IN THE HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 13.02.2024
Pronounced on: 21.02.2024

CrlA(AS) No.15/2021

UT OF J&K ...APPELLANT(S)

Through: - Mr. Faheem Nisar Shah, GA.

Vs.

SHABIR AHMAD DAR& ANR.…RESPONDENT(S)

Through: - Mr. Ateeb Kanth, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant-State has challenged the impugned judgment of acquittal dated 15.02.2021 passed by learned Principal Sessions Judge, Budgam, whereby the respondents have been acquitted of the charges for offences under Section 363, 376, 342, and 109 RPC arising out of FIR No.230/2007 registered with Police Station, Budgam.

2) Briefly stated, case of the prosecution is that PW1, the complainant who happens to be the father of the prosecutrix, lodged a report with Police Station, Budgam, alleging therein that on 09.06.2007, the prosecutrix had gone out for undertaking some farming work but she did not return to her home. It was also reported by the

complainant that he had come to know that his daughter has been kidnapped by respondent/accused No.1-Shabir Ahmad Dar. It was also reported that the prosecutrix is a minor girl aged about 13 years. On the basis of this report, the police registered FIR No.230/2007 for offences under Section 363 RPC and started investigation of the case. During investigation of the case, the prosecutrix was recovered from the custody of respondent No.1 from a place near Cooperative Colony, Peer Bagh, Srinagar. The statement of the prosecutrix was recorded under Section 161 of Cr. P. C and she was also subjected to medication examination.

3) In her statement recorded under Section 161 of the Cr. P. C, the prosecutrix stated that on the fateful day, when she had gone out to get vegetables from the field at about 5.00 PM, while she was coming back to her home, upon reaching near Forest Check Post, accused Shabir Ahmad Dar came from behind in a taxi and asked her to come near him. She further stated that she was already knowing the said accused as he used to come to her house; that the accused Shabir Ahmad Dar offered to give her lift to her home and she accepted the offer and boarded his vehicle but the said accused instead of driving the vehicle towards her home proceeded towards

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Khan sahib. She asked accused Shabir Ahmad Dar as to why he was not taking her to her home, he responded by stating that he would do so after attending to some personal work; that she asked the accused to stop the vehicle but accused Shabir Ahmad Dar along with accused Shabir Ahmad Kuchay, who was also travelling in the same vehicle, tied her to back seat of the vehicle and extended threats to her. The prosecutrix went on to state that she was taken to an unknown place in a field inside a tin shed and was kept in captivity over there. She also stated that accused Shabir Ahmad Kuchay went away along with the vehicle whereas accused Shabir Ahmad Dar stayed along with her inside the shed. During the night, accused Shabir Ahmad Dar sexually ravished her on two occasions. On the next day, accused Shabir Ahmad Kuchay came there along with his taxi whereafter she was taken by the two accused to an unknown place and kept inside a under construction house. Again,accused Shabir Ahmad Kuchay went away from there whereas accused Shabir Ahmad Dar stayed with her during night and committed rape upon her. On 11.06.2007, when accused Shabir Ahmad Dar along with her were walking on the road near Peer Bagh, the police spotted them and accused Shabir Ahmad Dar fled away

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from the spot and she was saved by the police from the clutches of the accused.

4) After investigation of the case, the chargesheet was filed before the learned trial court and vide order dated 02.08.2007, charges for offences under Section 363, 376, 342 and 109 RPCwere framed against the accused and their plea was recorded. The respondents/accused denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of its case.

5) Out of 08 witnesses cited in the challan, the prosecution examined PW(1)- Ghulam Mohammad Mir, the complainant, PW (2)-the prosecutrix, PW (6)-the Medical Officer and PW(8)-SI Asif Iqbal, the investigator of the case. After completion of prosecution evidence, the statements of two respondents/accused under Section 342 of the J&K Cr. P. C were recorded. In their statements both the accused claimed that they were falsely implicated in the case on the basis of personal enmity and that they have not committed any offence. The respondents/accused, however, did not choose to lead any evidence in defence.

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6) The learned trial court after hearing the parties and after appreciating the evidence on record, came to the conclusion that the prosecution has been unable to bring home the guilt of the accused beyond reasonable doubt and, accordingly, the accused were acquitted by virtue of the impugned judgment of acquittal.

7) The appellant-State has challenged the impugned judgment on the ground that the learned trial court has not appreciated the evidence in its proper perspective. It has been contended that the impugned judgment is cryptic in nature. It has been further contended that the prosecutrix has clearly supported the prosecution case and her sole statement/testimony was enough to convict the accused. It has also been contended that the prosecutrix was minor, therefore, her consent was immaterial but the trial court has raised doubt about the testimony of the prosecutrix on the ground that there were no marks of violence present on her body.

8) I have heard learned counsel for the parties, perused the impugned judgment, the grounds of challenge and the evidence available on the trial court record.

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9) As already noted, the charge against the respondents/accused is that they had kidnapped the prosecutrix and thereafter wrongfully confined her. It is also alleged that accused Shabir Ahmad Dar has committed repeated sexual assaults upon the prosecutrix during two nights and that accused Shabir Ahmad Kuchay has aided and assisted accused No.1 in this process.

10) In order to prove the charges, the prosecution, besides examining the prosecutrix, has also examined the complainant who happens to be the father of the prosecutrix and the doctor who examined the prosecutrix. Besides this, the Investigation Officer of the case has also been examined.

11) The first question that is required to be determined is as to whether the prosecutrix was minor at the time of the incident because the age of the prosecutrix in a case like present one becomes significant for determination as to whether or not the sexual intercourse committed by the accused upon the victim would come within the definition of 'rape'. If it is found that the prosecutrix was minor at the relevant time, her conduct as to whether she was a consenting party to the alleged act would become immaterial.

12) As per the prosecution case, the age of the prosecutrix at the relevant time was 13 years. Along with the challan the prosecution has placed on record a copy of the certificate issued by Government Middle School, Bugroo Khansahib, wherein date of birth of the prosecutrix is shown as 15.03.1992. The prosecution has also placed on record of the challan school leaving certificate which also depicts date of birth of the prosecutrix as 15.03.1992. Unfortunately, the prosecution has not examined any witness to prove these certificates, nor the relevant record to support these certificates has been summoned. In fact, no witness has been cited in the challan to prove these documents nor the Investigating Officer has examined any witness in support of these certificates during investigation of the case. When confronted with this position, the Investigating Officer in his cross-examination has stated that he simply trusted the certificates issued by the school authorities.

13) In the absence of proof of the age certificates of the prosecutrix, the contents thereof relating to her age cannot be relied upon. There is no other evidence on record as regards the age of the prosecutrix. In fact, when the prosecutrix was cross-examined by the defence

to ascertain her age, she expressed her ignorance about the same. On top of it, the prosecution did not even examine her on this aspect of the case. The complainant, who happens to be father of the prosecutrix, also could not state anything about age of the prosecutrix when he was cross-examined by the defence in this regard and no question regarding age of the prosecutrix was put to him by the prosecution.

14) It is a settled law that in a criminal trial, the prosecution is bound to prove the charges against the accused beyond reasonable doubt and not by preponderance of probabilities. Therefore, unless prosecution establishes that the prosecutrix was minor at the time of the alleged occurrence by leading cogent and convincing evidence in this regard, it cannot be stated that the prosecutrix was minor at the relevant time. The burden of proving that the prosecutrix was minor at the time of alleged occurrence was upon the prosecution, which it has miserably failed to discharge.

15) Having held that the prosecution has failed to establish that the prosecutrix was minor at the time of alleged occurrence, let us now proceed to analyze her statement which is crucial to the prosecution case. Before doing so, it would be apt to notice the legal

position as regards the evidentiary value of a victim of rape. It is a settled law that conviction in a rape case can be based upon the solitary statement of a victim and it is not necessary for the Court to look for corroboration of her statement. However, it equally a settled position of law that before placing reliance upon the solitary statement of a victim of rape, the Court has to ascertain as to whether the testimony of the prosecutrix is of sterling quality.

16) The Supreme Court in the case of **Ganesan vs. State,** (2020) 10 SCC 573, had an occasion to consider a series of judgements of the said Court on conviction on the sole evidence of the prosecutrix. The relevant observations of the Supreme Court are reproduced as under:

> ***10.3.*** *Who can be said to be a "sterling witness", has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21: (2012) 3 SCC (Cri) 750]. In para 22, it is observed and held as under: (SCC p. 29)*
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> > *"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness*

makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

10.2. *In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

10.1. *Whether, in the case involving sexual harassment, molestation, etc., can there be conviction*

on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

> *"9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [Stateof Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)*
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> *'16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the*

totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In State of U.P. v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for

seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

> *'8. … The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. … The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. … Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. … Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. …*
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> *21. … The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution*

case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

(emphasis in original)

12. In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080] , this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In State of H.P. v. Raghubir Singh [State of H.P. v. Raghubir Singh, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [Wahid Khan v. State of M.P., (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan[Rameshwar v. State of Rajasthan, 1951 SCC 1213 : AIR 1952 SC 54] .

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

17) In **State (NCT of Delhi) vs. Pankaj Chaudhary,** (2019) 11 SCC 575, the Supreme Court after observing that testimony of the prosecutrix cannot be doubted by court merely on the basis of assumptions and surmises, held as under:

> ***29.*** *It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283: (2006) 1 SCC (Cri) 217]]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30 : 2000 SCC (Cri) 898]]*

18) Again, in **Sham Singh vs. State of Haryana,** (2018) 18 SCC 35, a similar view was taken by the Supreme Court. Paras 6 and 7 of the said judgment are relevant to the context and the same are reproduced as under:

> ***6.*** *We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony,*

> *short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: 1996 SCC (Cri) 316] (SCC p. 403, para 21).]*
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> ***7.** It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: 1998 SCC (Cri) 1725].)*

19) From the foregoing analysis of the law on the subject it is clear that conviction can be based on the sole testimony of the prosecutrix if it inspires confidence and no corroboration is required unless there are compelling circumstance for the Court to insist upon corroboration of her statement. It is also clear that minor contradictions or small discrepancies cannot form ground for discarding testimony of a

prosecutrix. The only requirement of law is that before placing reliance upon sole testimony of the prosecutrix, the Court should be satisfied that the testimony of the prosecutrix is of sterling nature.

20) The Supreme Court in the case of **Rai Sandeep vs. State (NCT of Delhi),** (2012) 8 SCC 21, had an occasion to consider as to who can be said to be a sterling witness. Para 22 of the said judgment is relevant to the context and the same is reproduced as under:

> ***22.*** *In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can*

> *be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.*

21) From the above quoted ratio laid down by the Supreme Court, it is clear that before placing reliance upon the statement of a prosecutrix, the Court should satisfy itself that she has withstood the cross-examination of any length, her version of the prosecution and under no circumstances it should give room for any doubt about the occurrence, the person involved and the sequence of events.

22) If we have a look at the statement of the prosecutrix, there are a number of contradictions in her statement on the essential aspects of the case. In her statement recorded under Section 161 of Cr. P. C, the prosecutrix has stated that after her kidnapping, she was taken to a tin shed, where accused Shabir Ahmad Dar committed rape upon her and during the second night, she was taken to an unknown under-construction house where she was again sexually assaulted by accused Shabir Ahmad Dar and on the third day, while she alongwith the accused was walking on a road near Peer Bagh, she was recovered by the police. In her statement recorded before the Court, she has stated that during the first night she was taken by accused Shabir Ahmad Dar to a tin shed where she was sexually ravished and on the very next day, she was left by the said accused on a road wherefrom she was

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recovered by the police. Thus, the prosecutrix has contradicted her statement recorded under Section 161 of Cr. P. C, inasmuch as she has not stated anything about the incident of rape that had allegedly taken place on the second night in an under-construction house.

23) Another glaring contradiction in the statement of the prosecutrix is that while in her statement recorded under Section 161 of the Cr. P. C, she has stated that accused Shabir Ahmad Kuchay aided and abetted accused Shabir Ahmad Dar in kidnapping her, inasmuch as when she tried to raise noise in the vehicle, both the accused tied her hands to the back seat of the vehicle and both of them gave life threats to her. She has also stated that it was accused Shabir Ahmad Kuchay who, after dropping them near the tin shed, went away and on the next morning he came along with the vehicle and took her along with accused Shabir Ahmad Dar to an unknown place whereafter he went away along with the taxi from there. In her statement recorded before the Court, the prosecutrix has given a clean chit to accused Shabir Ahmad Dar. She has stated that, in fact, accused Shabir Ahmad Kuchay had asked accused Shabir Ahmad Dar to set the prosecutrix free as she is a minor. She has gone to state that accused Shabir Ahmad Kuchay tried to rescue her but accused Shabir Ahmad Dar gave life threats to both of them. She further stated that accused Shabir Ahmad Kuchay got down from the vehicle before they reached the tin shed and finally she stated that accused Shabir Ahmad Kuchay has no role in her kidnapping. Thus, the prosecutrix has

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clearly contradicted her own version given to the police as regards the role of accused Shabir Ahmad Kuchay.

24) Another material contradiction in the statement of the prosecutrix and the statement of the medical expert is that while the prosecutrix in her statement has deposed that when she was sexually ravished by accused Shabir Ahmad Dar, she suffered injuries all over her body and received many scratches on her body. The Medical Officer, PW Dr. Rukhsana, has clearly stated that there were no marks of violence on private parts of the prosecutrix or on any other part of her body. Thus, the medical evidence also contradicts the statement of the prosecutrix.

25) Yet another contradiction that has come to the fore upon appreciation of the evidence led by the prosecution is that while the prosecutrix has stated that she was sexually ravished by accused Shabir Ahmad Dar during the night inside the tin shed, her father, PW Ghulam Mohammad Mir, has stated that because there were many ladies present in the house where the accused Shabir Ahmad Dar had taken the prosecutrix, as such, he could not do any wrong act with her. Thus, according to the complainant, the father of the prosecutrix, no sexual intercourse had taken place with the prosecutrix while she was in the captivity of accused Shabir Ahmad Dar.

26) The Supreme Court in the case of **Rai Sandeep** (supra) has clearly laid down that before reliance can be placed upon the solitary statement of the prosecutrix, it should be ensured that under no

circumstance, her statement should give room for any doubt as to the factum of occurrence, the persons involved as well as sequence of it. It has been further held that the version of the prosecutrix must have co-relation with each and every one of other supporting material and evidence and that said version should consistently match with the version of every witness. It is only if version of the prosecutrix qualifies these tests that it can be held that such a witness is a witness of sterling quality.

27) In the instant case, as already noted, there are contradictions on essential aspects of the case inter se the statements made by the prosecutrix before the police during investigation and before the Court during the trial. There are also contradictions between her statement and the statement of the Medical Officer and there are contradictory versions about the involvement of both the accused in the alleged occurrence. Even the statement of the father of the prosecutrix contradicts her version of occurrence. In these circumstances, it would be hazardous to base conviction of the respondents/accused on the solitary statement of the prosecutrix or at least it can be said that there is a reasonable doubt with regard to alleged occurrence and involvement of respondents/accused therein. Thus, the conclusion derived by the trial court on the basis of the evidence on record is possible.

28) The Supreme Court in the case of **Chandrappa vs. State of Karnataka,** (2007) 4 SCC 415, has, while culling out general

principles regarding powers of the appellate court while dealing within an appeal against an order of acquittal, clearly held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellant court should not disturb the finding of acquittal recorded by the trial court.

29) In view of the above, I do not find any ground to interfere with the judgment of acquittal passed by the trial court. The appeal lacks merit and is dismissed accordingly.

30) Before parting, this Court would like to record its strong exception to the judgment of the Sessions Judge, where the name of the victim has been repeatedly mentioned. It is well established that in the cases relating to sexual offences, the name of the victim is not to be mentioned in any proceeding (**Refer: Bhupinder Sharma vs. State of Himachal Pradesh (2003) 8 SCC 551)**. It is, therefore, directed that all the Criminal Courts of Union Territory of Jammu and Kashmir and Ladakh shall remain careful while dealing with such cases. The Registry shall circulate soft copies of this judgment to all the Criminal Courts of Union Territories of J&K and Ladakh.

(Sanjay Dhar)
Judge

Srinagar
21.02.2024
"BhatAltaf-Secy"

Whether the order is speaking: ***Yes***
Whether the order is reportable: ***Yes***