of delay, the respondents have filed a counter affidavit. Paras 6 and 7 of the affidavit are reproduced hereunder:

That the contents of paras 4, 5 and 6 of the affidavit (Application u/s 5 of the Limitation Act) are denied, misconceived, the deponent of the application u/s 5 of the Limitation Act being a responsible officer not explained the delay accordingly day by day but he filed the present affidavit as casual manner which is against the law and the present case is liable to be dismissed on this very ground for filing of the delay of the appeal. That the contents of paras 7 and 8 of the affidavit (Application u/s 5 of Limitation Act) are denied, misconceived, it shows from the affidavit of the deponent of application u/s 5 of the Limitation Act that on his mercy the filing of the date is filled up in the gap of paragraphs it shows the lackness in the part of the deponent as well as the prosecution agency and this type of lackness is deliberately which is not liable to be condoned and the present application submitted for passing in the office on 26.9.2008 and the office submitted report that

the delay of one year, two months and twenty four day on 26.9.2008 but subsequently it was filed in the Registry on 7.11.2008, neither in the affidavit (supported of the application u/s 5 of the Limitation Act) any explanation regarding delay of one year, two months and 24 days have been explained nor thereafter upto filing the present application in the Registry be explained, in these circumstances the application u/s 5 of Limitation Act is liable to be rejected.

3. There is a vehement opposition on affidavit as well as orally to the prayer for condonation of delay. That apart, we also examined the impugned judgment and we found no merit in the contentions of the learned State Counsel. The criminal trial originated in an F.I.R. which was registered only u/s 354 I.P.C. In the statement recorded u/s 161 Cr.P.C., it was not the case of the prosecutrix that she had been subjected to forcible sexual intercourse, but later by way of submitting an application u/s 156(3) Cr.P.C., an F.I.R. u/s 376 I.P.C. was registered.

4. The trial court has noticed improvements and serious contradictions in the testimonies of Smt. Kanti Devi (PW-2) and Smt. Sudha Devi (PW-3) and taking a note of the conduct of the witnesses, the trial Court has recorded acquittal.

5. Learned State Counsel during the course of hearing could not point out from the record as to whether there was any incriminating recovery which could support the allegation of commission of rape. It is now a settled principle of law, in a catena of decisions rendered by the Apex Court that if on appreciation of evidence two views are possible the view taken by lower court in favour of the accused on the facts and circumstances of the case, should be taken as the probable and reasonable view.

6. Hence, this application for leave to appeal is dismissed on the ground of inordinate delay as also on merits.