Suppl. Cause List
J1

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Virtual Mode)

Pronounced on: 29.12.2020

CRA No. 49/2016
IA No. 1/2016

Jarnail Singh …Appellant..

Through :- Mr. O. P. Thakur, Advocate with
Mr. R. K. S. Thakur, Advocate.

v/s

State of J&K …Respondent..

Through :- Mr. Aseem Sawhney, AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The appellant-Jarnail Singh on being convicted for the commission of offence under Section 376 RPC by the court of learned Principal Sessions Judge, Reasi has been sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.25000/-. The appellant is further directed to undergo imprisonment for six months in case of default in the payment of fine.

2. The complainant-prosecutrix submitted complaint before the Judicial Magistrate, Mahore on 01.07.2010 against the appellant-convict and the complaint was forwarded under Section 156(3) Cr.P.C to SHO Police Station, Mahore. FIR No. 77/2010 under Section 376 RPC came to be registered with Police Station, Mahore on 01.7.2010 at about

7.15 p.m. The complaint is exhibited as EXPW-G and the F.I.R is exhibited as EXTP-AZ. The allegation against the appellant is that the appellant is a teacher in a school and on 26.06.2010 the appellant had called the prosecutrix who was the student of 8th class of Middle School, Shikari to collect books from the residence of the appellant after the school time as the books were required to be distributed to the students. The accused is stated to have committed rape upon her when the prosecutrix visited the house of the accused. The investigations led to filing of the charge sheet which ultimately resulted into the conviction of the appellant by the learned trial court. The prosecution examined number of witnesses in support of its case. The statements of the witnesses have been detailed in the judgment of the trial court and need not be set out again in the appeal and shall be referred to wherever required during discussion.

3. The learned counsel for the appellant has argued that the complaint is belated one with a design to rope in the appellant falsely coupled with the aspect that the person who was revealed of the occurrence by the victim in the first instance is not proved credibly and has material bearing in the case as different versions have come up qua the contents of the complaint.

4. Learned Additional Advocate General appearing on behalf of the respondent-State has strenuously argued that the complaint or F.I.R is not the encyclopedia of the events that precede it nor is there any requirement that all the facts are bound to be stated in the complaint or F.I.R by the complainant and if some of the facts have not been mentioned that does not dent the case of the prosecution on that score. The evidence regarding the initial revelation of the incident as made

out from the statements of the witnesses is consistent one without any major contradictions.

5. Learned counsel for the appellant has invited the attention of the court towards the contents of the complaint lodged by the complainant-prosecutrix and which are admitted by the prosecutrix to be correct one. As per the complaint, which resulted into registration of the F.I.R, the appellant had on 26.06.2010 asked the prosecutrix, aged about 13/14, studying in Middle School, Shikari, to visit his house as the books are to be distributed to the students. The prosecutrix was asked to visit the house after the school hours. The complainant visited the house of the accused who was alone in his house at that time. The accused closed the door when the prosecutrix visited the house and the accused forced the victim on the floor of the house, untied the salwar and committed rape upon the complainant. The complainant was also threatened that in case she revealed the incident she will be ousted from the school. The reason for filing the complaint on 01.07.2010 as given in the complaint is that the prosecutrix felt ashamed and did not reveal the incident to anyone. The complainant did not attend the school for two days. It was only on 30.06.2010 that the complainant informed her mother of the whole incident when mother asked the reason for her distress and thereafter the complaint is being filed against the appellant. As per the complaint, the first person to whom the incident was narrated on 30.06.2010 by the complainant was her mother PW-7 Gulzar Begum. The complainant in her statement in the trial has disclosed that she had narrated the incident to PW-Shaheen Akhter who was asked to state the incident to her mother as she is not able to speak of the occurrence to her mother. The prosecutrix was

asked by the mother of the occurrence and she stated the same to be true. Thereafter the father was narrated of the incident by the mother of the complainant. The committees were also held for two-three days with regard to the incident and the father of the accused was also informed by the father of the complainant with regard to the incident. PW-Shaheen Akhter, as per the statement of the complainant, was the one who had narrated the incident to the parents of the prosecutrix. PW-3 Abdul Aziz is the father of the victim, who as per the witness, was not present on the day of occurrence in the house and on 28th he was informed by his wife of the occurrence when he came back to the house. The witness also speaks of visiting the house of the accused and enquired from father of the accused. Then he lodged the report with the police but the police did not register it and thereafter the report was got registered through the court. PW-4 Abdul Gani who is known to the accused as well as the prosecutrix has come up with the statement that a panchayat was also held and when the matter was not settled there the complaint came to be lodged with the police. He has further deposed in his statement that he was informed about the occurrence on 26.06.2010 itself at 6 p.m. PW7 -Gulzar Begum, mother of the victim, has stated of the F.I.R having been lodged with regard to the occurrence of 26th on 28th but the SHO did not register the F.I.R and thereafter the Magistrate at Mahore was approached and on his direction the F.I.R came to be registered. The witness states that she revealed the occurrence to her husband on 28th. She has also stated that on 27th she enquired from her daughter about the occurrence but she did not disclose the same and it was PW Shaheen Akhter who had disclosed the incident to her on 27th. PW-6 Shaheen Akhter has stated

that she was informed by the complainant of the occurrence in the evening and then she revealed the same to the mother. She does not know what sort of misbehavior was done by the accused with the victim. The occurrence is stated to be of 26.06.2010 whereas the written complaint-EXPW-G is filed with the Magistrate on 01.07.2010. It is evident from the contents of the complaint that the mother of the complainant was informed of the alleged occurrence on 30.06.2010 for the first time by the complainant. It is not mentioned in the complaint that it was PW-Shaheen Akhter who had disclosed the occurrence to the PW-Gulzar Begum, mother of the complainant, prior to 30.06.2010. If the said PW Shaheen Akhter was the first person to be revealed of the occurrence by the complainant, the corollary to the same would be that the complaint would have mentioned the name of PW-Shaheen Akhter in the complaint but that has surprisingly not happened in the present case.. As mentioned above, PW-Abdul Gani has deposed that he was informed of the occurrence on 26.06.2010 at 6 P.M. which means that said witness was also in know of the alleged occurrence through the father of the prosecutrix. Whereas PW-Shaheen Akhter is stated to be the first person to whom the incident was narrated by the complainant-victim whereas the complaint reveals that it was the mother of the complainant who in fact came to be informed of the incident initially by the complainant. Not only that, PW-Abdul Aziz, father of the complainant, has stated that he was informed of the occurrence by his wife on 28th when he came back to the house. Who in-fact was the first one to be informed of the alleged occurrence by the prosecutrix is not clearly revealed from the prosecution evidence as

different versions have cropped up in the statements of prosecution evidence

6. The different stance taken by the prosecution witnesses including the parents of the victim regarding the revelation of the occurrence in the first instance lends support to the contention of the learned counsel for the appellant that it cannot be ruled out that the complaint filed against the accused was false and fabricated with all the time in the world with a view to rope in the accused falsely. In the present case, the suspicion lurks in the mind of the court, as stated above, about the genuineness of the complaint filed against the accused.

7. No doubt the delay in filing the complaint in a case like rape can be taken care of by the court if the circumstances are reasonably explained by the prosecution. It is not out of place to mention that in a rape case the victim or her family may be hesitant or feel shy or even feel insecure in disclosing the occurrence as the same can be fraught with serious consequences for the victim as well as her family members. The agony to be faced by the victim after the horrendous incident may be difficult to surmount by her. At the same time, the court has to be on guard before the conclusion is drawn if the circumstances which led to filing of the case not with promptitude after the occurrence are genuine and reliance can be placed upon the version which has come in the prosecution case. No hard and fast explanation can be in place qua the delay in filing the complaint or F.I.R against the victim and each case has to be adjudged upon its own merits.

8. In 2012 AIR (SC) 3157 titled Rai Sandeep @ Deepu vs. State of NCT of Delhi, 2011 AIR (SC) 2218 titled Bhayamiyan @ Jardar Khan and another vs. State of Madhya Pradesh, 2003 AIR (SC) 818 titled Vimal

Suresh Kamble vs. Chaluverapinake Apal S. P. and another and 2007 AIR (SC) 155 titled Ramdas and others vs. State of Maharashtra, the Hon'ble Supreme Court held that the delay in filing the First Information Report may not be fatal but the Court has to be satisfied that the delay in filing the F.I.R has been properly explained.

9. It may be mentioned that the learned trial court has not dealt with this aspect of the case in light of the evidence that has come on record. The trial court has failed to appreciate the different accounts that have come in the prosecution evidence qua F.I.R. lodged on 01.07.2010 though the occurrence is alleged to be of 26.06.2010. The various description that have been noticed above regarding the initial revelation of the occurrence has direct bearing on the aspect delay if any has occurred in lodging of the complaint/F.I.R. In case the occurrence is of 26.6.2010, as set up in the complaint, the prosecutrix feeling ashamed revealed the story to her mother on 30th and on the next day the complaint is lodged. However, the revelation of the incident starts occurring through various statements from 26th itself and the panchayat or committees being convened with regard to the alleged incident also crop up in the prosecution evidence. Another point which may be taken care of relating to this aspect is that the prosecution evidence has come on record regarding the filing of the complaint before the police prior to 01.07.2010 but the police failing to register the same. PW-Abdul Aziz and his wife PW-Gulzar Begum have stated so. As mentioned above, PW-Abdul Aziz has deposed that he was informed of the occurrence on 28th and thereafter he lodged the report with the police but the police did not register the same. PW-Gulzar Begum has also stated that the F.I.R was sought to be lodged on 28th

but the SHO did not register the same. If the court is to go by the statements of these two witnesses, it means that both of them were in know of the occurrence by 28th and thereafter they reported the occurrence with the Police Station but the police did not register the same. However, PW-Sujit Kumar, Investigating Officer, has stated that the report came to be lodged on 01.07.2010 at about 6 p.m. and he even asked PW-Abdul Aziz, father of the prosecutrix, about the delay in filing the F.I.R to which he replied that his daughter was in mental shock and in view of the social stigma attached to it. It is made out from the statement of PW-Sujit Kumar, Investigating Officer, that Police Station, Mahore was not approached prior to 01.07.2010 for registration of the case. The complaint filed before the magistrate on 01.7.2010 also does not reveal of the complainant approaching the police earlier and the refusal by the police to register the case and rightly so because the complainant as per the complaint had revealed the incident to the mother only on 30.6.2010. There is no other evidence on record to show that the police station Mahore was approached prior to 01.7.2010 for filing the case against the accused. The delay in lodging the complaint against the accused is mental shock experienced by the prosecutrix or holding of the panchayat/ committees or prosecutrix feeling ashamed of the incident or the police failing to lodge the complaint when approached earlier are versions that galore in the prosecution evidence. The delay in filing the complaint against the accused remains unexplained.

10. Another significant piece of evidence which has bearing on the above aspect and the case in entirety is the statement of PW-Meema Begum who speaks of the incident of 26.06.2010 and deposes that she found

the prosecutrix weeping outside the room(shop) when she reached the shop of the accused. The prosecutrix was holding the trouser in her hand and on seeing the witness the accused ran away from the spot. As per the witness, she was informed by the victim that the accused had raped her. The statement of this witness assumes importance for the simple reason that as per the witness she becomes the first person to meet the victim after the occurrence. The prosecutrix in her statement has not mentioned of meeting this witness immediately after the occurrence. The important aspects which come to the fore in the statement of this witness are: she was the first person who was informed of the occurrence by the prosecutrix on 26.06.2010 and not PW-Shaheen Ahkter. If the statement of PW-Meema Begum is to be believed than the stance taken by the prosecutrix or other witnesses which is otherwise contradictory to each other creates grave suspicion about the incident as a whole. The argument of the learned counsel for the State that the statement of this witness cannot be disregarded only for the reason that the prosecutrix has not stated of this witness cannot be accepted.

11. The accused was standing at the shop as per the witness. Further the witness has stated that the prosecutrix was sitting on the ground and that she was not unconscious and the witness took the prosecutrix at some distance where she fell unconscious. The prosecutrix was stated to have informed the witness of the occurrence at that place itself. She did not inform the parents or any other person of this fact. This witness failing to inform the parents or anyone else of the occurrence is unusual and strange in the facts and circumstances of the case more so when the witness claims to be the neighbour of the prosecutrix. Not

only that, the witness stating of the presence of the accused in the shop is not believable. The reason is simple. It cannot be conceived that the accused and the victim could be seen immediately at the same time near the shop after the occurrence. PW-Meema Begum appears to be a planted witness with purpose to boost the case of the prosecution but her statement in fact only weakens the case of the prosecution for the reasons stated above and more so when the prosecutrix in her statement has not spoken of the presence of PW-Meema Begum in her statement which should have been there in the natural course of things.

12. The panchayats took place after the incident has also come in the prosecution case. Again, this version does not fall in line with the statements given by the prosecution witnesses qua the complaint. If the occurrence was related to the mother on 30.6.2010 by the prosecutrix for the first then there was no question of any panchayat taking place prior to that point of time and if the version of the prosecutrix and PW Abdul Gani regarding holding of panchayats is to be taken as true then the contents of the complaint get falsified.

13. Looked from any angle, the prosecution case is bound to fail on the aspects which are discussed above. The inconsistency in the prosecution evidence is not trivial in nature but significant and strikes at the genuineness of the prosecution case. The prosecution has to prove its case beyond the shade of doubt but the prosecution has failed to do so in the present case.

14. So far as happening of the occurrence is concerned, the same has allegedly taken place on 26.06.2010 at about 5 p.m. in the house of the accused. The accused is stated to have called the prosecutrix on the first floor of his house when the prosecutrix visited him, closed and

bolted the door. The accused is stated to have knocked down the prosecutrix on the floor and gagged her mouth with chunni (Dupata) and thereafter raped her. The prosecutrix raised alarm but nobody was there. The statement of the prosecutrix that she was gagged with chunni (Dupata) is an improvement to what she had deposed while recording her statement before the Magistrate during the course of investigation as she has not spoken a word about that. Secondly, the prosecutrix has mentioned while recording her statement in the Court that during the course of occurrence salwar got blood stained and her clothes were also torn. The seizure memo prepared of the clothes, salwar and shirt, which were handed over by the father of the prosecutrix do not mention of blood stained clothes having been handed over to the police or that the clothes were torn. PW Sujit Kumar, investigating officer, has also deposed that the clothes of the victim were not torn or blood stained. The seizure memo is exhibited as EXTP-AZ/1. Not only that, the forensic report which is not exhibited even if taken into consideration also does not speak of the salwar being found blood stained when examined during chemical and microscopical examination. The chunni (dupatta alleged to be used during occurrence by the accused) has not been seized. It may be relevant to note that the seizure of the clothes of the prosecutrix is of 10.07.2010 meaning thereby that the seizure had been effected after ten days of the filing of the report by the prosecutrix. What was worn by the prosecutrix at the time of the alleged occurrence and if the clothes worn by the prosecutrix at that time were infact seized by the police is not made out from the record. Further, the victim has deposed during trial that the accused had threatened to shot her in case she revealed the

incident to her. Again, this fact is not mentioned in the complaint as it only speaks of the accused threatening the victim of being thrown out from the school. The contradictions that surface in the statement of the victim qua the complaint and the other evidence on the record do not inspire the confidence in the court of the occurrence taking place in the case.

15. The alleged occurrence of 26.06.2010 is consequence to the alleged calling of the prosecutrix to the house of the accused as the books were required to be collected from his house and which were to be distributed for the students of the school. Learned counsel for the accused has laid much stress on two aspects in this regard. Firstly, that the statement of PW-Gulzar Begum, mother of the accused, does not confirm that the prosecutrix had been visiting the school during those days or rather the name of the prosecutrix was struck-off from the school and, secondly, going by the statement of the mother the accused called the prosecutrix for the books prior to 26.06.2010. Not only that the prosecutrix in her statement had also backed out of the contents of the complaint as she states that the prosecutrix was told on 25.06.2010 by the accused that she was to collect the books from the house as they were to be distributed to the students and then she visited the house of the accused on 26th. This stand is contrary to what is stated in the complaint that prosecutrix was told by the accused to collect the books on 26.06.2010 and she visiting the house on the same date itself, i.e., 26.06.2020. The learned counsel for the State has, however, submitted that the argument of the learned counsel for the appellant has not much significance as to whether the appellant was asked by the accused on 25th or 26th of June, 2010 to collect the books from his residence as the

occurrence is the only factor which is required to be seen in the present case. The court is of the view that the date of 25.6.2010 may not have assumed significance but for the fact that the circumstances that have appeared in the case do call out for attention of the court on the point under discussion. The complaint specifically mentions of the date of 26th when the prosecutrix was told to visit the house of the accused but the u-turn is taken by the prosecutrix in her statement recorded in the court as she states that she was asked on 25th by the accused to visit the house and thereafter she visited the house on the next day at 5o'clock. In the statement recorded before the judicial magistrate she does speak of 25th when she was told by the accused to come on 26th. In the statement recorded before the court the victim does not speak a word that the accused had called the victim to visit his house on 25th. She has visited the house on her own as the school was closed on 26th and she did not meet the accused in the school. PW Gulzar Begum, mother of the victim, has deposed in the court that her daughter was not keeping well for the last two/four days and had not visited the school four days prior to the occurrence. The contradictory statements by the witnesses do not inspire confidence in the court and only makes the prosecution case doubtful.

16. The medical evidence has also come on record. PW Dr. Manisha Langer is radiologist and has issued the certificate EXTP-9 after examining X-rays and the age of the victim being opined more than 14 years and less than 16 years. Dr. Renu Sudha had examined the victim on 01.7.2010 at district hospital Reasi and issued the certificate EXTP-10. As per the witness, no mark of violence was seen on the body of the prosecutrix and hymen was found ruptured. HP examination

showed no spermatozoa. No evidence of recent sexual intercourse was seen on the person of the prosecutrix. The previous participation in sexual intercourse could not be ruled out by which she means that she might or might not have had sexual intercourse previously. Dr. Harvinder Singh has only examined the accused and issued the certificate EXTP-11 with the opinion that the accused was capable to perform sexual intercourse. The statement of this witness does not in any manner connect the accused with the commission of offence. In the present case, the medical evidence is not of that much consequence for the simple reason that the medical examination of the victim had taken place after more than five days of the alleged occurrence. Irrespective of the outcome of the medical evidence on record the reliability and truthfulness of the statement of the prosecutrix can be the basis of recording conviction against the accused.

17. The accused has produced one witness, namely, Om Parkash in defence who was also government teacher in the school in question. As per the statement of the witness the Education Minister had visited the school on 26th June and the school function was over at 6 p.m whereas he along with the accused left the premises at 7 p.m. The witness has stated that there was no vacation in the month of June, 2010 in the school and that the prosecutrix was the student of 8th class. The learned counsel for the appellant has submitted that from the statement of the witness it is evident that the accused was present in the school on 26th June up to 7 p.m whereas the occurrence is stated to have happened sometime before as per the prosecution. The learned counsel appearing for the State has submitted that the statement of the witness who was headmaster at that time does not conclusively draw inference about the

presence of the accused in the school when the alleged occurrence took place in the house of the accused. The time factor which has come in the statement of the witness regarding the presence of the accused in the school may not be of much relevance as the same is in proximity to the alleged time of occurrence. Secondly, there is no evidence on record that the Minister had infact visited the school on 26th June. The prosecution has to stand on its own legs and prove the case against the accused beyond shadow of doubt and not rest on the defence evidence. It is only when the prosecution is able to prove its case against the accused that the evidence produced in defence assumes importance. The same has not happened in the present case. The defence evidence may appear to be deficient in strict terms of the stand taken by the accused but that does not in any manner discharge the burden of the prosecution to prove its case against the accused. The authorities produced by the both the sides need not be cited just for the sake of piling of the papers when the factual aspects that come on record are by themselves sufficient to disbelieve the prosecution case.

18. The trial court while recording its findings has failed to take note of the contradictions appearing in the prosecution case, as discussed above, which prove fatal for the prosecution. The learned trial court appears to be swayed by the mere fact that as the case stands registered against the accused there can be no falsity in the prosecution case. The prosecution case as whole is required to be assessed and analyzed before recording guilt or innocence of the accused.

19. In view of the discussion made above, the Court is of the view that the prosecution had failed to prove its case against the appellant-accused beyond shadow of doubt. The appeal is allowed and the judgment of

the trial court is liable to be set aside and is, accordingly, set aside. The appellant-convict is acquitted of the charge framed against him under section 376 RPC and to be released forthwith. The record of the trial court be sent back.

(PUNEET GUPTA)
JUDGE

Jammu
29.12.2020
Pawan Chopra

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

HIGH COURT
JAMMU & KASHMIR

PAWAN CHOPRA
2021.01.05 11:53
I attest to the accuracy and
integrity of this document