

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

CRAA No. 42/2014

Reserved on: 05.10.2023

Pronounced on: 17.10.2023

State of Jammu and Kashmir,
Through Senior Superintendent of Police
Kathua,

....Appellant(s)

Through:- Mr. Dewakar Sharma, Dy AG
v/s

1. Sohan Singh alias Kala S/o Rattan Singh,
R/o Manj, Tehsil Kalanoor,
District Gurdaspur, Punjab.
2. Rattan Singh S/o Jameet Singh
R/o Manj, Tehsil Kalanoor,
District Gurdaspur, Punjab.
3. Prem Singh S/o Pritam Singh
R/o Surmolarhi, Tehsil Pathankot,
District Gurdaspur, Punjab.

....Respondent(s)

Through:- None

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

J U D G M E N T

Per Mohan Lal-J

1. Appellant (State of J&K through Sr. Superintendent of Police Kathua) has commenced instant Criminal Acquittal Appeal against the judgment dated 13.08.2013 rendered by the Court of Learned Principal Sessions Judge Kathua (for short '**the Trial Court**') in case titled "State vs Sohan Singh and others" in File No. 02/Sessions arising out of FIR No. 30/2001 registered at Police Station Lakhanpur for the commission of offences punishable under Sections 376, 364, 325, 323, 34 RPC, whereby, respondents herein have been acquitted.
2. Vide order of this Court dated 13.03.2014 the delay of 83 days in filing appeal was condoned, whereas, by the further order of this court dated 31.01.2017 leave was granted to the appeal for its final hearing. Bailable warrants have been issued to the respondents for securing their presence, but so far none of the respondents have caused their appearance to contest the appeal. As there is no immediate prospects of securing the presence of respondents, we have found it pertinent to scan the impugned judgment

alongwith the entire evidence adduced by the prosecution before the trial court. We have also heard Ld. Dy. AG for the appellant.

- 3.** The brief facts of the prosecution case, sans unnecessary details, as emerged out from the contents of charge-sheet are, “that on 14.06.2001, respondents barged their entry into the house of PW-7 Rani Devi [D/o Chajju Ram R/o Jagatpur Kathua, hereinafter referred to the prosecutrix/victim] and in furtherance of their common criminal intention to abduct PW-7 who fled away from the spot and took refuge in the house of one Roop Singh, respondents pushed their way into the house of said Roop Singh, tried to lift PW-7 Rani Devi forcibly, her mother PW-2 Kanta Devi tried to rescue her but she was injured by R-1 with a ‘Danda’ and therefore, respondents abducted PW-7 Rani Devi in a Tata Sumo Vehicle and took her to their house situated at Kalanoor Gurdaspur Punjab where R-1 Sohan Singh (husband of PW-7) is alleged to have committed rape upon the prosecutrix”.
- 4.** The occurrence was reported to the police authorities of Police Station Lakhanpur by the complainant PW-2 Kanta Devi as an oral report, whereby, police swung into action and registered case FIR No. 30/2001 for the commission of offences punishable under sections 376, 364, 452, 325, 323, 34 RPC against the respondents. After completion of the investigation, charge-sheet against respondents was laid in the Court of learned CJM Kathua, who vide his order dated 07.04.2003 committed the case to the Court of Ld. Principal Sessions Judge Kathua as mandated by Section 205-D, Cr.PC for the reasons that offences under sections 376/364 RPC were exclusively triable by the court of Pr. Sessions Judge Kathua. Be it noted, that as the whereabouts of R-3 (Prem Singh) could not be known, therefore, the proceedings against him were initiated by the learned committal court of CJM Kathua in terms of the provision mandated u/s 512 Cr.PC on 07.04.2003. Vide order of the trial court dated 22.08.2003 charges were framed against R-1 and R-2 for commission of offences punishable under sections 376, 364, 452, 325, 323, 34 RPC to which they pleaded not and claimed trial.
- 5.** Prosecution in a bid to prove it’s case against the respondents, out of total sixteen (16) witnesses listed in the charge-sheet, examined only twelve (12) witnesses namely, PW-1 Angrez Singh (witness to the search of R-3

Prem Singh) , PW-2 Kanta Devi (eye witness and witness to lodging of FIR,), PW-3 Swarno (eye witness and witness to seizure & supurdnama), PW-4 Mst. Kusam Lata (eye witness and witness to seizure & supurdnama), PW-6 Karan Singh (eye witness), PW-7 Rani Devi (witness to the abduction of prosecutrix), PW-8 Ashwani Kumar (witness to recovery of prosecutrix), PW-9 Romesh Kumar (witness to recovery of prosecutrix), PW-10 Parveen Singh (witness to recovery of prosecutrix), PW-11 Jeet Singh (witness to supurdnama of prosecutrix), PW-12 Dr. Renu Gupta (witness who conducted medical examination of prosecutrix), PW-13 Dr. Ganysham Singh (witness who medically examined injured witness PW-2 Kanta Devi). Be it noted, that PW-5 Balwant Singh had died during pendency of the trial, while PW-15 Ashwani Kumar IHC (IO) & PW-16 Ajay Singh Jamwal SI/SHO Police Station Lakhanpur have remained unexamined by the prosecution for the reasons best known to it.

6. PW-2 Mst. Kanta Devi (m/o prosecutrix, eye witness to the occurrence) in her deposition before the trial Court in examination-in-chief has categorically putforth evidence, “that respondents 1 &2 alongwith three Sikh accused dragged her daughter, who fled in the house of her maternal Uncle Roop Singh but the accused pushed their way in the house of Roop Singh, she tried to rescue her daughter (Rani Devi), **but respondent Rattan Singh (R-2) beat her with ‘Danda’ whereby she received injuries in her arm and wrist**, PW-4 Kusam Lata also intervened who was even thrashed by the accused, whereby, she turned unconscious, however, accused forcibly took away the prosecutrix Rani Devi with them who was put in a vehicle, she alongwith Swarno and Kusam Lata went to Police Station Lakhanpur and were got medically examined and made a oral report, upon which she put her thumb impression which is marked as EXPW-K, the contents of which are true and correct, but on the third day of occurrence, prosecutrix Rani Devi was recovered and brought home”. In her **cross-examination** PW-2 Kanta Devi has suffered huge somersault by deposing that **in her statement recorded by the police u/s 161 CrPC she did not depose that Rattan Singh (R-2) inflicted injury on her head with ‘Danda’**. It is pertinent to mention here, that statement of PW-2 Kanta Devi recorded u/s 161 Cr.pc was shown to her during cross-examination wherein the evidence made by her in examination-in-chief

that she was inflicted injury on her head with 'Danda' by accused Rattan Singh does not find any mention of it.

- 7.** The genesis of the prosecution case is, that prosecutrix was in her parental home and on seeing the respondents/accused she fled from the spot, went in the house of Roop Singh, accused pushed their way into the said house, accused R-1 Sohan Singh beat Kanta Devi with 'Danda' whereby she received injury on her wrist. PW-3 Swarno Devi's testimony before the trial court that accused Sohan Singh and Rattan Singh have beaten them with 'Danda' when all of them were watching TV in the house of Roop Singh where Rani Devi was there, clearly demonstrates that all of them were watching TV in the house of Roop Singh. There is no substance in the prosecution case that Rani Devi (PW-7) escaped from her house and entered into the house of Roop Singh. PW-4 Kusam Lata is the maternal aunt of prosecutrix Rani Devi and has testified before the trial Court that R-2 Rattan Singh snatched Danda from her, inflicted injuries on their person and subsequently all of them beat Kanta Devi and Swarno Devi. PW-7 Rani Devi's (prosecutrix) version before the trial court that Rattan Singh picked up the Danda and injured her mother PW-2 Kanta Devi and her maternal aunt PW-4 Kusam Lata, while as accused Sohan Singh dragged her. There is complete inherent contradictions/inconsistencies in the statements of the witnesses as far as the role assigned to each of the accused is concerned, some of the witnesses have stated that it was Sohan Singh who injured Kanta Devi and Kusam Lata, whereas the others have stated that it was Sohan Singh who inflicted injuries on their person. The statements of witnesses lack consistency and cohesion on the mode and manner in which occurrence has ensued, which make the prosecution version doubtful and concocted, thereby entitling the respondents benefit of doubt.
- 8.** PW-7 Rani Devi (prosecutrix) is the star witness of the prosecution to prove her abduction by respondents and commission of rape by R-1 Sohan Singh. In her deposition before the trial Court she has categorically testified that accused R-1 Sohan Singh raped her in his house. In her deposition in examination-in-chief as well as in cross-examination she has not uttered a word that she stated to her mother, sister or maternal aunt that she was raped by R1 Sohan Singh. Even PW-2 Mst. Kanta Devi (m/o

prosecutrix), PW-3 Swarno Devi (sister of PW-2 Kanta Devi) have not made any whisper in their depositions before the trial court that after the recovery of prosecutrix (PW-7 Rani Devi) she stated to them that she was raped by R-1 Sohan Singh. The evidence of PWs 2 & 3 Kanta Devi & Swarno Devi cannot be treated as the evidence of corroborative nature enough to ascertain the truth or the falsehood of commission of offences of abduction and rape of PW-7 Rani Devi.

9. PW-12 Dr. Renu Gupta has medically examined the prosecutrix (PW-7 Rani Devi) and has emphatically deposed in regard to the rape upon the prosecutrix as under:-

“no marks of violence were seen anywhere on the body of prosecutrix, the hymen was torn and it was old tear, it admitted two fingers easily, uterus was of normal size, vaginal smear was taken and sent for examination to the laboratory and in the report revealed that no spermatozoa was seen in the slides”.

In the opinion of Dr. Renu Gupta, the prosecutrix was habitual of sexual intercourse. The doctor has categorically framed opinion that there was no evidence of recent sexual intercourse. The medical evidence, therefore, does not support or corroborate and completely negates the commission of forcible sexual intercourse with the prosecutrix.

In a case law reported in **1994 (3) Crimes (HC) 471**, [Baliala @ Balaram Behera & Anr—Appellant **versus** State of Orissa—Respondent] Orissa High Court while observing that detection of spermatozoa is positive sign of recent sexual intercourse, in paragraph 8 of the judgment held as under:

“Secondly, the doctor stated to have examined the vaginal swab but did not find any spermatozoa. Detection of spermatozoa is a positive sign of recent sexual intercourse. **It is almost accepted in medical science that presence of spermatozoa in vagina after the intercourse would be detected from 30 minutes upto 9 days or even 17 days (vide Modi’s Medical Jurisprudence and Toxicology, page 337-338, 20th Edition)**, in a case before the Supreme Court, reported in *Madho Ram v. State of UP*. 7, presence of spermatozoa was detected in the wearing apparel of the girl even after six days of the seizure of the garments and the report of the serologist was accepted as a corroborative evidence of rape. In the present case, PW-1 stated that four persons, except appellant Baliala, while committing the act had full penetration and all released the sperm inside the vagina. Could it be believed that PW-1 scrubbed her private part so carefully and thoroughly so as to completely wipe out the vaginal fluid so that no spermatozoa should be detected from the vaginal swab even though the same was examined only two days after the occurrence. She did not

state anywhere in her statement to have washed or cleaned her private part but rather stated that when she left the house of the appellants in the morning, she had not finished her daily work and further did not take her bath. Though it cannot be conclusively held that she did not have a wash at all, in the absence of her statement in assertions of such fact, the prosecution case becomes doubtful.

Ratio of the judgment (Supra) makes it manifestly clear, that the presence of spermatozoa in a vagina after completion of intercourse could be detected from 30 minutes upto 9 days or even 17 days. It is the prosecution story that occurrence of rape has been committed by R-1 with the prosecutrix on 14.06.2001 whereas prosecutrix has been recovered on 16.06.2001. The prosecutrix has been medically examined by Dr. Renu Gupta on 16.06.2001 with utmost dispatch immediately after her recovery. The prosecutrix is alleged to have been abducted approximately before 48 hours from the date of her examination. In her deposition before the trial court, prosecutrix has categorically put forth evidence that during the intervening night of 15/16th of June 2001 she was raped by R-1 Sohan Singh. PW-12 Dr. Renu Gupta in her deposition has clearly stated that no spermatozoa was seen in the slides sent for medical examination and there was no evidence of recent sexual intercourse. Had there been any truth or substance in the testimony of prosecutrix regarding her being raped by R-1 during intervening night of 15/16th June 2001, there could have been presence of spermatozoa in vagina after intercourse from 30 minutes upto 9 days or even 17 days. In light of the medical evidence aforesaid which completely demolishes the very edifice of the testimony of the prosecutrix and the prosecution story, we are of the affirm opinion that the testimony of the prosecutrix that she was raped by R-1 Sohan Singh does not inspire confidence, therefore, the evidence of PW-7 Rani Devi (prosecutrix) is not of a sterling quality, unworthy of reliance and is inadmissible in evidence.

- 10.** It is the prosecution version that prosecutrix (PW-7 Rani Devi) was abducted by the respondents, and one of the respondents namely R-1 Sohan Singh committed rape upon her. PW-12 Dr. Renu Gupta in her deposition before the trial Court has stated that no external injuries were seen on the body of prosecutrix. The Doctor having found no injuries on the person of the prosecutrix is suggestive of the fact that the prosecutrix was a consenting party. There is not even an iota of evidence uttered by the prosecutrix to show that she made any attempt to escape from the

clutches of the respondents or ever made any resistance. The prosecutrix was grown up woman. Had the occurrence taken place against her will or consent, natural course of conduct on her part would have been not to yield herself to the designs of the accused and to offer stiff resistance. Had the occurrence taken place against the will of the prosecutrix, at least she could have suffered scratches and would have scratched the accused. No injury has been found on the part of the accused person or the prosecutrix. These facts clearly demonstrate that the prosecutrix (PW-7 Rani Devi) was consenting party.

In **1998 (2) Crimes (HC) 418** [Mujia alias Maujilal & Ors **versus** State of MP—Respondent] Madhya Pradesh High Court while observing that where no resistance is made by the prosecutrix and there are absence of any injury on her person, it is unnatural conduct of the victim which shows that prosecutrix was a consenting party, in head note of the case law held as under:

“Indian Penal Code, 1860-**Rape**-Prosecutrix alleging commission of rape by accused persons-however, no resistance made by her to keep away accused by use of legs and hands-**Absence of any injury on person of prosecutrix on basis of injury report**-Recovery of broken pieces of bangles from Dugai-Unreliable as incident had occurred on roof-Non disclosure of incident to inhabitants of Bakhar-**Unnatural**-Prosecution adducing evidence by witnesses regarding disclosure of incident cannot be believed-Enmity between families of accused and prosecutrix-**Evidence on record shows that prosecutrix was a consenting party**-Hence, accused persons cannot be said to have committed offence of rape-Order of trial court convicting accused persons for offence punishable u/s 376 I.P.C liable to be set aside.”

In **2006(1) S.L.J 364** [Hans Raj vs State] a Coordinate Bench of this court while observing that absence of marks of struggle indicate that either there was no forcible intercourse with the lady or it was with her consent, in head note of the case law & in paragraph 14 of the judgment held as under:-

“**Criminal Trial Evidence Act Section 3 Ranbir Penal Code Section 376:** Conviction can be based on the sole testimony of the prosecutrix without corroboration provided statement of the prosecutrix inspire confidence- only that statement of a prosecutrix can inspire confidence which when appreciated in the light of cross-examination and attending circumstances of the case is not found to be out of tune with probability factor-In appropriate cases it is open to the court to look for corroboration or at least insist for some evidence which lends support to the version of the prosecution for accepting it as its fact value-accused 29 years of age alleged to have committed rape on a well build lady of 40 years-**no marks of violence indicating resistance/struggle found**-prosecutrix stating that she could not resist because she was paralytic patient but this fact ruled out by the doctor-other witnesses though supporting

prosecution story but such witnesses close relatives of the prosecutrix-accused acquitted of the charge.”

14. In the present case the prosecutrix was not a young lady at the time of occurrence but was a woman of about 40 years, married for the last 20/25 years, having married daughters. The accused is said to be about 29 years of age. The prosecutrix and PWs Shanti Devi, Chattu Ram and Thakardas are close relations of each other. The prosecutrix has admitted in her cross-examination that in a case lodged against Shanti Devi and her brothers, the accused had appeared as a witness and tendered evidence against them. The witnesses being closely related can have animus against the accused and it has also to be kept in mind that it is not unlikely that when a married woman is found in a compromising position in the company of a person who is not her husband, she can make false allegations against such person in brooder to protect her honour. In such a case if not the corroboration to the statement of the prosecutrix is to be insisted, at least the court must be satisfied before it accepts the testimony of the prosecutrix for recording that there was sexual intercourse committed with her. There is nothing in the medical evidence to suggest that there was sexual intercourse. The prosecutrix in her statement has alleged that the accused committed forcible intercourse with her. **In the ordinary course in the case of forcible intercourse on a well built matured lady the marks of violence indicating resistance/struggle are certainly to be found. The doctor who examined the prosecutrix has testified that there were no marks and the body off the prosecutrix. The absence of such marks of struggle indicates that either there was no forcible intercourse on the lady or if it was there then it was with her consent.** The prosecutrix has explained that she could not resist because she was a paralytic patient but the doctor PW Mansai has ruled out this fact. The prosecutrix says that her trouser was seized but investigation does not show any such seizure. Therefore, from the statement of the prosecutrix alone it cannot be accepted that she was the Victim of rape.

In **1993 (3) Crimes 67** [Pardeep Ambadas Shinde—Appellant versus State of Maharashtra—Respondent] Bombay High Court while observing that where the medical evidence shows no evidence of injury anywhere on the body of the prosecutrix, and if no laceration is found on vaginal across cervix, it amounts to consent by the prosecutrix, in paragraph 11 of the judgment held as under:-

11. This takes me to the medical evidence on record. P. W. 7 Dr. Ajit Patil has examined both Sunita and accused No. 1. On the issue of rape following are the findings of Dr. Patil in respect of Sunita: History of sexual contracts twice in the past. **No evidence of injury anywhere on the body.** Breasts-adult pattern. Auxiliary hair present (mature). Vulva and Vagina well developed. Pubic hair adult pattern P. V. Examination:- 2 fingers. P. V. easily possible Uterus RV-RF normal size. Fornices clear. P. S. examination:- **No laceration on vaginal across cervix and vagina healthy.**

Ratios of the judgments of **“Mujia alias Maujilal’s case”, “Hans Raj’s case” & “Pardeep Ambadas Shinde’s case”** (Supra) make it manifestly clear, that in the ordinary course in the case of forcible intercourse on a well

built matured lady the marks of violence indicating resistance/struggle are certainly to be found and absence of such marks of struggle indicates that either there was no forcible intercourse on the lady or if it was there then it was with her consent. Ratio decidendi of the case laws (Supra) squarely apply to the facts of the case in hand. In the case in hand, as per prosecution story, prosecutrix (PW-7 Rani Devi) was abducted by the respondents and one of the respondents namely R-1 Sohan Singh committed rape upon her. PW-12 Dr. Renu Gupta in her deposition before the trial Court has stated that no external injuries were seen on the body of prosecutrix. The Doctor having found no injuries on the person of the prosecutrix is suggestive of the fact that the prosecutrix was a consenting party. There is not even an iota of evidence uttered by the prosecutrix to show that she made any attempt to escape from the clutches of the respondents or ever made any resistance. The prosecutrix was grown up woman. Had the occurrence taken place against her will or consent, natural course of conduct on her part would have been not to yield herself to the designs of the accused and to offer stiff resistance. Had the occurrence taken place against the will of the prosecutrix, at least she could have suffered scratches and would have scratched the accused. No injury has been found on the part of the accused person or the prosecutrix. These facts clearly demonstrate that the prosecutrix (PW-7 Rani Devi) was consenting party.

- 11.** The version of prosecution regarding the recovery of the prosecutrix appears to be a tale only. PW-8 Ashwani Kumar, PW-9 Romesh Kumar & PW-10 Parveen Singh (brother of prosecutrix) are witnesses to the recovery memo of the prosecutrix. PW-8 Ashwani Kumar has tendered evidence before the trial court that the prosecutrix was not recovered from the house of accused/respondents in his view and presence. He has gone to the extent of deposing that recovery of prosecutrix was not made before him, police authorities brought the prosecutrix to his home in a Gypsy where he signed the memo of recovery, but he does not know from where the prosecutrix was brought by police authorities. PW-9 Romesh Kumar has stated before the trial court that prosecutrix was not recovered from the house of accused in his view and presence. He has further deposed that at the time of recovery of the prosecutrix, he had spotted the prosecutrix in the house of Ashwani Kumar and accused were neither there nor the prosecutrix was recovered from the house of accused. By the depositions

of PWs 8&9 Ashwani Kumar and Romesh Kumar who are independent witnesses to the recovery of prosecutrix, it is clinching evidence on record that both these witnesses have unequivocally denied the recovery of prosecutrix from the house of respondents/accused. PW-10 Parveen Singh (real brother of the prosecutrix) although in his examination-in-chief has stated about the truthfulness of the contents of recovery memo of the prosecutrix EXPW-PS, but in cross-examination he has demolished the prosecution case by deposing that he does not know date, month or year in which his sister was abducted. PW-Parveen Singh is an interested witness, and therefore, by no stretch of imagination, in absence of independent corroborative evidence of PWs- 8&9 Ashwani Kumar & Romesh Kumar, his evidence inspires confidence, is worthy of reliance and admissible in evidence.

- 12.** It is the prosecution story, that the prosecutrix is alleged to have been abducted by the respondents in a Tata Sumo vehicle to the house of the R-1 Sohan Singh in Punjab. The driver of Sumo was the most material and important witness in the case who could have unfolded the real prosecution case regarding abduction of the prosecutrix. The driver of Sumo vehicle has not been cited as prosecution witness in the list of witnesses in the charge-sheet nor examined otherwise which casts serious doubt regarding the credibility and authenticity of the prosecution case. The Sumo vehicle has neither been seized nor identified and no efforts were made to trace the vehicle. Moreso, the sole independent eye witness of the prosecution case namely, PW-6 Karan Singh has turned hostile and even from his cross-examination the prosecution has not been able to elicit any incriminating evidence against the respondents.
- 13.** From the facts of the case and the evidence led by the prosecution, it has come to fore that prosecutrix has travelled a long distance in the Sumo vehicle from her parental home to the house of alleged abduction to Manj, Punjab. She was taken by the respondents in a Sumo vehicle on a National Highway where number of check points usually remained installed, and particularly one located at Lakhanpur, where each and every vehicle is checked and passengers are frisked. Had the prosecutrix not been consenting party, she could have easily complained or cried about her abduction by accused. Not only this, the place from where the prosecutrix

is allegedly confined is surrounded by some houses as stated by the prosecutrix in her testimony. She could have narrated the occurrence to the people, raised hue and cry to attract attention of the people of the locality. The prosecutrix was not a cattle as could be tied on to a tether, she was an able bodied person and could have resisted the commission of rape, and assuming that she was raped, then medical evidence could have corroborated her testimony. From all the way from her maternal house to the place where she was subjected to rape, she has not offered any resistance/struggle or complained during Naka checkings which clearly demonstrates that the prosecutrix was a consenting party. Therefore, the allegation of abduction and rape of the prosecutrix are far from the reality.

14. For the foregoing reasons and the discussion made hereinabove, we are of the considered view, that the prosecution has utterly failed to prove its case against the respondents beyond any reasonable doubt. Viewed thus, we are of the firm opinion that the Criminal Acquittal Appeal is meritless, and the same is outrightly dismissed and rejected. Impugned Judgment of the trial Court dated 13.08.2013 is affirmed.

15. Disposed of accordingly.

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Jammu
17.10.2023
Vijay

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes