

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 02.11.2023
Pronounced on: 08.11.2023

CRAA No.09/2018

STATE OF J&K **...APPELLANT(S)**

Through: - Mr. Sajad Ashraf, GA.

Vs.

FEROZ AHMAD NAJAR & ANR. **...RESPONDENT(S)**

Through: - Mr. Abu Owais Pandit, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant-State has challenged the judgment of acquittal dated 28.01.2017 passed by learned 2nd Additional Sessions Judge, Srinagar, whereby the respondents have been acquitted of the charges for offences under Section 363, 376, 343, 506 and 109 RPC arising out of FIR No.2 of 2006 registered with Police Station, Rainawari, Srinagar.

2) Briefly stated, case of the prosecution is that on 23.12.2005, PW1-Mukhtar Ahmad Hagroo, who happens to be the father of the prosecutrix, lodged a missing report with Police Station, Rainawari, alleging therein that his daughter, the prosecutrix, had gone to her school on 06.12.2005 but she did not return. In the report, age of

the prosecutrix was mentioned as 14 years. The police launched search of the prosecutrix and ultimately they succeeded in finding her in Central Jail, Jammu, wherefrom she was recovered after getting her released on bail.

3) Upon recovery of the prosecutrix, her statement was recorded by the police. In her statement, the prosecutrix narrated that the respondents along with one girl, namely, Shazia, enticed her to go with them and she was taken in a white coloured Maruti car outside the State to Jaipur. On the basis of the statement of the prosecutrix, FIR No.2/2006 for offences under Section 363, 376, 343, 506 and 109 RPC was registered and investigation was set into motion.

4) During the course of investigation, statements of the witnesses under Section 161 of Cr.P.C were recorded and the prosecutrix was subjected to medical examination. The certificate relating to date of birth of the prosecutrix was obtained and she was found to be 17 years of age. The respondents/accused were arrested and in respect of girl Shazia, identification parade was conducted by the Executive Magistrate, Srinagar, but no clue about the said girl could be obtained. Accordingly, after finding that the

offences under Section 363, 343 and 506 RPC are made out against the respondent No.1 and offences under Section 363, 376m 343, 506 and 109 RPC are established against respondent No.2, the challan was lodged before the trial court.

5) The learned trial court vide its order dated 20.07.2007 framed charges for offences under Section 363, 376, 343, 506 and 109 RPC against both the respondents and their plea was recorded. The respondents denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of its case.

6) Out of 15 witnesses cited in the challan, the prosecution examined 12 witness which include PWs Mukhtar Ahmad Hagroo, Mst. Saleema, Gowhat Ahmad Bhat, the prosecutrix, Abdul Ahad Head Constable, Dr, Shagufta Parveen, Dr. Narinder Singh, Dr. Latif Ahmad, Smt. Mubeena Jan, Mohammad Amin Bhat, Ghulam Mohi-ud-din Bhat and Ali Mohammad Dar. After completion of prosecution evidence, the statements of respondents/accused under Section 342 of J&K Cr. P. C were recorded. The respondents/accused claimed that the father of the prosecutrix had purchased a scooter from them but he had not paid whole of the sale consideration

despite repeated demands. It was further stated by the accused that one day when they went to the house of the father of the prosecutrix to demand money from him, they came to know that the prosecutrix was having an affair with a Sikh CRPF personnel with whom she had eloped. The accused further stated that when they demanded money from the father of the prosecutrix, he raised a hue and cry and the accused threatened the father of the prosecutrix that in case he does not pay their money, they will defame him. Because of this, father of the prosecutrix implicated them in a false case. The respondents/accused, however, did not lead any evidence in defence.

7) The learned trial court after hearing the parties and after appreciating the evidence on record, came to the conclusion that the statement of the prosecutrix is not trustworthy nor her conduct is unblemished. The learned trial court also observed that the version of the occurrence given by the prosecutrix during trial of the case is entirely different from the version of occurrence given in the challan, therefore, the prosecution case cannot be believed. On this ground the learned trial court acquitted the respondents by passing the impugned judgment.

8) The appellant-State accused has challenged the impugned judgment on the ground that the learned trial

court has not appreciated the evidence in its right perspective. It has been contended that the allegations made in the charge sheet against the respondents/accused were clearly established from the statement of the prosecutrix and other prosecution witnesses and, as such, the acquittal of the respondents/accused has resulted in miscarriage of justice. According to the appellant, conviction can be recorded on the basis of a solitary statement of a victim of rape without any corroboration but in the instant case, in spite of there being credible statement of the prosecutrix, the learned trial court has discarded her statement on flimsy grounds.

9) I have heard learned counsel for the parties, perused the grounds of appeal, the impugned judgment of acquittal and the record of the trial court.

10) Before coming to the merits of the appeal, it would be appropriate to consider as to what is the scope of interference in an appeal against acquittal. The law on this aspect of the matter is no longer *res integra*. The Supreme Court and this Court in a series of judgments have settled that the scope of interference in an appeal against acquittal is limited and unless the High Court finds that the appreciation of the evidence made by the trial court is perverse, it cannot interfere with the finding of acquittal

recorded by the trial court. In **Nikhil Chandra Mondal vs. State of West Bengal** (Criminal Appeal No.2269 of 2010 decided on 3rd March, 2023), the Supreme Court has held that unless findings of the trial court are perverse or illegal, it is not permissible for the appellate court to interfere with the same.

11) In **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471, the Supreme Court has, after considering its earlier judgments on the scope of interference in a case of acquittal, held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that 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 court. It has been further held that 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.

12) With the aforesaid legal position in mind, let us now advert to the facts of the instant case. The prosecutrix, as per the evidence on record, was 17 years old at the time of

alleged occurrence. The occurrence is stated to have taken place in the year 2005. At the relevant time, the age of consent, as per the provisions contained in Section 375 RPC as it existed then, was 16 years and not 18 years. This is an important aspect of the matter which is to be borne in mind while appreciating the evidence on record in the instant case.

13) If we have a look at the version of occurrence given by the prosecutrix in her statement recorded under Section 161 of Cr. P. C, she has stated that on 06.12.2005, when she had gone to her school along with her mother to get admission, the respondents along with Shazia came in a vehicle, they stopped the vehicle near her and asked her to accompany them. She was assured that she will be left back at her home. According to the prosecutrix, she was influenced by the assurance of the inmates of the vehicle and she boarded the said vehicle but she was taken towards Jammu and on way she remained busy in talking to the accused who assured her that she will be brought back from Jammu but on next day after taking meals, she was taken to Jaipur where the accused hired two rooms on rent. In the evening, the prosecutrix slept in a room with Shazia whereas the accused slept in another room. According to the prosecutrix, during night she was raped

by accused Aijaz. After six days, she was brought back to Jammu by the accused where she was threatened by them. On 04.12.2005, she reached Jammu Railway Station and when police came over there, she started running away but was caught by the police. The prosecutrix has gone on to state that she gave wrong identity to the police concealing her real name, as a result of which she was taken into custody and sent to Central Jail, Jammu, wherefrom on 02.01.2006, she was got released on bail by her father.

14) In her statement recorded during trial of the case, the prosecutrix has given entirely a different version of the occurrence. According to her, she boarded the vehicle of accused from her school who assured her that she will be taken to her home but she was taken to Jammu and was kept for three days in Hotel Jewel at Jammu where accused Aijaz committed rape upon her on 2-3 occasions in presence of accused Feroz Ahmad Najar. She went on to state that after three days, she was sold to a Sikh person by the accused for an amount of Rs.10,000/. She went on to state that the Sikh person tried to keep her in a hotel but she escaped from his clutches and went to Railway Station at Jammu where she started crying. An Army Jawan met her and she narrated whole story to him.

According to the prosecutrix, she was handed over to police by the said Army Jawan. She was taken to police station where accused came a number of times to take her but the police did not hand over her custody to them. In the meantime, the police came from Srinagar and she was brought to Srinagar by them where she was handed over to her parents. In her cross-examination, she has stated that the girl who was travelling with them in the vehicle on way to Jammu administered injunctions to her which made her unconscious. She further stated that besides her, there were three boys and one girl in the vehicle. When her attention was brought to the contrary version given by her in her statement under Section 161 of the Cr. P. C, she stated that the statement is incorrect. She specifically stated that she did not go to Jaipur and that she resided at Jammu for three days in Jewel hotel.

15) The Investigating Officer, Ali Mohammad Dar, has stated that the prosecutrix did not narrate to him that she met any Army personnel at Jammu. He has also stated that the prosecutrix did not narrate to him that the girl had administered injunction to her and made her unconscious and there is no such mention in the statement of the prosecutrix recorded by him under Section 161 of Cr. P. C. The Investigator also stated that

the prosecutrix never told him that she was sold by the accused to a Sikh person and that she escaped from the clutches of the said Sikh person.

16) From the analysis of the statement of the prosecutrix recorded during trial of the case and the statement of the Investigating Officer recorded during trial of the case, it is clear that there are major contradictions in her statements on the essential aspects of the case. These contradictions between the version of occurrence given in statement of the prosecutrix under Section 161 of Cr. P. C and her statement recorded during trial of the case have been proved during trial of the case. It is true that even if defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness but when the contradiction relates to vital aspects of the case and the version of occurrence given in previous statement by a witness is entirely different from the version of occurrence given by such witness during the trial of the case, it does definitely make the statement of such witness unreliable and untrustworthy.

17) The prosecutrix has invented the story of getting injected by the girl who was accompanying her in the vehicle on way to Jammu. While making her statement

before the trial court, she has also invented a new story that she stayed in Jewel hotel at Jammu for three days and she was sold to a Sikh person by the accused for Rs.10,000/. Again, she states that she met an Army personnel at Jammu Railway Station to whom she narrated the story. All these facts were never narrated by the prosecutrix while making her statement under Section 161 of Cr. P. C which has been clearly stated by the Investigating Officer who recorded her statement under Section 161 of Cr. P. C. Therefore, statement of the prosecutrix is absolutely unworthy of credit

18) It is true that on the solitary statement of a victim of rape, conviction of an accused can be based but it is equally true that such statement should be unblemished and of sterling quality. In the instant case, as already discussed, the statement of the prosecutrix is unworthy of credit. Therefore, the accused cannot be held guilty on the basis of the said statement. There is no corroboration to her statement. The medical evidence is negative, obviously because the prosecutrix has been subjected to medical examination after a pretty long time of the alleged incident. The missing report relating to the prosecutrix has been lodged by her father after a lapse of about twenty days and there is no explanation coming forth from her father as to

why he did not lodge the missing report immediately. There is also evidence on record to show that there was some dispute between father of the prosecutrix and the accused relating to some monetary transaction. This circumstance makes the delay in lodging the report a factor adverse to the case of prosecution and, therefore, the false implication of the respondent/accused cannot be ruled out.

19) For the foregoing reasons, the view taken by the learned trial court in acquitting the respondents/accused and in holding that the statement of the prosecutrix is unworthy of credit does not deserve to be interfered with by this Court while exercising appellate jurisdiction. Therefore, the impugned judgment of acquittal passed by the learned trial court warrants no interference from this Court. The appeal is, accordingly, dismissed. The bail and surety bonds of the respondents/accused are discharged.

20) Record of the trial court along with a copy of this judgment be sent down.

(Sanjay Dhar)
Judge

SRINAGAR
08.11.2023
“Bhat Altaf, PS”

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