HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CrlA(S) No. 02/2024

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Whether the operative part of Judgment is Pronounced? **FULL**

SHOWKAT AHMAD SEER

….. Appellant(s)

Through: Mr. Tasaduq H. Khawaja, Sr. Advocate with
Mr. Naseer ul Akbar, Advocate

V/s

UT OF JK THROUGH
POLICE STATION QALAMABAD

….. Respondent(s)

Through: Mr. Faheem Nissar Shah, GA with
Mr. Haaris Khan, Assisting counsel

CORAM:
HON'BLE MR. JUSTICE SANJAY PARIHAR-JUDGE

J U D G M E N T

1. The present appeal is directed against the judgment of conviction and order of sentence passed by the court of Additional Sessions Judge, Handwara (hereinafter referred to as "the trial Court") in FIR No. 46/2016 registered under Section 376 RPC, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 50,000/-.
2. Briefly stated, the prosecution case is that the complainant, PW-1 Bashir Ahmad Seer, lodged a written complaint before Police Station Qalam-Abad on 19.07.2016 alleging that he was working as a porter with the Army and was on duty on 15.07.2016. During his absence, his wife, PW-3 Khuram Begum, informed him that their daughter, PW-2 (the victim), had gone to the nearby fields for irrigation purposes. While she was engaged in the said activity, the appellant allegedly appeared at the spot, forcibly took her to a nearby forest area and subjected her

to forcible sexual intercourse. The complainant was further informed by his wife that, when the victim did not return home, she went in search of her and, while proceeding towards the fields, heard cries emanating from the nearby forest area. Upon rushing to the spot, she allegedly found the appellant mounted upon the victim and committing the illicit act. On noticing her presence, the appellant is stated to have fled from the spot.

3. The complainant further explained that owing to the prevailing law and order situation, he could not lodge the report immediately. Upon receipt of the written complaint (Ext. P-1), FIR No. 46/2016 came to be registered on 19.07.2016 at 4:30 p.m. During investigation, the Investigating Officer got the victim medically examined. The medical expert found a laceration mark on her nose, another on the right side of her chest, and a bruise on her right thigh. A laceration was also noticed on the perineum, though the hymen was found intact. Since the victim had changed her clothes and had taken a bath, no traces of semen could be detected. The medical report further recorded that the introitus admitted the little finger with difficulty. The Investigating Officer also seized the torn pyjama of the victim. The appellant was arrested on 24.10.2016 and was subjected to medical examination, whereupon he was found potent and capable of performing sexual intercourse.

4. The victim was thereafter produced before the Judicial Magistrate First Class for recording of her statement under Section 164-A Cr.P.C., which was recorded on 20.07.2016. The statement of her mother was also recorded during investigation. Upon completion of the investigation, the Investigating Officer concluded that the appellant had committed an offence punishable under Section 376 RPC. Consequently, a charge-sheet was presented before the trial Court and

the appellant was formally charged for the commission of the offence under Section 376 RPC. The appellant pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined PW-1 Bashir Ahmad Seer (father of the victim), PW-2 (the victim), PW-3 Khuram Begum (mother of the victim), PW-4 Dr. Aneesa Rashid, Medical Officer, PW-5 Dr. Sajad Ahmad, Medical Officer, and PW-6 Abdul Rashid Dar, Sub-Inspector. After the prosecution evidence was concluded, the appellant was examined under Section 342 Cr.P.C. with reference to the incriminating circumstances appearing against him. In his statement, he asserted that the prosecution witnesses had deposed falsely before the Court and that he was innocent. According to him, one Habib Dar wielded considerable influence over the complainant's family and, owing to previous enmity between him and the said Habib Dar, the latter had prevailed upon the complainant's wife to falsely implicate him in the case. He further stated that on the day of the alleged occurrence he had merely spoken to the victim, who happened to be his neighbour residing in the same locality. He claimed that he, along with two of his friends, had gone to their agricultural land for irrigation purposes and had spoken to the victim there. According to him, there were vacant fields near the alleged place of occurrence where boys were playing cricket and no such incident had taken place. He stated that he could never have thought of humiliating the victim and that it was difficult to imagine that such an act could have been committed in an open area. When asked why the witnesses were deposing against him, he reiterated that they had falsely implicated him under the influence of Habib Dar. He also examined one Shabir Ahmad Chachi as a defence witness.

6. Upon appreciation of the evidence, the trial Court, by the impugned judgment and order, observed that PW-1 was not an eye-witness to the occurrence and had lodged the FIR on the basis of the narration made by his wife, PW-3. The trial Court further held that although there was some delay in lodging the FIR, the same stood satisfactorily explained by the complainant. It was also observed that the medical evidence established the presence of laceration marks on the nose and right side of the chest of the victim, as well as a bruise on her right thigh. The Court held that the mere fact that the hymen was found intact did not absolve the appellant of criminal liability, particularly when the victim had successfully withstood cross-examination. The trial Court further found that the presence of the appellant at the place of occurrence stood established through the evidence of the prosecution witnesses and that he had failed to discredit the testimony of the victim.

7. The trial Court noted that the victim had categorically stated that she was overpowered by the appellant, laid on the ground, her trousers were torn, and she was subjected to rape. According to the trial Court, this version stood corroborated by the injuries found on the nose and right side of the chest of the prosecutrix, the bruise on her right thigh, and the laceration mark on the perineum detected during the per-vaginal examination. The Court further observed that the appellant was a grown-up person physically capable of overpowering the victim and committing the offence alleged against him. Holding that the prosecution version stood clearly established and was duly corroborated by the medical evidence, the trial Court found the appellant guilty of the offence under Section 376 RPC and sentenced him accordingly.

8. The submissions advanced on behalf of the appellant assail the impugned judgment primarily on the following grounds. Firstly, it is contended that the evidence led by the prosecution does not inspire confidence and is insufficient to establish the guilt of the appellant beyond reasonable doubt. According to the learned counsel, a careful reading of the statement of the victim reveals that she was keenly interested in securing the conviction of the appellant, thereby rendering her testimony unreliable.

9. Secondly, it is argued that the prosecution case finds no support from the medical and scientific evidence on record. On the contrary, the testimony of the medical expert, according to the appellant, categorically rules out the possibility of the victim having been subjected to any penetrative sexual assault. In such circumstances, it is submitted that there was no justification for recording a conviction under Section 376 RPC, particularly when the statements of the victim and other prosecution witnesses are replete with contradictions and inconsistencies.

10. Thirdly, learned counsel submits that there is no independent corroboration of the alleged occurrence. Even the presence of PW-3 at the place of occurrence, according to the defence, becomes doubtful in view of the admissions elicited during his cross-examination.

11. It is further contended that, having regard to the statements of the victim and her mother, it is highly improbable that the victim would have remained silent for three days without disclosing the alleged occurrence to anyone. The trial Court, according to the appellant, has returned the finding of guilt on a misappreciation of the evidence and has proceeded on presumptions and assumptions without meticulously examining the material available on record.

12. Learned counsel has also drawn attention to the delay in lodging the FIR. While the prosecution case is that the incident occurred on 15.07.2016 and the FIR came to be registered on 19.07.2016, the testimony of the complainant does not clearly support this version. Rather, the complainant has stated that the FIR was lodged on 20.07.2016 and that even the medical examination of the victim was conducted on the same day. He further deposed that on 19.07.2016 the police had refused to register the FIR, compelling him to approach a superior police officer, who thereafter directed registration of the case. On the basis of this testimony, it is argued that if the FIR was in fact registered on 20.07.2016, whereas the record reflects registration on 19.07.2016, the discrepancy strikes at the root of the prosecution case and renders the entire prosecution story doubtful.

13. The appellant further submits that, according to the complainant's own version, he was informed by his wife about the alleged heinous incident. In such circumstances, it is argued that a father serving in the Army would not ordinarily remain stationed at his place of posting and wait for four days before lodging a report, but would have immediately rushed home. This conduct, according to the appellant, is wholly inconsistent with the natural reaction expected in such a situation and further casts doubt on the veracity of the prosecution case.

14. On the other hand, learned counsel for the respondents, while supporting the judgment rendered by the Trial Court, contended that the victim remained steadfast during cross-examination and successfully withstood the test of credibility. It was argued that the testimony of the victim stands corroborated by PW-3, who, upon hearing the victim's cries, rushed to the place of occurrence and witnessed the appellant lying over the victim. According to the respondents, this circumstance

lends substantial assurance to the prosecution case and reinforces the victim's version that it was the appellant who violated her privacy and dignity. It was further submitted that the mere fact that the medical evidence does not fully support the prosecution version, cannot by itself, demolish an otherwise cogent and reliable ocular account. Emphasis was laid on the fact that the appellant has failed to elicit anything during cross-examination to discredit the prosecution witnesses or to establish the existence of any animosity, prior dispute, or motive on the part of the complainant or the witnesses that could give rise to an inference of false implication. Consequently, it was urged that the findings recorded by the Trial Court are well-founded and warrant no interference.

15. Learned counsel for the appellant, placing reliance upon the judgments reported in (2007) 12 SCC 57 and (2018) 18 SCC 695, contended that the presence of PW-3 at the scene of occurrence is highly doubtful. It was argued that during the course of investigation, PW-3 had categorically stated that while the victim had gone to a nearby field for watering purposes, she herself had proceeded to the market to procure medicine. In view of this admission, it was submitted that PW-3 could not have returned to the place of occurrence before 12:00 noon, whereas, according to the version of the victim, the incident had taken place between 10:00 a.m. and 10:45 a.m. Consequently, the testimony of PW-3 regarding witnessing the occurrence is rendered inherently improbable. Learned counsel further submitted that the testimony of the victim is replete with inconsistencies, exaggerations and material improvements, thereby making it unsafe to form the basis of conviction. It was also argued that the medical evidence does not support the prosecution version, inasmuch as the medico-legal opinion is negative.

Referring to the testimony of the victim, learned counsel pointed out that although she alleged that the appellant had torn her trouser during the occurrence, she simultaneously stated that she had washed the said trouser thereafter. According to the learned counsel, if the trouser had indeed been torn during the incident, there was no plausible reason for washing it, and the explanation appears to have been subsequently introduced to account for the presence of semen stains on the garment. It was, therefore, contended that the prosecution story suffers from material infirmities and improvements at every stage, creating serious doubt about its veracity and rendering the prosecution unable to establish its case beyond reasonable doubt.

16. I have heard learned counsel for the parties and carefully perused the record of the case. Before adverting to the merits of the appeal, it would be appropriate to briefly recapitulate the testimony of the prosecution witnesses, which is reproduced hereunder for the purpose of disposal of the present appeal.

17. PW-1, the father of the victim, deposed that the occurrence had taken place on 15.07.2016. At the relevant time, he was employed as a porter with the Army and was stationed at the Brigade Headquarters, situated approximately two kilometres from the place of occurrence. According to him, the report came to be lodged on 19.07.2016. He admitted that he was not an eyewitness to the occurrence and had learnt about the incident from his wife. He stated that his wife had telephonically informed him about the incident from the main entrance of the camp. The witness further deposed that the application which formed the basis for registration of the FIR was drafted by him personally and not by any neighbour. He specifically denied the suggestion arising from the testimony of the victim that the report had been drafted by one Nazir

Ahmad. PW-1 further stated that he could not immediately return home after receiving information of the incident, as the Army authorities did not permit him to leave until 18.07.2016, and that he ultimately reached home on 19.07.2016.

18. The witness further stated that upon approaching the police station, he was informed that the matter pertained to the Women Police Station, Baramulla. He thereafter approached the Superintendent of Police, Handwara, on 20.07.2016 and submitted an application complaining that the police authorities were not cooperating. According to him, the Superintendent of Police endorsed the application and forwarded it to the concerned police station. However, when confronted with the endorsement appearing on the application (Ext. P-1), the witness was unable to satisfactorily explain the same. He further deposed that the police visited the place of occurrence for the first time on 21.07.2016. The witness also stated that owing to the nature of his employment, he would remain away from home for periods extending up to two or three months.

19. PW-1 denied the suggestion that his wife had informed him about the occurrence only after three days. He stated that, as narrated to him by his wife, she had gone to Kotlari village to procure medicine and, while returning, noticed that the victim was not present in the field. On hearing cries emanating from a nearby forest area, she proceeded towards the spot and allegedly found the accused committing a sexual act upon the victim, who's trouser had been torn. Upon noticing her presence, the accused allegedly fled from the scene, whereafter she brought the victim back home.

20. The testimony of PW-2, the victim, reveals that on the date of occurrence she had gone to the field for watering crops at the instance

of her mother. According to her, while she was engaged in watering the field, the appellant approached her, caught hold of her arm and prevented her from leaving. She deposed that the appellant threatened her, stating that he was carrying a gun and would kill her if she attempted to flee. She pleaded with him to let her go, reminding him that he was like a brother to her. However, the appellant allegedly took her towards a forested area, tore her trousers, made her lie on the ground and forcibly committed sexual intercourse with her. She stated that although she raised hue and cry, nobody came to her rescue and that she sustained injuries during the occurrence. According to her, her mother thereafter arrived at the spot, upon which the appellant fled away, and she was taken back home by her mother.

21. The witness further stated that she subsequently made a statement under Section 164 Cr.P.C. before the Magistrate and was medically examined. She deposed that her father returned home after about three days of the occurrence and thereafter submitted an application regarding the incident. She also stated that her mother had informed her father about the occurrence only after three days. Significantly, she admitted that neither she nor her mother disclosed the incident to any person in the vicinity, nor did they inform anybody while returning home from the place of occurrence. She further stated that she had informed her mother that the appellant used to harass her even prior to the occurrence, though she had never lodged any complaint in that regard with any person.

22. During cross-examination, she denied the suggestion that her mother had gone to Qalamabad to procure medicine on the day of occurrence. She maintained that the appellant committed the sexual act only once. While initially stating that the appellant had dragged her to the place of occurrence and that her clothes became muddy in the process due to a

water channel flowing between the fields, she later admitted that when the appellant first caught hold of her, he did not drag her. She stated that she had reached the field at about 10:00 a.m. and that the occurrence had taken place before 10:45 a.m. According to her, the appellant tore her trousers before forcing himself upon her. She further deposed that when her mother arrived at the spot, the appellant was in the process of getting up from over her and, therefore, his semen did not fall on her trousers but on the ground, though some portion allegedly came into contact with her legs. Since her trousers had been torn, her mother gave her a phiran to wear. She also stated that the doctor had examined her entire body. According to her, the appellant was wearing an inner garment and trousers at the time of occurrence. Notably, she admitted that she had not actually seen any weapon with the appellant. She further stated that her clothes had become wet and smeared with mud because of water flowing through a canal situated between the forest area and the field.

23. The testimony of PW-3, the mother of the victim, reveals that on the day of the occurrence she had sent her daughter to irrigate the field. When the victim did not return for a considerable time, she proceeded in search of her and initially found that the victim was not present in the field. She then heard cries emanating from nearby bushes and rushed towards the spot. According to her, she found the appellant lying over the victim after having removed his trousers and having torn the victim's trousers. On noticing her presence, the appellant allegedly fled from the scene. She further deposed that her husband was serving in the Army and was away from home at the relevant time. She informed him about the occurrence, but he returned home only after three days,

whereafter an application was lodged before the police. She also stated that the police had seized the trousers involved in the occurrence.

24. During cross-examination, PW-3 denied the suggestion that on the day of the incident she had gone to the nearby market at Kotlari to purchase medicine. She maintained that she remained at home and, after waiting for her daughter to return, proceeded herself towards the fields at about 10:30 a.m., the victim having left for the fields at around 10:00 a.m. She further stated that the victim had sustained injuries on her body, from which blood had oozed, and that her clothes were stained with blood. She reiterated that she did not visit Kotlari for purchasing medicine on the day of the occurrence and asserted that the contrary recital recorded in her statement by the police was incorrect. She also deposed that the appellant was their neighbour and resided in the same locality. According to her, the incident was disclosed to her husband upon his return after three days, following which the matter was reported to the authorities.

25. PW-4 is the Dr. Anisa Rashid, claims to have examined the victim on 20.07.2016 at about 11:30 AM and on examination, she found that the victim was in good condition. She was bearing laceration mark on her nose and right side of her chest and a bruise on right thigh. On PV examination, she found laceration on her perineum but found her hymen intact. The victim had changed her clothes and also taken bath. She found that her introitus admitted little finger with difficulty. She has taken vaginal smear for histo-pathological examination but found no presence of spermatozoa. That on clinical examination she had opined that victim had not suffered coitus because her hymen was intact. That had the victim being subjected to sexual assault her hymen ruptured should have been there and since the same was intact and her

introitus would admitted the little finger difficulty, she could opine that victim has not undergone any penetration or coitus. That she did not find bruises lacerations or tear on the body of the prosecution which could have been caused by dragging her on the ground.

26. PW-5, Dr. Sajad is found narrating that he has examined the appellant who was 19 years old and found that his external genitalia were well formed and possessed secondary male sexual features and apparently was potent.

27. PW-6 Abdul Rashid Dar, the Investigating Officer, stated that during the course of the initial investigation he found no evidence suggestive of forcible sexual intercourse. He further deposed that, on the basis of the medical opinion and the statement of the victim available at that stage, he concluded that the appellant had intended to commit attempt of rape and, therefore, found only the offence punishable under Section 376/511 RPC to be made out. According to him, it was only after the statement of the victim was recorded under Section 164 Cr.P.C. that the offence under Section 376 RPC came to be added. He denied the suggestion that the father of the appellant had been wrongfully confined during the investigation.

28. The witness further stated that the clothes worn by the victim on the date of the occurrence had been washed by her, while the First Information Report itself came to be lodged four days after the incident. He admitted having heard that the Superintendent of Police, Handwara, had questioned the SHO, Police Station Qalamabad, regarding the non-registration of the FIR. He stated that the FIR was ultimately registered on 19.07.2016 on the basis of an application submitted by the complainant, and that the victim was medically examined on the following day, i.e., 20.07.2016. He further deposed that since the

victim's trouser had already been washed, he did not consider it appropriate to send the same for forensic examination.

29. The Investigating Officer also admitted that he had not enquired from the victim whether she had been wearing any undergarment on the date of the incident. When confronted with the torn pyjama marked as Ext. P-1/MAT, he acknowledged that only one side thereof was torn and that a portion of the garment was missing. He admitted that the missing piece was never recovered from the scene of occurrence. He further conceded that he had not collected any documentary proof, including school records, to ascertain the date of birth of the victim. Significantly, he reiterated that throughout the investigation conducted by him from 19.07.2016 till 05.10.2016, the only offence that, in his assessment, stood established against the appellant was one under Section 376/511 RPC. This, in essence, is the substance of the evidence led by the prosecution through these witnesses.

30. On scanning record of the Trial Court reveals that Exhibit P-1 is the written application for registration of the FIR, drafted in Urdu and bearing the purported thumb impression of the complainant, PW-1 Bashir Ahmad Seer. Exhibit P-6/1 is the application submitted by the Investigating Officer seeking medico-legal examination of the victim, wherein the particulars of FIR No. 46/2016 are recorded as one registered under Section 376 RPC. Exhibit P-5 is a similar application moved by the Investigating Officer for obtaining the medical opinion regarding the appellant. Significantly, however, while the FIR number continues to be reflected as FIR No. 46/2016, the offence mentioned therein is shown as one under Sections 376/511 RPC. The arrest memo of the appellant dated 24.10.2016 also records that he was arrested in

connection with an offence under Sections 376/511 RPC. The identification memo likewise carries the same particulars.

31. A further scrutiny of the remand application dated 05.10.2016, addressed to the learned Magistrate, discloses that although the FIR had initially been registered under Section 376 RPC, in view of the medico-legal opinion and the statement of the victim recorded under Section 164-A Cr.P.C., the offence under Section 511 RPC was added during the course of investigation. The application specifically records the Investigating Officer's conclusion that the material collected during investigation disclosed commission of an offence punishable under Sections 376/511 RPC and, on that basis, sought judicial remand of the accused. The subsequent application seeking extension of judicial remand on 01.11.2016 proceeds on the same premise.

32. It is trite that an accusation of rape constitutes one of the gravest offences against a woman. The crime is not confined to a mere physical assault; it strikes at the dignity, bodily integrity, honour and psychological well-being of the victim, often leaving enduring scars upon her personality. Recognising the seriousness of such allegations, judicial precedents have consistently emphasised that courts trying offences of rape are required to discharge their duties with a high degree of responsibility, sensitivity and caution. While the testimony of the prosecutrix cannot be viewed with suspicion merely because she is the victim of the offence, the court is nonetheless under an equally solemn obligation to ensure that the charge is established in accordance with law and by reliable evidence. The sensitivity demanded in such cases cannot eclipse the fundamental requirement of a fair trial, and the court must carefully evaluate the entire evidentiary record to ascertain

whether the offence alleged, or any lesser offence emerging from the material on record, stands proved beyond reasonable doubt.

33. In ***State of Punjab versus Gurmeet Singh, 1996 SCC (2) 384***, the Apex Court held as under:

> "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 over-look. 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. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty."

Which position was reiterated in ***Ranjit Hazarika versus State of Assam 1998 (8) SCC 635.***

34. Rendering a discarding note, the Apex Court in ***Sadashiv Ramarao 2006 10 SCC 92,*** has held as under:

> "It is true that in a rape case, the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the Court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

35. In ***Rajo versus State of Madhya Pradesh, AIR 2009 SC 858,*** the Court observed as under:

> "The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in

> its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

36. In that case the victim was between 13 to 14 years of age, whereas the accused was around 19 years and was stated to be of capable of affecting sexual intercourse. There the victim had alleged that she was dragged by the accused inside the room confined her during the entire night and there sexually assaulted her by inserting his penis in her vagina twice and when she cried, he grabbed her mouth with a piece of cloth and it was only next day she was freed.

37. The accused had claimed that he had been falsely implicated. The medical officer had opined that her hymen was ruptured but the same was old one. There were no injuries on her private parts, as such she could not give any opinion as to whether any rape had been committed. Though she had found that victim had an abrasion on left elbow and abrasion on her arm and a contusion on her leg, but these injuries were held not sufficient to establish to rape, illegal confinement or hurt. It was found that the evidence of the victim when read as a whole is full of discrepancies and does not inspire confidence.

38. Given the aforesaid legal proposition, this court, now proceed to discuss the case of the prosecution. The victim in her initial statement recorded by the Investigating Officer on 19.07.2016, has narrated the following version:

> *"She had gone to her field for watering and while she was engaging in that process, the appellant came there. she knew him as she used to tease her. He asked her to company him in nearby jungle and caught hold of her from hand. She asked*

him to leave her but he threatened her that in case she doesn't come he would kill her. He took her to nearby jungle and then committed forcible sexual intercourse with her. She though cried but no one came to her rescue. Then her mother came and on seeing her, the appellant fled away. In the act, the appellant had torn her Pajama. Her mother took her back home."

39. On 20.07.2016, she was produced before the Judicial Magistrate Ist Class, Handwara, there she made the following narration:

> "The *accused caught hold of her and took her to the jungle. She raised hue and cry but nobody came there. He told her that he is having a gun and in case she flees, he would kill her and that he is also having grenade. She is found telling him that he is just like her brother. He tore her clothes, tore her pajama and then forced himself upon her, she raised hue and cry and, in the meanwhile, her mother came and he fled away.*
>
> *During trial she narrated before the court, "when accused caught hold her, she tried to flee but could not. He told her that he is having a gun and in case she flees, he would kill her. He tore her clothes as well as her pajama brought her on the ground and forced himself upon her, she tried for help but nobody came to her rescue. That in the struggle, she suffered injuries which injuries she has shown to the doctor, in the meanwhile, her mother came and on seeing her he fled away. Further narrated that she was dragged by the appellant from the field to the nearby jungle and in the process, her clothes got smeared with mud as well as wet and received injuries on her body wherefrom blood started oozing as well. She claims that around the scene of the crime there are open fields but nobody was working in the field. The incident happened between 10:00 AM to 10:45 AM. He tore her pajama and then committed bad act with her which lasted for 15 minutes. She had handed over that pajama to the police, that accused ejaculated in between and part of seamen fell on ground and portion of that also fell on her thighs."*

40. There is no dispute that the medical evidence does not support the allegation of penetrative sexual assault. PW-4, the Medical Officer, has categorically opined that the victim had not undergone coitus, thereby indicating that there was neither complete nor even partial penetration of the male organ into the genital tract of the victim. The doctor found the hymen intact and observed that the introitus admitted only the little finger with difficulty. On the basis of these findings, the medical expert unequivocally concluded that the victim had not been subjected to any penetrative sexual assault. It is well settled that a conviction may, in an

appropriate case, rest solely upon the testimony of the prosecutrix even in the absence of corroborative medical evidence. However, such testimony must be of sterling quality, wholly reliable, and inspire the confidence of the Court to such an extent that it leaves no room for reasonable doubt. Consequently, where the medical evidence completely rules out penetration and stands at variance with the prosecution version, the testimony of the victim must be scrutinized with greater care to determine whether it possesses the degree of credibility necessary to sustain a conviction despite the adverse medical opinion.

41. Before adverting to the issue of delay in lodging the FIR, it would be appropriate to first analyse the testimony of the victim and ascertain whether it inspires confidence on its own or requires corroboration from other evidence on record. According to the victim, the appellant caught hold of her hand and took her to a nearby jungle adjoining the field, where he subjected her to forcible sexual intercourse against her will. In her deposition before the Court, she further stated that when she resisted, the appellant dragged her from the field to the place of occurrence and, in the process, her clothes became smeared with mud because a water channel existed between the field and the jungle. The existence of such a water channel has also been spoken to by PW-3, the mother of the victim.

42. It is an admitted position that the victim changed her clothes after the occurrence. The prosecution case is not that the appellant had removed her clothes; rather, it is alleged that her pyjama was torn during the incident. However, the Investigating Officer, during his cross-examination, categorically stated that the pyjama was not torn from the middle portion but only from the leg side. As is evident from seizure

memo Exhibit P-3, a torn pyjama was seized on 19.07.2016 in the presence of the parents of the victim. Ordinarily, if the pyjama had indeed been torn during the commission of the offence, it would have remained in the same condition and would not have been washed prior to its seizure. The record further reveals that before her medical examination the victim had changed her clothes and had also taken a bath. During her testimony, she stated that the appellant had ejaculated, that a portion of the semen had fallen on the ground, and that some of it had come into contact with her thighs. Despite such allegations, the medical examination did not reveal any injury on her genital organs except a laceration noted on the perineum.

43. The medical evidence assumes considerable significance in the facts of the present case. Although the victim alleged that she was subjected to rape, the medical opinion does not support the allegation of penetrative sexual assault. It is well settled that the absence of rupture of the hymen or the fact that the hymen remains intact is not, by itself, determinative of whether rape has occurred. Nevertheless, in the present case, the medical expert has categorically opined that the hymen was intact and that the introitus admitted only a little finger with difficulty. This aspect assumes importance because it substantially belies the allegation of penetrative sexual intercourse as projected by the prosecution. In the absence of any clinical evidence suggestive of penetration, the Court is required to assess the prosecution case on the basis of the remaining material available on record.

44. The medical examination did reveal a laceration on the nose, an injury on the right side of the chest, and a bruise on the right thigh, which indicate that some form of struggle may have taken place. However, the medical expert specifically opined that these injuries were not

consistent with the victim having been dragged from the field to the place of occurrence. Consequently, the assertion of the victim that she was dragged to the spot does not find corroboration from the medical evidence.

45. As already noticed, the allegation of dragging remains unsubstantiated. The Court is conscious of the fact that there is no suggestion of prior animosity between the victim and the appellant which would readily explain a false implication. Equally, the defence has not been able to establish any convincing motive on the part of the victim to falsely implicate the appellant. Nevertheless, the Court cannot overlook the inconsistencies and infirmities emerging from the prosecution evidence.

46. The testimony of the Investigating Officer further reveals that, during the course of investigation, the appellant was initially found liable for an offence under Section 376 read with Section 511 RPC and that such opinion constituted the final investigative conclusion at that stage while the appellant was in judicial custody. Thereafter, no substantial additional evidence appears to have surfaced which could justify the alteration of the opinion so as to sustain a charge of completed rape under Section 376 RPC. According to the victim herself, the appellant first caught hold of her hands and thereafter took her towards the place of occurrence. The allegation that she was dragged from the field to the jungle appears to be an embellishment introduced subsequently. Had the victim been forcibly dragged over such a distance, one would ordinarily expect injuries or marks of resistance on her wrists, arms, buttocks, etc., particularly when the prosecution case is that she resisted throughout. Significantly, no such injuries were noticed during her medical examination.

47. The evidence also reveals that the appellant was a student and that, according to the victim, he used to follow her and obstruct her on earlier occasions. While such circumstances may indicate unwelcome conduct on the part of the appellant, they do not, by themselves, furnish proof of the allegation of penetrative sexual assault, which must ultimately be established through cogent, reliable and trustworthy evidence. From her initial version recorded by the police, the victim did not state anything to suggest that she had offered any significant resistance when she was allegedly taken from the field towards the nearby jungle. In her earliest account, she merely stated that the accused had threatened to kill her. Subsequently, however, she introduced an improved version by alleging that the appellant was carrying a gun and had also claimed to possess a grenade. At the same time, she candidly admitted that she neither saw any gun in his possession nor was the appellant actually armed with any weapon. Equally significant is the absence, in her initial statement, of any allegation that she was dragged by the appellant. This omission lends some support to the possibility of a prior acquaintance between the parties. The claim of resistance, therefore, appears to be an embellishment introduced at a later stage. This inference is further strengthened by the absence of any evidence suggesting that the appellant had removed the victim's trousers or innerwear, although, according to the victim, the appellant had removed his own trousers while still wearing an undergarment. She further stated that her pyjama was torn by the appellant with both hands and that she raised hue and cry during the occurrence. However, despite such alleged cries for help, no independent person is shown to have responded, notwithstanding the defence version that several persons were working in the adjoining fields at the relevant time. The appellant, on the other hand, has

maintained that he could never have imagined harassing or sexually exploiting the victim. In the backdrop of these circumstances, particularly the omissions and improvements in the victim's earlier version, there arises a reasonable probability that any resistance offered by the victim in accompanying the appellant was, at best, limited or half-hearted, thereby rendering her subsequent assertions on that aspect susceptible to careful scrutiny. It is also appropriate to state that in terms of prosecution case the victim was minor at the time of occurrence. In fact, there is no dispute as to the minority of the victim and once that is the case then the issue of consent on the part of the victim in the incident, even if it was there, is inconsequential.

48. The prosecution has not explained the injury found on the perineum region of the victim or established whether the same was caused as a result of the assault attributed to the appellant. It is, however, evident from the statement of the victim that the appellant had ejaculated and that a portion of the semen had fallen on the ground. The medical evidence does not disclose any injury to the private parts of the victim and, significantly, the possibility of coitus has been ruled out. At the same time, the laceration found on the perineum cannot be ignored, since this part of body of the victim lay in-between the vaginal canal and her anus. In the absence of evidence of penetration, the only reasonable inference that can be drawn is that the appellant, in an attempt to gratify his sexual lust, may have, upon noticing the tender age of the victim and being mindful of the consequences that might follow the actual penetration, forced or rubbed his male organ between the thighs of the victim, resulting in the perineum laceration. This circumstance probabilizes the prosecution case only to the extent that there was an attempt to commit an offence of rape in the nature of

penetrative sexual assault, but not that actual or partial penetration had taken place. The victim's version regarding penetrative sexual assault does not find corroboration from the medical evidence and, therefore, cannot be accepted in its entirety. However, the evidence on record clearly establishes that the appellant had disrobed himself, torn the victim's pyjama and subjected her to a sexual assault by pressing his genital organ between her thighs, culminating in ejaculation. Such conduct unmistakably demonstrates his intention to commit rape, though the allegation of actual penetrative sexual assault remains unproved in view of the medical evidence on record.

49. The presence of PW-3 at the scene of occurrence appears highly doubtful. In her own deposition, she stated that at about 10:00 a.m. she had gone to Qalamabad to procure medicine. According to the victim, the place from where the medicine was to be obtained was situated at a distance requiring approximately half an hour to reach and another half an hour to return. The prosecution case itself places the occurrence between 10:00 a.m. and 10:45 a.m. Thus, if PW-3 had indeed proceeded to Qalamabad at 10:00 a.m., her presence at the spot during the relevant period becomes highly improbable. What further weakens her credibility is the inconsistency in her version. While she initially admitted having gone to Qalamabad for obtaining medicine, she subsequently claimed before the Court that she was present at home. This stand is contradicted by PW-1, who categorically stated that his wife had informed him that she had gone to Qalamabad to fetch medicine, while PW-2 had been sent to the nearby field for watering purposes. In these circumstances, the claim of PW-3 that she had witnessed the appellant lying over the victim does not inspire confidence. Her attempt to project herself as an eyewitness is rendered

doubtful by the surrounding circumstances, which strongly indicate that she could not have been present at the place of occurrence at the relevant time.

50. Further, PW-3 stated that the victim's pyjama had been completely torn and that she had provided her own phiran to the victim. She also deposed that while returning from the field to their house, neither she nor the victim disclosed the incident to anyone. Such conduct appears highly unnatural. It is difficult to accept that the mother of the victim, having allegedly witnessed the appellant in a compromising position with her daughter and having observed the torn condition of the victim's clothing, would remain silent and refrain from informing any person about the occurrence, particularly when the appellant was their neighbour and not a stranger. This unnatural conduct further detracts from the reliability of her testimony and casts serious doubt upon her claim of having witnessed the occurrence.

51. The respondents have sought to contend that the prosecution case is doubtful on account of the delay in lodging the FIR and that the said aspect has not been duly appreciated. There is some substance in the submission inasmuch as, according to the complainant, he was informed about the occurrence by his wife on the very day of the incident, i.e., 15.07.2016, when she reported the matter at the Sentry Gate. Yet, despite learning about the alleged assault upon his daughter, he remained at his place of work for the next three days and returned home only on 19.07.2016. At first glance, such conduct may appear somewhat unusual and inconsistent with the reaction ordinarily expected from a parent in such circumstances.

52. The respondents have further emphasized that, according to the prosecution itself, when the complainant approached Police Station

Qalamabad on 19.07.2016, the FIR was not registered and he was allegedly advised that, since the matter related to a woman, it should be reported elsewhere. Consequently, the complainant approached the Senior Superintendent of Police on the following day. This version also finds some support in the testimony of the Investigating Officer.

53. The question, however, is whether these circumstances are sufficient to demolish the prosecution case. While examining this aspect, the nature of the accusation and the attendant circumstances cannot be lost sight of. The complainant was working as a porter with the Army. Although he has stated that no restrictions were imposed upon his movement, it cannot be ignored that, considering the prevailing situation in the area during the relevant period, movement of persons associated with Army establishments was not entirely free from practical constraints. More importantly, the incident in question involved an allegation of sexual misconduct against a young girl. Even if the evidence on record ultimately does not establish penetrative sexual assault and points only towards an indecent sexual encounter, it is not uncommon for parents to deliberate and reconsider before reporting such an incident to the police, particularly when the future and social standing of their daughter are involved. In offences of this nature, hesitation and reluctance in approaching law enforcement authorities are not uncommon and, therefore, some delay in reporting the matter cannot be viewed with the same strictness as in ordinary criminal cases.

54. Viewed in this context, the delay in lodging the FIR does not appear to be so inordinate or unnatural as to cast a serious cloud over the prosecution case. The objections raised on this score are, therefore, of little significance and do not materially affect the credibility of the prosecution version.

55. The appellant has also attempted to highlight that the scribe of the written complaint was not examined. According to the victim, the complaint was written by one Nazir Ahmad, whereas the complainant has stated that he himself authored the application. It is contended that this discrepancy constitutes a material contradiction which undermines the entire prosecution case. The contention, however, does not merit acceptance. The written complaint forms part of the record. The complainant has stated that he had passed the 10th standard and was capable of writing Urdu, and the complaint itself is admittedly written in Urdu. The discrepancy regarding the person who physically penned the complaint is not of such magnitude as would affect the substratum of the prosecution case. The complaint was based upon the information conveyed to the complainant by his wife regarding the incident involving their daughter, and the essential facts remain unchanged.

56. Merely because the victim stated that the complaint was written by Nazir Ahmad, whose testimony was not recorded, cannot by itself render the prosecution case unreliable, particularly when the victim has consistently narrated the sequence of events relating to the occurrence dated 15.07.2016. It is true that the victim appears to have embellished certain aspects of the occurrence. However, such exaggeration does not necessarily lead to the conclusion that the entire prosecution story is false. Courts have repeatedly recognized that victims of sexual offences may either suppress certain facts or, at times, exaggerate certain details due to trauma, fear, or social pressures. Unless such embellishments strike at the core of the prosecution case, they do not justify rejection of the testimony in its entirety.

57. Hon'ble Supreme Court in ***Madan Lal vs. State of J&K, (1997) 7 SCC 677,*** has held that:

> "12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC."

58. Aforesaid supra applies in all force to the case in hand. In the absence of any material on record suggesting a motive for false implication of the appellant, or any circumstance creating a reasonable probability that the appellant has been falsely roped in, the prosecution case cannot be discarded merely on account of the aforesaid discrepancies. In fact, the appellant, in his statement under Section 342 Cr.P.C., admits his presence at the crime scene. The evidence, when viewed as a whole, does not reveal any infirmity of such magnitude as would render the prosecution version inherently weak or unworthy of reliance.

59. An appellate court does not ordinarily reappreciate evidence merely because another view is possible. It will interfere with the findings of a trial court only when there are substantial reasons justifying such intervention. Generally, an appellate court may interfere where the findings recorded by the trial court are shown to be perverse, manifestly illegal, based on misreading or non-consideration of material evidence, or are such that no reasonable person acting judicially could have arrived at them. In the present case, for the reasons recorded hereinabove, the finding of conviction returned against the appellant for the offence punishable under Section 376 RPC cannot be sustained. The evidence on record, though insufficient to establish the commission of

rape beyond reasonable doubt, unmistakably demonstrates that the appellant had made a determined attempt to commit the offence. The finding of the trial court, therefore, suffers from misappreciation of evidence to the extent it records a conviction under Section 376 RPC.

60. Accordingly, the conviction of the appellant under Section 376 RPC is altered to one under Section 376 RPC read with Section 511 RPC. Having regard to the age of the appellant at the time of the occurrence, the nature of the act proved against him, the period already undergone in custody, and the overall facts and circumstances of the case, the appellant is sentenced to undergo imprisonment for a period of five years and to pay a fine of Rs.10,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of three months. Whereas the period of the custody suffered by the appellant during trial and pendency of appeal, same is ordered to be set-off as against sentence as ordered above.

61. ***Disposed of*** as such. Copy be notified to the trial court for further compliance and record be sent back.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
16.06.2026
"Imtiyaz"

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

This judgment is being pronounced by me in terms of Rule 138(3) of the Jammu & Kashmir High Court Rules.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
16.06.2026