

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

CRAA No.169/2014

Reserved on 23.12.2024

Pronounced on 31.12.2024

State of J&K through SSP Poonch

...Petitioner(s)/Appellant(s)

Through: Mr. Rajesh Thapa, AAG

Vs.

**Mohd Shafi son of Ramzan Joo resident of
Arai, Tehsil Mandi, District Poonch.**

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

J U D G M E N T

Sanjeev Kumar J

1 This acquittal appeal by the State of Jammu and Kashmir (now UT of Jammu and Kashmir) is directed against an order and judgment dated 08.02.2014, passed by the learned Sessions Judge, Poonch in file No.16/Sessions titled 'State vs. Mohd Shafi' whereby the trial Court has acquitted the respondent of the charge under Section 376 RPC.

2 Briefly stated, the prosecution case as was laid before the trial Court, is that on 01.07.2008, a report was lodged by the prosecutrix (name withheld) against her father at Police Station, Mandi, alleging therein that about one and a half months earlier, the accused (respondent herein) committed rape upon her. She claimed that she did not disclose the incident

to anybody in order to save herself from condemnation and ostracization by society. It was alleged that during the intervening night of 29th and 30th June 2008, the respondent picked up a quarrel with her mother Mst Naseema Bi, and forced her to leave his house. While younger brothers of the prosecutrix were sleeping in the house, the respondent forcibly gagged her mouth, took her to another room, and raped her without her consent. On this report, FIR No. 52 of 2008 for commission of offence under Section 376 RPC came to be registered at Police Station, Mandi and the investigation entrusted to ASI Kamal Din. The I.O got the medical examination of the prosecutrix conducted at District Hospital, Poonch. He also went on spot, prepared a site plan, and recorded the statements of the witnesses conversant with the facts of the case in terms of Section 161 CrPC. The salwar produced by the prosecutrix was seized, and a seizure memo was prepared which, after proper sealing, was sent to the FSL Jammu for examination. The respondent was subsequently arrested, and the investigation concluded as 'proved' against him. Consequently, the challan was presented before the Court of CJM, Poonch, on 18.08.2008 and the same was committed to the trial Court for trial.

3 The trial Court framed charge under Section 376 RPC against the respondent vide order dated 18.12.2008. The charge was read over to the respondent who pleaded not guilty and claimed to be tried. With a view to establishing the charge against the respondent, the prosecution examined all the eleven listed witnesses, including I.A.Malik, Scientific Officer, FSL Jammu and Manzoor Hussain, a teacher, in support of its case. The incriminating circumstances appearing in the prosecution evidence were put

to the respondent and his statement under Section 342 Cr.PC was recorded by the trial Court on 11.12.2012. The respondent denied the allegations as false and frivolous. The respondent appeared himself as a witness and examined one more witness in his defence.

4 The trial Court, after examining the evidence on record, came to the conclusion that the prosecution had failed to connect the respondent with the alleged crime. Vide impugned judgment passed by the trial Court, the prosecution case was dismissed and the respondent acquitted of the charge. The trial Court has arrived at its conclusion of acquittal in favour of the respondent for the following reasons:

(i) PW-1, the prosecutrix is daughter of the respondent, PW-2, is his wife and PW-4 is his son. PW-4, who is also brother of the prosecutrix, did not support the prosecution case. Although, he was declared hostile, no incriminating evidence could be elicited from his statement during cross-examination by the prosecution;

(ii) In the report lodged on 01.07.2008, the prosecutrix had alleged that the respondent committed rape upon her during night about one and a half months ago and also on the intervening night of 29th and 30th June, 2008, when he took her to another room and subjected her to rape. However, in her statement before the Court, she has not stated anything about the rape committed upon her about one and a half months of the filing of the report;

(iii) There is a major contradiction in the statement of PW-1 with regard to place of occurrence. In the report lodged by her before the police, the prosecutrix has stated that she was taken to another room by the respondent, where he raped her. However, in her statement recorded before the trial Court, she has stated that the respondent entered her room after knocking the door and committed rape upon her in her room. She has stated that the respondent had entered her room on the pretext of finding out a torch. This is also stated by PW-2 in her testimony before the Court. The prosecutrix has, thus, given

two places of occurrence; one the room in which she was sleeping and the other being a separate room where she was allegedly taken by the respondent and raped;

(iv) The statement of PW-1 is not in sync with the statement of PW-2 and the story projected by them is not trustworthy. In her deposition, PW-1 has stated that in the morning of the date of occurrence, she was beaten by the respondent and was advised not to disclose about the rape to anybody. On the next day, when her mother came back, her father went to Poonch. On the next day, she narrated the occurrence to her mother, to which her mother responded by asking as to why she did not disclose it to her on the previous day. Her mother also advised her to tell the entire incident to the respondent upon his return from Poonch. She claimed that upon the return of the respondent from Poonch, she disclosed the incident to her mother in presence of the respondent, upon which the respondent started beating her;

(v) So far as PW-2 is concerned, she claims that on the next day of occurrence, she was told by the prosecutrix about the rape having been committed by the respondent. She does not support the statement of PW-1 that she told PW-1 to narrate the whole story in presence of the respondent when he returned from Poonch. P-2 has given a different story saying that when PW-1 informed her about the commission of rape upon her by the respondent, she did not believe her. According to PW-2, it was not believable that a father could commit rape upon her daughter. PW-2 goes on to state that she continued to hear the story of occurrence from PW-1 for 10 to 12 days, but still did not believe her. It was only after 10-12 days, when PW-1 was examined by a Doctor in Mandi Hospital and it was found that PW-1 was pregnant, PW-2 believed that PW-1 has been raped by the respondent. The testimonies of PW-1 and PW-2 are, thus, not in alignment with each other and are rather contradictory on material particulars;

(vi) The lodging of FIR on 01.07.2008 i.e after about one and half months of the occurrence has also remained unexplained. Other than stating that she did not disclose about the rape to anybody out of fear of social condemnation and ostracization from society, she has said nothing more. It has come in evidence that she narrated about the incident to her mother PW-2 on the second day of the occurrence, but the FIR was

lodged only after PW-1 was found to be pregnant by the Doctor who examined her in Mandi Hospital, 10-12 days after the occurrence;

(vii) That PW-1 has, in her testimony, claimed that during the course of committing rape, respondent caused tooth bites on her breasts and scratches on her back. However, the testimony of PW-8, the Doctor, belies this statement of PW-1. The Doctor has clearly stated that there were no tooth bites on the breasts and scratches on the back of the prosecutrix. The statement of PW-1 to the extent that she bled about one glass of blood, which fell on the mattress during the course of intercourse, is not corroborated by any ocular or circumstantial evidence. Neither the mattress has been seized and sent to examination, nor the same was claimed to have been seen by PW-2 when she returned home on the very next day of the occurrence;

(viii) Disinclination of PW-1 to allow DNA test to be conducted to ascertain the paternity of the baby which she had given birth to is also a factor that casts serious doubt on the entire prosecution case;

(ix) DW-1 has given a motive for the implication of the respondent, stating the relationship between the respondent and the mother of the prosecutrix was strained, and there were financial issues between the two.

5 It is on the basis of the aforesaid reasoning, the trial Court has not believed the prosecution version.

6 Having heard learned counsel for the parties and gone through the entire record minutely, including the evidence on record, we are of the considered opinion that the conclusions arrived at by the trial Court on the basis of evidence on record, are the possible conclusions which cannot be interfered with in acquittal appeal. The trial Court has minutely analysed the evidence on record and has found the case put up by the prosecution unworthy of credence. The huge delay in lodging FIR from first incident without any satisfactory explanation; the two different versions with regard

to place of occurrence; the nature of the injuries received by the prosecutrix; and the testimony of the Doctor to the contrary, are some of the factors that that put the entire case of the prosecution in the realm of doubt and suspicion.

7 For the foregoing reasons, and also the reasoning given by the trial Court as culled out by us hereinabove, we are of the considered opinion that the view taken by the trial Court is the possible view in the matter. It is well settled that scope of interference by the Appellate Court in a judgment of acquittal is well circumscribed and even if, on evaluation of the evidence on record, two views are possible, the appellate Court hearing an acquittal appeal will lean in favour of the view that supports the accused.

8 In the instant case, the evidence on record, particularly the statements of PW-1 and PW-2 and the story projected by them do not inspire confidence. The trial Court has, thus, rightly concluded that the prosecution had failed to connect the respondent/accused with the commission of crime attributed to him. We fully concur with the view taken by the trial Court. The appeal is devoid of any merit and the same is, accordingly, dismissed. The copy of the judgment along with trial Court Record be sent back.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
31 .12.2024
Sanjeev

Whether order is reportable:Yes/No