

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

Case: CRA No. 28/2017

CrIM No. 315/2020

IA No. 1/2017

1. Sunil Kumar alias Balwant S/o Pikha Ram,
Age 19 years.
2. Sat Pal alias Matha S/o Vishwa Nath
At present Central Jail Kot Bhalwal, Jammu.
3. Mst. Revo Devi alias Parseeno W/o Pawan
Kumar all residents of village Kanjli, Tehsil and
District Reasi.

...Appellant(s)

Through: Mr.Sunil Sethi, Sr. Advocate with
Mr. Sumit Nayyar, Advocate
Mr. Rohit Sharma, Advocate with
Mr. S.M Wajahat, Advocate
Mr. Sagir Ahmed Khan, Advocate
Ms. Deepika Mahajan, Advocate with
Mr. Atharv Mahajan, Advocate

V/s

State of J&K through In-charge Police Station Reasi. Respondent(s)

Through: Mr. Rajesh Thappa, AAG

**CORAM:HON'BLE MR. JUSTICEATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT(ORAL)

20.02.2025

(Atul Sreedharan-J)

1. The present appeal has been preferred by the appellants who have been convicted by the impugned order dated 11.11.2017, arising from FIR No. 67/2015, which was registered against the appellants-herein for offences under Sections 363/376/120-B/342/506 of Ranbir Penal Code.
2. The brief facts of the case are as follows:
3. On 12.05.2015, at about 12.20 p.m PW-2, the father of the prosecutrix lodged a written report being EXTP-1 at P.S Reasi, alleging that on 09.05.2015, A-3, in the absence of this witness, took his daughter, aged

15/16 years, for collecting firewood in the jungle. The reputation of A-3 is dubious according to the prosecution, and that the prosecutrix was taken away in absence of her father. Thereafter, it is alleged that A-3, on the pretext of attending the call of nature went away and thereafter A-1 and A-2 reached the scene of occurrence and committed rape upon the prosecutrix one after the another. Thereafter, the accused persons are alleged to have kept the prosecutrix in the jungle for the whole night after which she was released from the custody and disclosed the whole incident to her parents after she reached home. It is also the case of the prosecution that on 11.05.2015, a meeting was convened in the village in which the appellants apparently threatened the father of prosecutrix with dire consequences if he takes any legal action against them. Based on EXTPW-1, FIR No. 67/2015 for the aforementioned offences was registered and the matter taken into investigation. The Investigating Officer PW-12 got the prosecutrix medically examined. The pyjama was re-sealed and sent to the FSL for chemical examination and the FSL Report/opinion was received on 24.05.2017, which is marked as Mark-A and Mark-B, respectively.

4. The FSL Report reflects that the Panama with cord reveals Human semen stains/spermatozoa on Exhibit No. K-99/2015 and blood stains were also detected.
5. The FSL Reports also discloses that the “Group of seminal stains/blood stains could not be determined on account of interfering substances.”
6. Learned counsel for the appellants has drawn the attention of this Court to the statement of PW-1 who is the prosecutrix who states that she knows the appellants and that on the date of the incident, A-3 came to her house and asked her to accompany her to jungle for firewood. She further says that on that day her parents and her brother were not at home, and she was taken to

the nearby jungle where they collected firewood. She further states that A-3 went away from there after receiving a phone call on the pretext of answering nature's call after which A-1 and A-2, the appellants-herein, reached the spot and committed rape on the prosecutrix one after the other. She also says that she felt pain and she cried. Further, she states that she had to remain in jungle for the whole night and on the next day between 9 and 10 am, her father and uncle Tilak Raj reached the spot and upon seeing them, the appellants-herein ran away. She further says that the appellants asked her father to settle the matter amicably which he refused. She also refers to meetings that were convened for two to three days between the complainant side and the accused side and thereafter, on 12th the FIR was registered, and the IO took her to the hospital for medical examination and for recording her statement under 164-A Cr.P.C. She has proved her 164-A statement which is marked as EXTP-2 and also states that she was studying in the Government High School, Kanjali.

7. In cross-examination by the defence, she says that the appellants who were accused A-1 and A-2 were her neighbours and used to visit her house once or twice in a month and they were no strangers to her. She also denies any threat being given by A-3 in order to compel her to go to the jungle to collect firewood. She says that during the sexual assault, she suffered abrasions, and her clothes had got torn and that she sustained injuries on her shoulder, back, hips and that a little blood also came out from the abrasions. She has also stated that she was raped for two to three hours by A-1 and A-2 each. She says that she was recovered by her father and uncle Tilak Raj, and that her father sent for clothes from the house and that she wore the clothes that came from the house and her father had taken her to the lady doctor who examined her private parts though she did not record it in writing. She

categorically states in the cross-examination that the clothes worn by her on the date of occurrence were washed and thrown away in the lane. She further states that the date of birth which is recorded in the School Certificate is wrong and that at the time of occurrence she was about 15 years old.

8. PW-2 is Milkhi Ram who is the father of the prosecutrix and says that his daughter was taken away in his absence and that he along with his brother Tilak Raj and Des Raj searched for her and that it was his brother Des Raj who had found the prosecutrix in a Nalla at Kanjali while he was going to attend his duty. He further says that his brother Des Raj saw the appellants running away from the scene of occurrence. Further, he says that Des Raj informed him that the prosecutrix has been found and that he (Des Raj) saw the appellants running away and thereafter Des Raj brought the prosecutrix to their house. He also states that the prosecutrix was medically examined and that the delay in lodging the FIR was on account of the meeting convened in the village for two days (perhaps between the appellants and the complainants) from which no fruitful result came out. In cross-examination, this witness says that he is unable to recollect the name of the school where the prosecutrix studied and that he did not fill any form at the time of admission. He also says categorically that he did not state the date of birth of the prosecutrix to the school officials as he was illiterate and he also says that the date of birth recorded by the Headmaster of the School, Kanjali, disclosing the date of birth as 10.08.1998 is wrong and that at the time of occurrence, the prosecutrix was 15 years of age. He further states that the clothes of the prosecutrix were blood stained, and she had sustained abrasions. He says he spotted A-1 and A-2 running away at a distance of ten meters at the place of occurrence. He further states that they did not change the clothes of the prosecutrix when they reached the house and that she

continued to wear the clothes for two days and thereafter the same were taken to the Police Station. He says that has no knowledge of any document prepared for those clothes.

9. PW-3 is Tilak Raj, the brother of PW-2 who accompanied PW-2 in search of the prosecutrix. He also corroborates the statement of PW2 that the prosecutrix was found by their brother Des Raj who telephonically informed that she has been found in Kanjali. He also says that their brother Des Raj brought the prosecutrix to her house. He says that he handed over the clothes of the prosecutrix to the police. This witness has been cross-examined by the PP in order to get him to prove EXTP-3/1, no reason has been recorded by the learned trial court in the order as on what grounds the witness was declared hostile or what part of the statement of the witness was adverse to the cause of the prosecution on account of which he ought to be declared hostile. But, from the statement of this witness, it appears he was declared hostile only to prove EXTP-3 which was not put to him in his examination in chief. Rather than move an application for further examination of witness on account of material question having been omitted, the prosecution, has resorted to a procedure which was allowed by the learned trial court which this court does not approve of. On cross-examination by the defence, this witness states that he was at a distance of 60 to 70 meters away from Des Raj. He says that the clothes of the prosecutrix were lying on the ground which he handed over to the police.
10. PW-4 is Des Raj, the other brother of the father of the prosecutrix who says that after finding the prosecutrix, he informs PW-2 about her location but does not take her home and instead proceeds towards his place of work after boarding a vehicle. In cross-examination, he specifically states that he did not take the prosecutrix to her house and instead went away for performing

his duty and that no conversation between him and the prosecutrix ever took place. He further states that he was standing near the prosecutrix but did not find any abrasion or blood on her and that the police recorded his statement on 23rd of May. This witness has not been declared hostile after cross-examination and so what he has stated in his cross-examination may be deemed to have been accepted by the prosecution.

11. As regards medical evidence, there has been an MLC which was conducted. However, below the signature there is no name of the doctor who performed the MLC and more strangely the MLC has not been exhibited before the trial court. Undoubtedly, the prosecution cannot take the assistance of this document as it has not been proved before the learned trial court by the doctor who has recorded the said MLC and if he was unable to testify for whatever reasons, the same ought to have been proved by any employee of the hospital who was conversant with the signature of the doctor. Whether the same could be relied upon by the defence as it was a prosecution document is an elucidation of a legal preposition which this court shall reflect upon later in this order. The FSL report goes to reflect that there was Human Semen stains/spermatozoa and blood stains on the Pyjama. However, the blood group from the spermatozoa and blood stains were undecipherable on account of interfering material.
12. Learned counsel for the State while opposing the appeal has referred to the statement of the prosecutrix which he has stated is of sterling quality and also that the same is corroborated by the statement of PW-8 who is the official posted in the High School, Kanjali who testified before the learned court below with regard to the date of birth certificate as per the records available with the school. He proved EXTP-9 which shows that the prosecutrix was born on 10.08.1998. He further states that the FSL Report is

a strong corroborating material which disclosed Human Semen stains/spermatozoa and blood stains on the Pyjama that was seized from the prosecutrix and therefore, establishes the case of the prosecution beyond reasonable doubt.

13. Heard the learned counsel for respective parties and perused the record of the trial court.
14. The first aspect that needs to be considered by this court is whether the factum of sexual intercourse has been proved. As per the learned counsel for the respondent-State, that fact stands proved from the examination-in-chief of the prosecutrix which is impeccable, the FSL Report which shows that there were Human Semen stains/spermatozoa and blood stains on the Pyjama worn by the prosecutrix and seized by the police, and as also the MLC of the prosecutrix, though it has not been exhibited. He further states that the medical reports of the three accused persons go to reflect that they were capable of having sexual intercourse. Therefore, according to the learned counsel for the State, the fact of sexual intercourse stands proved beyond reasonable doubt.
15. The examination of the trial court record reveals that an MLC was prepared of the prosecutrix though the identity of the doctor who examined the prosecutrix is not revealed and the MLC has never been exhibited but it forms part of the charge-sheet/trial court record. Undoubtedly, this was a document that the prosecution wanted to rely upon against the accused persons but the said document remained un-exhibited as the doctor who had examined the prosecutrix was not examined as a witness before the learned trial court and neither was the report proved through anyone else working in the hospital who was conversant with the handwriting of the doctor who prepared the MLC. As the same has not been exhibited, it cannot come to the

aid of the prosecution, however, as it was a document that was relied upon by the prosecution in order to prove the guilt against the accused persons. It is presumptively admitted by the prosecution that it does not doubt the genuineness of the documents or the contents of the said document. Therefore, the same, where it is beneficial to the cause of the defence can be used by the defence.

16. The un-exhibited MLC report does not give an opinion on the fact of rape as it records that there were no injuries on any part of the prosecutrix. The prosecutrix on the other hand says that she had suffered abrasions in the course of rape and some blood also oozed out. However, as already stated hereinabove, the MLC that was allegedly prepared two days after the alleged rape does not mention any bodily injuries. Secondly, PW4-Des Raj in his cross-examination says categorically that he was standing close to the prosecutrix but did not see any blood on her when she was seen by him in a Nalla at Kanjali.

17. As regards, the FSL Report which discloses Human Semen stains/spermatozoa and blood stains on the Pyjama allegedly worn by the prosecutrix without giving their blood group is a report that is based on a seizure that itself is doubtful as the prosecutrix in her cross-examination states categorically that the clothes that were worn by her during the incident were washed and thrown away in the lane and nowhere does the prosecutrix says that it was subsequently recovered and handed over to the police. Therefore, the fact about the finding of human Semen stains/spermatozoa and blood stains on the Pyjama, is rendered worthless. Therefore, the fact of sexual intercourse of prosecutrix itself is under doubt as the same has not been proved beyond reasonable doubt. The position of law is clear that the statement of the prosecutrix alone can be relied upon for convicting a man

for rape provided that there are no other conflicting/contradictory attending circumstances in the case which could render her sole statement doubtful.

18. The second most important facet in this particular case is, as to who saw the prosecutrix first and the manner of recovery. PW-2 and PW-3 say that they were together in search for the prosecutrix, and that PW-2 was informed telephonically by PW4-Des Raj, that the prosecutrix was found near Nalla at Kanjali. Both PW-2 and PW-3 states that it was PW4-Des Raj who bought the prosecutrix to the house of PW-2 and handed her over to the PW-2. However, PW-4, in his cross-examination states that he found the prosecutrix near Nalla at Kanjali, but did not take her to her house and instead informed PW-2 and then he boarded a vehicle and proceeded for his work. PW-1, prosecutrix herself states that she was found by PW-2 and PW-3 i.e., her father and uncle which by necessary implication is negated by the statement of PW-2 and PW-3 who state that she was brought to the house of PW-1 by PW-4. This also renders doubtful the case of the prosecution with regard to the recovery of the prosecutrix allegedly from the custody of the appellants herein.
19. The next important facet of this case is delay in the registration of an FIR. The incident has taken place on 31.10.1993. However, the FIR is registered on 12th. The cause for the delay has not been satisfactorily explained but for the fact that PW-3 states that there were parleys going on between the appellants and the PW-2 for an amicable settlement of the issue to which PW-2 did not agree as the incident had brought disrepute to his family. Thus, it is also seen that the delay in registration of the FIR also raises doubt with regard to the prosecution story.
20. Therefore, in view of what has been argued, discussed hereinabove, this court is of the opinion that the prosecution has been unable to prove this case

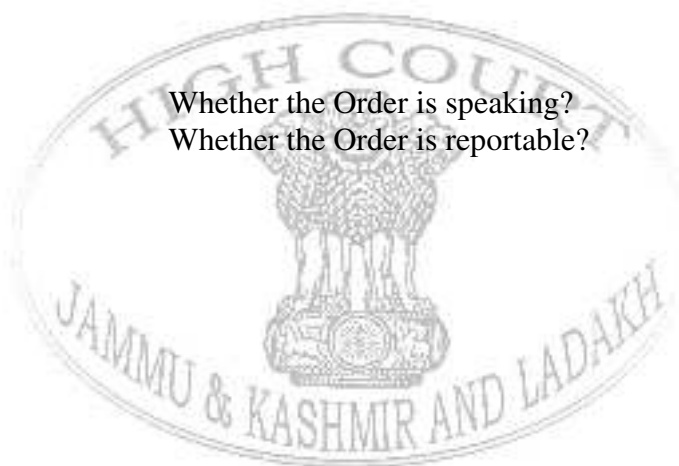
beyond reasonable doubt against the appellants and therefore, the impugned judgment is set aside, the appellants are acquitted. They be set free forthwith if not required in any other case. Before parting with this case, this court would like to record the slip shod investigation of this case where a vital document (MLC Report of the prosecutrix) was ignored and was not got exhibited by the prosecution. It is surprising why the Investigating Officer in this case did not insist on proving the said document and it is also surprising that the prosecutor also did not consider the importance of exhibiting the MLC Report, a vital document in a rape case.

21. The appeal stands **disposed of**.

(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

Jammu
20.02.2025
AKHILESH



Yes/No
Yes/No