

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

Case:-**CRAA No.121/2013**

Reserved on:04.12.2025

Pronounced on: 30.01.2026

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Whether the operative part or
full judgment is pronounced: **Full**

State of J&K

.....Appellant

Through: Mr. Dewakar Sharma, Dy. AG.

VERSUS

Mohd. Farooq and another

..... Respondents

Through: Mr. A.K Shan, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

Shahzad Azeem-J

1. This is an acquittal appeal preferred against the judgment dated, February 4, 2013, passed by learned Sessions Judge, Poonch [the trial Court] in case titled “***State vs. Mohd. Farooq and***

another", whereby the trial Court has acquitted the accused of the charges under Section 376/34 RPC.

Prosecution Case: -

2. Prosecution story in brief is that the formal case against the accused came to be registered for commission of offence under Section 376/34 RPC in pursuance to the written complaint dated April 22, 2003 lodged by the deceased prosecutrix (name withheld, hereinafter referred to as "complainant") in the Police Station, Surankote, alleging therein that during intervening night of April 21-22, 2003 at about 11 p.m, when she was sleeping along with her children, all of sudden someone knocked at the door, but she neither opened the door nor responded for half an hour. Thereafter, someone called her son namely; Barkat Hussain and disclosed the identities as, Mohd. Farooq and Noor Hussain, respectively, (respondents herein). She asked them to come in front of the window, and thereafter she opened the door and accused entered in the house, sat on the cot and were offered meals, but they refused, however, they have taken tea. Their colleague waiting outside was also provided tea. The accused were wielding the weapons. Accused have said that they had not slept for three days, and asked them to

switch off the lights and go to sleep. Complainant said to have provided bedding to the accused and then went to sleep with her children. After sometime both the accused; Mohd. Farooq and Noor Hussain, armed with the weapons, holding torch came to the complainant, threatened her and subjected her to forcible sexual intercourse. The complaint further proceeds on the premise that the accused have also asked their colleague, who was waiting outside the house to have sexual intercourse with the complainant, but he refused, saying that he does not commit such acts. It is alleged that the accused left the house at about 2:00 a.m. However, due to fear arising from the militancy in the area, the complainant was too frightened to report the occurrence to anyone immediately. In the morning, she informed her relatives about the incident. The complainant, therefore, sought legal action as permissible under law.

3. On the basis of complaint dated April 22, 2003, a formal case being FIR No.43/2003 under Section, 376/34 RPC came to be registered and investigation taken up.

4. On completion of investigation, it was found that accused, Mohd. Farooq and Noor Hussain were the Special Police Officers

(SPOs) at the relevant time. On April 20, 2003, they were detailed for Search Operation duty along with Special Task Force (STF) personnel in the village Marhote. However, except for the accused and their colleague, PW-2, Nizaar Hussain Shah, a SPO, entire posse of cops had returned. Thereafter, the prosecution story proceeds in line with the allegations contained in the complaint except that PW-2, Nizaar Hussain Shah who was accompanying the accused had forbidden the accused from wrong doing, therefore, further narration of prosecution story needs no reiteration.

5. During trial, the prosecution has examined 10 witnesses out of listed 11 witnesses and the only one prosecution witness who was not examined during trial was none other than the complainant, as she had died by that time.

Findings of the trial Court: -

6. The reasoning prevailed with the trial Court while acquitting the accused was that the testimonies of the star witnesses, PW-2, Nizaar Hussain Shah, PW-4, Nazia Akhter and PW-5, Shakeela Bi did not inspire confidence, being full of contradictions, therefore, found to be unworthy of reliance.

Submissions: -

7. Appeal against the judgment of acquittal is filed purely on conventional grounds; that the trial Court has mis-appreciated the evidence and misconstrued the law, thus has committed grave error while passing the judgment of acquittal. Further assertion is that the prosecution has successfully proved the allegations leveled against the accused, but the trial Court has acquitted the accused against law and facts, therefore, prayed for setting aside of the impugned judgment.

8. Per contra, the learned counsel appearing for the respondents primarily argued in line with the reasoning prevailed with the trial Court while passing the impugned judgment of acquittal, therefore, we do not deem it proper to reiterate the submissions.

Analysis: -

9. Admittedly, the statement of complainant could not be recorded by the trial Court as by that she had died due to unrelated cause to the incident of rape, therefore, neither statement of the

complainant recorded by the Police nor the complaint dated, April 22, 2003 lodged by her on the basis of which the investigation commenced are admissible in evidence, therefore, we are now left with the depositions of rest of the prosecution witnesses. Now, it is to be seen as to how these prosecution witnesses faired during the trial.

10. PW-2, Nizaar Hussain Shah, PW-4 Nazia Akhter and PW-5, Shakeela Bi are the eye witnesses. PW-2 was the SPO and was on search operation duty with the accused and STF team at the time of occurrence. PW-4, Nazia Akhter and PW-5, Shakeela Bi are the daughter and niece of the complainant, respectively and were stated to be present in the room, when accused alleged to have committed the illicit intercourse with the complainant. Therefore, their testimonies form fulcrum of the prosecution story.

11. The precise allegation is that the accused while on search-operation duty in village Hari Mehrote entered in the house of complainant and committed illicit intercourse. However, although PW-2, Nizaar Hussain Shah was also accompanying the accused and was asked by the accused to commit illicit intercourse, but he refused. To the contrary when PW-2, Nizaar Hussain Shah entered

in the witness box, he was declared hostile as he pleaded ignorance about the occurrence, except that he was on search operation duty at the relevant time. It is relevant to note that PW-2, Nizaar Hussain Shah on cross-examination by the prosecution, specifically pleaded ignorance about the forced entry of the accused in the house of the complainant. This witness also categorically deposed that he did not enter in the house of complainant. It has also come in his testimony that the rumours were doing the round during those days that the complainant had in connivance with the militants arranged the marriage of one Mst. Safia Begum with a militant and made her to cross over the border. It has further come in his testimony that a false case came to be foisted upon the accused at the instance of militants. It is further deposed by PW-2 that there was a general saying that complainant after receiving hefty amount from the militants had been registering false cases against the SOG, personnel.

12. Now coming to the testimonies of PW-4, Nazia Akhter and PW-5, Shakeela Bi, who as per the prosecution story were present in the room at the time of occurrence. Both the witnesses had contradicted the contents of the complaint, prosecution case and also the statement of the doctor, who had examined the

complainant. PW-4 and PW-5 in contradiction to the contents of the complaint and prosecution story had deposed that at the time of occurrence both the accused had broke open the door and made forcible entry in the room and before committing illicit intercourse with the complainant they slapped and also bit on her face. It has also come in their testimonies that accused after committing illicit intercourse with the complainant called their colleague staying outside (PW-2), but when complainant begged for mercy, he did not commit wrong.

13. It is important to note that PW-2, Nizaar Hussain Shah has specifically deposed that he did not enter the house of complainant. Insofar as the depositions of PW-4 and PW-5 regarding biting on the face of the complainant by the accused are concerned, same has been belied by none other than the PW-7, Dr. Shamim-Ul-Nisa-Bhatti, who examined the complainant and it has come in her testimony that there was no mark of violence particularly on the face of the victim. The witness further deposed that there was also no sign of biting on the face of the victim. PW-4 and PW-5 when confronted with their statements recorded under Section 161 Cr.P.C, same were found to be full of material improvements and embellishments on the point of biting and slapping on the face of

the complainant by the accused, therefore, testimonies of PW-4 and PW-5, on these material and fundamental points are unworthy of reliance as their credibility is sufficiently eroded.

14. There is another important aspect of the matter that even the presence of PW-5, Shakeela Bi at the time of occurrence appears to be improbable and unnatural, because when her father i.e., PW-3, Mohd. Aslam entered in witness box, he categorically deposed that Shakeela Bi is married to his nephew and has two children, who has been residing with her husband. This witness when was asked a specific question during his cross-examination that where was his daughter, Shakeela Bi at the time of occurrence, the PW-3, Mohd. Aslam pleaded ignorance as to her whereabouts at the time of occurrence and same is highly unnatural and improbable for a father to say, particularly when prosecution alleges that Shakeela Bi was present in the house of the complainant at the time of occurrence, as per the prosecution case, the husband of the complainant was at Saudi Arabia and Shakeela Bi was regularly staying there at night.

15. PW-6, Nazir Hussain is another prosecution witness, but he was declared hostile and despite his cross examination by the

prosecution, nothing material could be elicited from him. PW-7 is a doctor, who had examined the complainant, but neither in her examination report, EXPW-S.B nor in her testimony it has come that the complainant found to have sustained bite marks, abrasions or any injury including teeth impressions as deposed by the PW-4 and PW-5, respectively.

16. Since the star witnesses i.e., PW-2, Nizaar Hussain Shah has turned hostile and PW-4, Nazia Akhter and PW-5, Shakeela Bi had improved upon their respective statements, besides being falsified by PW-7, Dr. Shamim-Ul-Nisa-Bhatti, on the point of biting and slapping on the face of the complainant, so much so the version of the prosecution that PW-2 had forbidden the accused for wrong doing and committing of offence of rape by the accused is also not proved, rather PW-2 was declared hostile, therefore, testimonies of these witnesses are unreliable. The evidence tendered by these witnesses lacks credibility due to material inconsistencies, improvements and inherent contradictions, coupled with the fact that PW-2 had deposed that there was general impression that the complainant had been foisting false cases on the police personnel at the behest of militants after receiving hefty amount.

17. Once it is found that witnesses to the occurrence are unreliable, and even one of them has turned hostile, therefore, while dealing with the acquittal appeal, the appellate court, however, must bear in mind that in a case of acquittal, there is double presumption in favour of the accused, **firstly**; the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. **Secondly**; the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Therefore, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of the acquittal recorded by the trial court. Support for this proposition can be drawn from the Hon'ble Supreme Court judgment in "**Babu vs. State of Kerala**" (2010) 9 SCC 189.

18. A very vital aspect of the prosecution case has remained all along unanswered and same in our opinion cast cloud on the entire prosecution story that it is the positive case of the prosecution that when the accused have called the son of the complainant namely, Barkat Hussain and disclosed their identities only then, they were allowed to enter in the house, however, the said Barkat

Hussain is neither cited as witness nor any plausible reason tendered for withholding such an important witness, therefore, there is a statutory presumption against the prosecution that had the said Barkat Hussain been produced as a witness, in that event, his testimony would have been unfavorable to the prosecution case. Thus, yet for this reason, we are convinced that the trial Court has rightly acquitted the accused of the charges.

19. As regards other witnesses, their statements are purely corroborative and formal in character, as they are the witnesses to the post occurrence procedural aspect of the incident, without independently establishing any incriminating fact against the accused, therefore, their depositions being of no assistance to the prosecution case, thus, require no elaborate discussion.

Result: -

20. Considering the material improvements, and embellishments in the testimonies of the star witnesses, the learned trial Court had rightly held the prosecution case as not proved against the accused and these findings being plausible, therefore, no interference is called for.

21. In view of the foregoing reasons and upon scrutiny of the evidence, we are of the view that the trial Court has appreciated the evidence in its correct perspective and, accordingly, while concurring with the judgment of the trial Court, the appeal is dismissed, as same is found to be devoid of merit.

22. Record be sent to the trial Court with due dispatch.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

JAMMU
30.01.2026
Surinder

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