

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 17.09.2025
Pronounced on:- 30. 09.2025
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Crl LP(D) No. 3/2023
CrlM No. 152/2023

Union Territory (State) of J&K
through SDPO, Bhaderwah

.....Petitioner/Appellant(s)

Through: Mr. Raman Sharma, Sr. Advocate (AAG) with
Mr. Kartikay Sharma, Advocate

vs

- | | |
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| <ol style="list-style-type: none">1. Shah Din @ Shava S/o Hamida Gujjar
R/o Sarore Adda, Tehsil Bari
Brahmana, District Samba.2. Sharu S/o Hamida Gujjar R/o Sarore
Adda, Tehsil Bari Brahmana, District
Samba.3. Fallian S/o Bashir Ahmed Gujjar R/o
Sarore Adda, Tehsil Bari Brahmana,
District Samba.4. Mohd. Sharief S/o Ibrahim R/o
Sudhmahadev, Tehsil Chenani, District
Udhampur.5. Mohd. Hussain S/o Mohd. Yusaf R/o
Sudhmahadev, Tehsil Chenani, District
Udhampur.6. Mohd. Amin S/o Gami Gujjar R/o
Sudhmahadev, Tehsil Chenani, District
Udhampur .7. Farooq Ahemd S/o Ali Hussain r/o
Sudhmahadev, Tehsil Chenani, District
Udhampur. | <p>..... Respondent(s)</p> |
|---|----------------------------|

Through: None.

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjay Parihar J

1. By way of the instant miscellaneous application, the appellant seeks
condonation of delay in filing the acquittal appeal against the judgment
dated 30.07.2022 passed by the Fast Track Court, Doda

(hereinafter referred to as “***the Trial Court***”) in case FIR No. 102/2017 titled “***State of J&K vs. Shah Din @ Shava and others***”, wherein the respondents, who were facing trial for offences under Sections 366, 376, 344, 147 and 109 of the Ranbir Penal Code (RPC), came to be acquitted. By a separate application, the appellant has also prayed for the grant of leave to file the said acquittal appeal.

2. The Registry has taken steps to summon the respondents in the matter. When the case was taken up, this Court considered it appropriate to examine and dispose of the aforesaid applications at the admission stage itself. The prosecution's case, in brief, is that the respondents were alleged to have committed offences under Sections 366, 376, 344, 147 and 109 RPC on the basis of an occurrence, that took place during the intervening night of 5th/6th September, 2017. It is alleged that the respondents, after forming an unlawful assembly, entered the *Dhera* of the victim, forcibly abducted her, and took her to Sarore, from there she was transported to Kehlani Top in a vehicle. From Kehlani Top, she was allegedly taken on foot towards Sarore and confined in a room for a period of three days, during which time rape was committed upon her. Thereafter, she was taken to Uttarakhand and, at the instance of her brother, when the matter came to be reported to the police, she was brought back. On the written complaint of her husband, FIR No. 107/2017 under Sections 363, 376, 344, 147 and 109 RPC came to be registered at Police Station Bhaderwah, leading to investigation and trial. It is an admitted position that during the course of the trial, the prosecutrix turned hostile and failed to identify the accused as the assailants and perpetrators of the alleged crime. The Trial Court, in

view of her testimony, recorded that there existed no incriminating evidence against the respondents, and proceeded to truncate the proceedings, holding that continuation of the trial would serve no useful purpose and would be a futile exercise.

3. The appellants have urged that the judgment, impugned herein, is unsustainable in law as the Trial Court failed to apply its judicial mind to the evidence available on record. It is contended that there was sufficient and credible evidence against the respondents to warrant continuation of the trial. Though the victim had recanted her statement recorded under Section 164-A Cr.P.C., it is the appellants' case that the prosecution had nonetheless collected cogent material which clearly established the involvement of the respondents.
4. We have given our thoughtful consideration to the matter in hand and have also heard learned counsel for the petitioner. It is an admitted position that the appeal has been filed with a delay of 94 days. To justify condonation of such delay and to seek leave to appeal, the main plank of the appellants' argument is that there existed credible evidence against the respondents, and the Trial Court had no authority in law to truncate the proceedings in the manner it did.
5. A perusal of the impugned order reveals that after the prosecutrix turned hostile and deposed contrary to the prosecution's case, an application came to be filed by the respondents on 18.07.2022 seeking truncation of the proceedings. Alongside, the prosecution also moved an application under Section 479-B Cr.P.C., praying for initiation of proceedings against the prosecutrix on the ground that she had made a false deposition. Both these

applications were considered and disposed of by the Trial Court through the judgment impugned herein.

6. The pleadings further demonstrate that once the victim was declared hostile, the prosecution sought permission to re-examine her. Her statement was accordingly deferred, and she was recalled for further examination. However, even upon re-examination, she did not support the prosecution's version, asserting that the names of the respondents were disclosed by her at the instance of the police, and that she had neither seen the respondents nor had they subjected her to any unlawful act. She further failed to recognise or identify the respondents in Court as the persons who had kidnapped her or were otherwise involved in the incident. The Trial Court, therefore, concluded that even if the remaining evidence on record was taken at its highest degree of face value, it would still be insufficient to secure a conviction of the respondents. On this reasoning, the Trial Court not only dismissed the charge-sheet but also declined to initiate proceedings against the prosecutrix under Section 479-B Cr.P.C.

7. Much emphasis has been laid by the petitioners on the contention that the learned Trial Court, being a Court of Sessions, could not have terminated the proceedings against the respondents midway merely because the prosecutrix did not support the prosecution's case. In the case of **Satish Sharma v. State of M.P., (1996) 9 SCC 766**, it was held *“But when the Judge is fairly certain that there is no prospect of the case ending in conviction, the valuable time of the Court should not be wasted on holding a trial only for formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are*

under heavy pressure due to the workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time, it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.”

8. The aforesaid pronouncement pertained to a case where the accused was discharged at the stage of charge/discharge, the Court having taken into account material produced by the accused himself at that stage. It was held therein that if the accused succeeds in producing reliable material at the stage of charge/discharge, which fatally affects the very sustainability of the prosecution case, it would be unjust to suggest that such material could not be looked into by the Court. However, the said view came to be overruled in ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568***, wherein the Hon'ble Supreme Court held that the accused has no right to produce documents at the stage of charge/discharge to prove his defence, and that the Court is only required to consider the material placed and relied upon by the prosecution for determining whether a charge is made out.
9. In the instant case, therefore, the procedure required to be applied by the Trial Court was that, once charges were framed, the prosecution was under an obligation to adduce evidence in support of the charge. Thereafter, upon completion of prosecution evidence, examination of the accused, and hearing of both sides, the Court could consider whether there was any evidence to sustain the charge. If the Court concluded that there was “no evidence” against the accused in support of the charge, then, in terms of Section 273 of the J&K Code of Criminal Procedure, 1989 Svt.

(PariMateria to Section 232 of the Code of Criminal Procedure, 1973), the Court was bound to record an order of acquittal. Conversely, if it was not a case of total absence of evidence, the Court was required to call upon the accused to enter upon his defence and adduce evidence in support thereof.

10. It is a settled proposition of law that Courts are required to decide criminal cases based on evidence available on record, and not merely to dispose of them for the sake of convenience. In cases of sexual assault, it is equally well settled that the testimony of the prosecutrix, if found to be credible and trustworthy, can form the sole basis for conviction. She not being treated as an accomplice to the crime but rather as the victim and the sole injured witness of the assault, her evidence, therefore, assumes great evidentiary value.
11. However, where the prosecutrix declines to identify the perpetrators of the crime, two inferences may arise: either she was a consenting party to the incident, or that the persons who stood trial were not the actual perpetrators. In the present case, once the prosecutrix was examined and she recanted her earlier version, no other prosecution witness of material importance, even if examined, could have made the prosecution's case successful. Although there is no specific provision in law empowering the "Sessions Court" to truncate proceedings mid-way, the Trial Court, faced with the prosecutrix's categorical denial of involvement of the respondents and in the absence of any incriminating material emerging even in cross-examination, was justified in holding that continuation of the trial would be nothing but a futile exercise. Considering the settled legal position that in such cases the

testimony of the victim is determinative of the fate of the prosecution, no exception can be taken to the course adopted by the Trial Court.

12. The Trial Court rightly formed the opinion that, in light of the testimony of the prosecutrix, there was no reasonable prospect of conviction of the respondents, and that prolonging the trial would result only in wastage of valuable judicial time. The appellants have failed to point out any clinching material on record which could warrant the conclusion that the prosecutrix had been subjected to sexual assault at the instance of the respondents. The learned Trial Judge has carefully considered the testimony of the prosecutrix and also examined the matter in the context of Section 479-B Cr.P.C., concluding that there was nothing to suggest that the prosecutrix had deliberately or wilfully given a false version or fabricated evidence.
13. The record reveals that the prosecutrix was first examined on 17.02.2022 and again on 18.07.2022, and on both occasions she categorically denied the involvement of the respondents in the commission of the alleged offence. On 19.05.2022, at the instance of the prosecution, she was recalled for re-examination, but she once again reiterated that the respondents were not the culprits. While she did not deny the occurrence of the incident dated 05/06 September 2017, her consistent stand was that the respondents were not the persons who abducted her or subjected her to sexual assault.
14. It was contended that, in light of the prosecutrix's refusal to identify the respondents, the Trial Court ought not to have concluded the matter, but should instead have confronted the Investigating Officer to test the veracity of the victim's testimony. However, considering the nature of the charges levelled against the respondents and the fact that the prosecutrix had

categorically recanted from the prosecution case, putting the Investigating Officer on notice would not have materially altered the situation. Once the prosecutrix failed to identify the respondents, those arraigned as accused could not reasonably be held responsible for the alleged offences. The Trial Court has rightly taken the view that the testimony of the prosecutrix was neither procured by extraneous influence nor given under duress. We find no justifiable ground to interfere with the reasoning adopted by the Trial Court and are inclined to give a quietus to the matter. The appellants have not been able to demonstrate any compelling circumstance warranting the grant of leave to appeal. Nothing has been placed before us to show that the acquittal of the respondents has in any manner undermined the majesty of law.

15. For the foregoing reasons, the prayer for condonation of delay and for the grant of leave to file an acquittal appeal is ***declined***. Consequently, the appeal, alongwith connected applications, stands ***dismissed***.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
30.09.2025
Rahul Sharma

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