

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

CRAA 139/2013

Reserved on: 09.10.2025
Pronounced on: 16.10.2025
Uploaded on: 17.10.2025
Whether the operative part or
full judgment is pronounced: Full

State of J&K

... Appellant(s)

Through: -Mr. P.D.Singh Dy.AG

vs.

Mohd Yousaf

Respondent(s)

Through: - Mr. Anwar Choudhary Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE**

JUDGMENT

Sanjeev Kumar, J

1 This acquittal appeal by the then State of Jammu and Kashmir (now U.T. of J&K) arises out of a judgment of acquittal dated 16.01.2013 passed by the learned Principal Sessions Judge, Ramban ["the Trial Court"] in Criminal Challan No. 29/2010 titled State of J&K vs. Mohd Yousaf.

2. Briefly put, the prosecution case, as was presented before the trial Court, is that on the basis of a written complaint lodged by one Rashid Bakerwal on 07.10.2010 to the Judicial Magistrate 1st Class Banihal alleging therein that his minor daughter (hereafter referred to

as the ‘prosecutrix’) was kidnapped in the intervening night of 4th and 5th October and a theft was committed to the amount of Rs.75000 by Juma, Hameed, Abdul Aziz and Sardar sons of Lala Bakerwal resident of Taryan Udhampur Banihal, Police of Police Station Banihal registered an FIR No. 185/2010 for the commission of offences punishable under sections 363/109/457/380 RPC.

3 On completion of the investigation of the case, chargesheet was laid against Mohd Yousaf for the commission of offences punishable under Sections 363/376 RPC before the Local Jurisdictional Magistrate who committed the case to the trial Court. The trial Court vide order dated 21.02.2011 framed charges against the accused/respondent herein for commission of aforesaid offences. The accused present during the trial, pleaded not guilty to the charge and claimed to be tried.

4 With a view to prove the case against the respondents, the prosecution cited 09 witnesses, however, produced and examined 08 witnesses namely PW-1 Prosecutrix, PW-2 Rashid Bakerwal, PW-3 Bashir Ahmad, PW-4 Mohd Rafiq, PW-5 Dr. Rita Kotwal, PW-7 Dr. Mohd Anwar and PW-9 Inspector Sajad Mir as prosecution witnesses.

5. The trial Court upon hearing the public prosecutor and the learned defence counsel and upon considering the evidence came to

the conclusion that the prosecution has miserably failed to bring home the charge against the respondent/accused.

6 We have heard the learned counsel for the appellant and have perused the material on record, including the evidence of the witnesses and the impugned judgment.

7. The trial Court, in its detailed judgment, has made three key findings that formed the basis for acquitting the respondent/accused:

(a) Regarding the age of the prosecutrix, the trial Court found that the prosecutrix was not a minor below 16 years as claimed by the prosecution. The Court relied on the statement of PW-2, father of the prosecutrix, who stated that the prosecutrix was born nine years after his marriage, which took place 30-35 years ago. Based on this, the trial Court calculated that the prosecutrix was between 21-26 years of age at the time of the incident, not 13-14 years as claimed.

(b) Regarding the allegation of kidnapping, the trial Court found no evidence of kidnapping. The Court noted that the prosecutrix had accompanied the accused without resistance and did not disclose any alleged kidnapping to anyone at various places, including the Banihal Bus Stand, en-route to Udampur, at Udampur, or Tikri where she was allegedly confined. The Court also relied upon the statements of PW-3 and PW-4, brothers of the complainant, who stated that they had heard that the prosecutrix had eloped with the respondent.

(c) Regarding the allegation of rape, the trial Court found that the sexual intercourse was consensual, not forcible. The Court noted that the prosecutrix had stated that she had contracted "nikah" (marriage) with the respondent and had made a statement before a Magistrate at Udampur Court that she had married the respondent and was staying with him willingly. She had stayed with the respondent as his wife at Udampur and Banihal.

8. We have carefully examined the evidence on record and the reasoning of the trial Court.

9 In the present case, we find that the Trial Court has carefully analyzed the evidence on record and has given cogent reasons for its conclusions. The trial court's finding that the prosecutrix was not a minor is based on the statement of her father (PW-2). The Court has rightly noted the inconsistency between the age claimed by the prosecutrix and the age that could be inferred from her father's statement regarding the duration of his marriage. Regarding the allegation of kidnapping, the trial Court has correctly noted that the prosecutrix did not raise any alarm or disclose any alleged kidnapping to anyone at various places. The statements of PW-3 and PW-4 also support the inference that the prosecutrix had eloped with the respondent of her own will.

10. As regards the allegation of rape, the trial Court has rightly observed that the sexual intercourse was consensual. The prosecutrix's own statement that she had contracted "nikah" with the respondent and her statement before a Magistrate at Udhampur Court that she had married the respondent and was staying with him willingly, clearly indicates that the relationship was consensual.

11. We may add here that with regard to the radiologist's opinion about the age of the prosecutrix, as mentioned by PW-5 Dr. Rita Kotwal, could not be relied upon since the radiologist was neither

produced nor examined before the court. In the absence of his/her cross-examination, this opinion cannot be given any weightage.

12. We are of the considered opinion that the view taken by the Trial Court on the basis of the evidence brought on record by the prosecution is legally perfect and unexceptionable.

13 It is now a trite law that while hearing an appeal against the order of acquittal, the powers of appellate Court are circumscribed by well established principles. The Supreme Court in **Vijay Kumar Vs. State; (2009) 12 SCC 629**, held thus:

"(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

14. It is equally well settled that in an acquittal appeal, if the appellate Court on appreciation of evidence finds that another view different from the one taken by the learned trial Court is also possible, the view which favours the accused has to be taken.

15. That being the principle of law defining the scope of interference in acquittal appeals, we do not find any merit in this appeal and the same is, therefore, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
16.10.2025
Sanjeev

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