

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

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CrlA (S) no.11/2023
CrlM no.1558/2025
CrlM no.1611/2023

*Reserved on: 24.09.2026
Pronounced on: 29 .09.2026
Uploaded on: 29.09.2026*

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

Mohammad Ashraf Ganie

S/o Gh. Qadir Ganie, R/o Kach Harran, Tehsil Beerwah, District Budgam
through his wife Parveena Gul age 24 years

..... Petitioner(s)

Through: Mr. S.T. Hussain, Senior
Advocate with Ms. Nida Nazir, Advocate

Versus

Union Territory of Jammu & Kashmir through Station House Officer, Police
Station Budgam

.....Respondent(s)

Through: Mr. Hakim Aman Ali, Dy. AG

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

JUDGEMENT

1. Appellant, Mohammad Ashraf Ganie, through this appeal assails the judgment of conviction dated 10.10.2023 and the order of sentence dated 07.11.2023 passed by the learned Additional Sessions Judge (Fast Track), Budgam (hereinafter referred to as “*Trial Court*”), in case FIR No. 309/2007 of Police Station Budgam, whereby the appellant stands convicted for the offences punishable under Sections 376, 450

and 506 of the Ranbir Penal Code, Samvat 1989 (hereinafter referred to as “RPC”) and sentenced as under:

- (a) For the offence under Section 376 RPC: rigorous imprisonment for seven years and fine of ₹1,00,000/- (Rupees One Lac only);
- (b) For the offence under Section 450 RPC: rigorous imprisonment for five years;
- (c) For the offence under Section 506 RPC: simple imprisonment for one year;
- (d) In default of payment of fine: further simple imprisonment for four months;
- (e) All the sentences have been directed to run concurrently; and
- (f) The period of custody undergone by appellant from 19.07.2007, when he was arrested to 13.05.2008, when he was admitted to bail, ordered to be set off against the substantive sentence in terms of Section 397-A of the Code of Criminal Procedure, Samvat 1989.

2. The appellant is presently lodged in Central Jail, Srinagar. The instant appeal has been preferred by appellant through his wife, Parveena Gul, which is legally permissible, and no objection in this behalf has been raised by either side.
3. The prosecution case, as set out in the complaint (ExPW-1) and that unfolded during trial, is that the prosecutrix (PW-3), is an adopted daughter of PW-1 Ghulam Hassan Ganie and PW-2 Mst. Raja, resident of village Kachipora/Kachiparan, Tehsil Khansaheb, District Budgam, in whose neighbourhood the appellant, a carpet-weaver and farmer by profession, also resided, at a short distance from the complainant's house. On the date of occurrence, i.e. 15.07.2007, PW-1 had gone to Bemina, Srinagar, for work as a cook (Wazwan), and PW-2 had taken

the prosecutrix's younger ailing sister to hospital at Ichgam for treatment, leaving the prosecutrix alone at home.

4. According to the prosecution version, the prosecutrix, who was in the kitchen cooking, heard the sound of the door being unlocked and, believing it to be her mother, did not react; she then found that the appellant had entered the house and bolted the door from inside. On being asked by the prosecutrix why he had entered in the absence of her mother, the appellant is alleged to have gagged her mouth, issued a threat to her life, and forcibly committed rape upon her in the kitchen, before fleeing from the spot. When the mother (PW-2) returned home and on being questioned, the prosecutrix narrated the occurrence to her. PW-2 thereupon informed PW-1 telephonically, who returned home from Srinagar on the same evening and, along with the prosecutrix, proceeded to Police Station Khansaheb, where a written complaint (Ex.PW-1) was lodged. On the basis of the said complaint, FIR No. 309/2007 dated 16.07.2007 came to be registered under Sections 376/511 RPC.
5. During investigation, the Investigating Officer, PW-6 ASI Mohammad Yousuf, visited the spot, prepared the site-plan, recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure ("*Cr.P.C.*" for short) and got the prosecutrix medically examined at District Hospital, Budgam. Upon receipt of the medical opinion (Ex.M-4) of PW-4 Dr. Rubeena, confirming that sexual intercourse had taken place with the prosecutrix, the Investigating Officer formed the opinion that a completed offence under Section 376 RPC, and not merely an attempt thereto, was made out, and

accordingly dropped Section 511 RPC and added Sections 450 and 506 RPC.

6. The appellant was also referred for medical examination to ascertain his potency, and PW-5 Dr. Shiekh Ishfaq opined, on examination conducted on 27.07.2007 i.e. four days after registration of the FIR, that the appellant had developed secondary sexual characteristics and was capable of performing intercourse.
7. Upon conclusion of investigation, challan was presented on 25.07.2007 before the learned Judicial Magistrate 1st Class, Budgam, for offences under Sections 376, 450 and 506 RPC, and the case was thereafter committed to the Court of learned Principal Sessions Judge, Budgam. Upon creation of Fast Track Courts, the case was transferred to the Court of the learned Additional Sessions Judge (Fast Track), Budgam, on 24.08.2021, where it was ultimately tried and decided.
8. Charge under Sections 376, 450 and 506 RPC was framed against the appellant on 31.07.2007. The appellant pleaded not guilty and claimed trial.
9. The prosecution, in support of its case, examined six witnesses, the substance of whose testimony may be summarized as under:

- (i) PW-1 Ghulam Hassan Ganie (father/adoptive father of the prosecutrix) deposed that the prosecutrix is his adopted daughter, whom he had adopted at the age of one year, and who resided in his neighbourhood. He stated that on the day of occurrence he was working at Bemina, Srinagar, and received a telephonic call from his wife, PW-2, informing him that the appellant had barged into the house and committed rape upon the prosecutrix; that he immediately returned home, found the prosecutrix crying, and, upon confirming the occurrence,

proceeded along with her to Police Station Khansahib, where he lodged the written complaint Ex.PW-1, which bears his signature. In cross-examination, he was confronted with minor discrepancies regarding the exact mode and timing of his return from Srinagar (via Hyderpora, by hired sumo) and the precise time at which he reached the police station, but he remained consistent on the core fact that, on being informed of the occurrence, he returned home and lodged a report without delay on the same evening.

(ii) PW-2 Mst. Raja (mother of the prosecutrix)deposed that she had taken her younger, ailing daughter to Ichgam for treatment on the day of occurrence, and that on her return home at about 4:00–4:30 p.m., she found the prosecutrix crying; that on being questioned, the prosecutrix disclosed that the appellant had entered the house, threatened her and committed rape upon her; that she thereupon informed her husband, PW-1, telephonically, who came from Srinagar and lodged the complaint at Police Station Khansahib, the prosecutrix and PW-2 having also accompanied him. In cross-examination, certain variations emerged as to the exact time of the various stages of the day's events and as to who exactly signed the complaint, but PW-2 remained unshaken on the substance, namely that she found her daughter in a distressed and weeping condition immediately on her return, and that the daughter's account of the appellant's having entered the house and committed rape upon her was disclosed to her at the first available opportunity.

(iii) PW-3, the Prosecutrix, is the most material witness. She deposed that she knew the appellant, who resided close to her house; that on the day of occurrence, her father had gone to Srinagar and her mother to Ichgam, leaving her alone at home; that while she was cooking in the kitchen, she heard the sound of the door being unlocked, and, on looking, found that the appellant had entered and bolted the door; that on her asking him why he had entered in her mother's absence, the appellant

put his hand on her mouth, administered a threat to her life, and forcibly committed rape upon her in the kitchen, before fleeing; and that she narrated the occurrence to her mother on the latter's return, whereafter her father was informed and the report lodged. In cross-examination, the defence sought to bring out that the prosecutrix had a good relationship with the appellant's family, that the complaint was lodged five days after the occurrence, and that certain details, such as whether her clothes were torn or merely untied, varied between what was earlier recorded and what she deposed in Court. The prosecutrix explained, tellingly, that a girl in her position "may not be able to disclose clearly to police, who might have written it as an attempt to rape", and unambiguously reaffirmed, without equivocation, that the appellant had in fact committed rape upon her, describing the act, the absence of her consent, and the threat administered to her, in categorical terms.

- (iv) PW-4 Dr. Rubeena (Medical Officer) deposed that she medically examined the prosecutrix in the month of July of the relevant year, at the request of the Investigating Officer, and found no mark of violence on her body, but that on internal examination it was found that intercourse had taken place, the hymen not being intact and the prosecutrix not being a virgin. She further deposed that, since the prosecutrix was menstruating at the time of examination, slides could not be taken. In cross-examination, she confirmed that the prosecutrix was produced before her after five days of the occurrence, and that she was accompanied by the police rather than by her parents at the time of examination, and could not, for that reason, say precisely when the act of intercourse had taken place.
- (v) PW-5 Dr. Shiekh Ishfaq (Medical Officer) deposed that he examined the appellant on 27.07.2007, on a reference made by the Investigating Officer to ascertain his sexual potency, and opined that the appellant had developed secondary sexual

characteristics and was capable of performing intercourse. In cross-examination, he candidly conceded that, given the delay of four days between registration of the FIR and the examination of the appellant, and in the absence of information as to whether the appellant had bathed in the interregnum, he could not offer a definitive opinion as to whether the appellant was, in fact, potent or impotent on the date of the alleged occurrence.

(vi) PW-6 ASI Mohammad Yousuf (Investigating Officer) deposed to having received the complaint of PW-1, registered the FIR, visited the spot, prepared the site-plan, recorded the Section 161 Cr.P.C. statements of the witnesses, and referred the prosecutrix for medical examination. He confirmed that in the first instance, the statements of PW-1 to PW-3 recorded during investigation spoke of an "attempt" to commit rape, and that it was only upon receipt of the medical report confirming intercourse that Section 376 RPC (completed offence) was invoked in place of Section 511 RPC, with Sections 450 and 506 RPC being added simultaneously. He also candidly admitted certain lacunae in the investigation, including the non-association of any independent witness of the locality and some uncertainty as to the exact date of the FIR's registration and of his visit to the spot, which were duly highlighted by the defence in cross-examination.

10. Appellant in defence produced and got examined the witness DW-1 Gh. Mohammad Ganie who in examination-in-chief stated that he knows both the appellant and the complainant; that the appellant is a good boy of good habits; that the appellant used to cook in marriage ceremonies and was arrested by the police at Srinagar while he was cooking food; that Mufeeda and her relatives had also lodged FIRs against respected persons of the locality; that there is no case against

the appellant. In cross-examination by the prosecution, DW-1 first stated that he and the appellant were not working together, but then stated that on the day of occurrence the appellant was working with him.

11. Appellant, in his statement recorded under Section 342 Cr.P.C., denied the prosecution allegations in toto and took the specific plea that he used to cook food along with the complainant, PW-1, at various places; that on the date of occurrence he was at Srinagar, cooking food along with one Khazir Ganie S/o Lassa Ganie, R/o Kashieparien, whom he claimed was the best witness to establish his presence at Srinagar; and that there existed a monetary dispute between him and the PW-1 on account of wages due to him, which, according to the appellant, was the real motive for his false implication. Significantly, Khazir Ganie was never produced by the appellant as a defence witness, notwithstanding the appellant's own assertion, in his statement, that he was the person best placed to corroborate the alibi.
12. The learned Trial Court, upon a detailed and witness-wise appreciation of the evidence, and after discussing the applicable legal principles, including the law relating to appreciation of the testimony of the related/interested witnesses, the effect of delay in examination of witnesses, the ingredients of Sections 375, 376, 450 and 506 RPC, and the settled principles of sentencing, arrived at the conclusion that the prosecution had proved its case beyond reasonable doubt, and convicted the appellant under Sections 376, 450 and 506 RPC by judgment dated 10.10.2023. By a separate, detailed order dated

07.11.2023, after hearing both sides on the question of sentence and considering the mitigating and aggravating circumstances placed before it, the Trial Court awarded the sentence, granting the benefit of set-off for the period of custody already undergone.

13. Aggrieved and dissatisfied with judgement of conviction and order of sentence, the instant appeal has been filed on multifarious grounds. Learned counsel for the appellant, in support of the memo of appeal, has exhorted the following submissions:

- a) That the prosecution has miserably failed to prove its case beyond reasonable doubt, the entire case resting upon the concocted and interested testimony of PW-1, PW-2 and PW-3, without independent corroboration, and the Trial Court erred in relying upon such testimony;
- b) That there exist glaring and material contradictions between the initial version disclosed in the complaint (Ex.PW-1), the FIR, and the Section 161 Cr.P.C. statements of PW-1 to PW-3; all of which spoke only of an attempt to commit rape, on the one hand, and the subsequent invocation of Section 376 RPC (completed offence) together with Sections 450 and 506 RPC, on the other, without any explanation for the change, which change of stance, according to the appellant, betrays the ill-will and afterthought of the prosecution witnesses;
- c) That the prosecution witnesses have contradicted themselves and one another on several material particulars, including the exact time of occurrence, the persons who accompanied the prosecutrix to the police station, the manner in which the complaint came to be drafted, and the time at which the medical examination of the prosecutrix was conducted;
- d) That the medical evidence of PW-4 does not establish rape, there being no mark of violence on the body of the prosecutrix, and the observation that "sexual intercourse has been done"

being a general observation, consistent with consensual intercourse, and silent as to the date and time of the act;

- e) That there is total and unexplained confusion and delay of about five days with regard to the medical examination of the prosecutrix, casting serious doubt on the prosecution case;
- f) That there is no independent, disinterested witness to the occurrence, all the material witnesses (PW-1 to PW-3) being close relatives of one another, and interested in securing the conviction of the appellant;
- g) That the Investigating Officer (PW-6), who is himself a prosecution witness, has contradicted the statements of PW-1 to PW-3 recorded before the Trial Court, and the doctors, who are also prosecution witnesses, have similarly contradicted one another and the other prosecution witnesses;
- h) That the appellant has been falsely implicated on account of a pre-existing monetary dispute between himself and PW-1 relating to wages due to the appellant, and that the prosecution witnesses have deposed at the instance of PW-1 to settle scores with the appellant;
- i) That the appellant was, on the date of occurrence, at Srinagar for work, as corroborated by DW-1, and that the Trial Court failed to appreciate this defence of alibi in its true perspective;
- j) That there is no direct, circumstantial, or cogent medical evidence connecting the appellant with the commission of the offence, and no recovery or discovery of any incriminating material was effected during investigation;
- k) That the Trial Court did not properly comply with the mandate of Section 342 Cr.P.C., resulting in prejudice to the appellant;
- l) That, in any event, the sentence awarded is harsh, excessive and disproportionate, having regard to the fact that the appellant has a young family, including minor children, dependent upon him, and that the trial itself remained pending for an inordinately long period of about sixteen years.

14. *Per contra*, learned counsel appearing for respondent-UT has supported the impugned judgment and order of sentence in their entirety, and has submitted that: the testimony of the prosecutrix, being that of a natural and truthful witness, does not require corroboration as a matter of law, more so where, as here, it stands corroborated by the medical evidence establishing that sexual intercourse had in fact taken place, and by the promptness with which the occurrence was disclosed to her mother and reported to the police on the very evening of the occurrence; that the change from Section 511 RPC to Section 376 RPC is a wholly natural and expected consequence of the ordinary course of investigation, particularly where the informants are unlettered rural persons unfamiliar with legal nuances and the manner in which a complaint comes to be scribed and understood by the police; that the minor contradictions relied upon by the appellant pertain to collateral and peripheral matters, not touching the core of the prosecution case; that the delay in medical examination stands duly explained; that the appellant's plea of alibi remains wholly unsubstantiated, the appellant himself having failed to examine the one witness, namely, Khazir Ganie, whom he claimed was best placed to establish it; and that the sentence awarded, being the minimum prescribed for the offence under Section 376 RPC as it then stood, calls for no interference.
15. I have heard learned counsel for parties and perused the impugned judgement and the Trial Court record.

16. An appeal against conviction under Section 374 Cr.P.C. confers upon the first appellate court the power and duty to reappraise the entire evidence, both oral and documentary, and to arrive at its own conclusions on facts and law. At the same time, due weight must be accorded to the assessment of the Trial Court, which had the advantage of observing the demeanour of the witnesses. Where its findings are founded on a reasonable appreciation of the evidence and are neither perverse nor vitiated by a material error of law or fact, interference is not warranted merely because another view may also be possible. In *Padam Singh v. State of U.P.*, (2000) 1 SCC 1, the Supreme Court reiterated the plenary power of the appellate court to reassess the evidence in an appeal against conviction. It is in the exercise of that jurisdiction that the evidence on record has been independently examined.
17. It is settled that the testimony of a prosecutrix in a case of sexual assault stands on the same footing as that of an injured witness and does not require corroboration as a rule of law. A conviction may, therefore, rest upon her sole testimony where it is found reliable and inspires confidence. At the same time, this principle does not dilute the fundamental requirement that the prosecution must establish its case beyond reasonable doubt. Where the testimony suffers from material inconsistencies or the surrounding circumstances create a reasonable doubt regarding the prosecution version, the Court must subject the evidence to careful scrutiny. The principles enunciated in *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 and *Vijay @*

Chinee v. State of M.P., (2010) 8 SCC 191, have to be understood in this perspective.

18. The prosecution case principally rests upon the testimony of PW-3, the prosecutrix. According to her, on 15.07.2007 she was alone at home, her father having gone out for work and her mother having taken her younger sister to Ichgam for treatment. She stated that while she was cooking food in the kitchen, the appellant entered the house, bolted the door from inside, gagged her, threatened her with death and committed rape upon her. She further stated that she disclosed the occurrence to her mother upon the latter's return. PW-2 supported the prosecution to the extent that, upon returning home, she found the prosecutrix crying and was informed by her about the occurrence. PW-1 stated that he was informed about the incident and thereafter approached the police. Neither PW-1 nor PW-2 witnessed the alleged occurrence. Their evidence is relevant to the circumstances preceding and following the alleged incident and to the fact of disclosure, but the actual commission of the offence necessarily rests upon the testimony of PW-3.

19. The first circumstance requiring close scrutiny is the material variation between the earliest version of the occurrence and the case ultimately presented at trial. The written complaint and the FIR initially resulted in registration of the case under Sections 376/511 RPC. PW-6, the Investigating Officer, also acknowledged that the statements of PW-1 to PW-3 recorded during investigation referred to an "attempt" to commit rape. It was only after receipt of the medical opinion that Section 511 RPC was dropped and the

investigation proceeded on the basis that the completed offence under Section 376 RPC had been committed. Sections 450 and 506 RPC were also added during investigation. The question is not whether the investigating agency possessed the power to alter or add offences in the course of investigation; plainly, it did. The material question is the evidentiary effect of the substantial variation between the earliest factual version and the version subsequently presented before the Court.

20. An FIR is not a substantive evidence, nor can a statement under Section 161 Cr.P.C. be treated as substantive proof of the facts stated therein. Nevertheless, an omission or contradiction touching the very nature of the occurrence cannot be disregarded merely because it appears in an earlier statement. Its significance has to be assessed in the context of the evidence as a whole. In the present case, the distinction between an attempted act and a completed act of sexual intercourse is not an insignificant matter of detail. It goes to the nature of the principal offence itself. The Investigating Officer's testimony that the witnesses had initially spoken of an attempt lends significance to the defence contention that the prosecution version underwent a material improvement, during investigation.
21. PW-3 sought to explain the discrepancy by stating, in substance, that a girl placed in such circumstances may not be able to clearly disclose the incident to the police and that the police might have recorded it as an attempt. Such an explanation cannot be rejected merely on account of hesitation or lack of precision in reporting a sexual offence. At the same time, the Court must examine whether

the remaining evidence furnishes sufficient assurance that the later version represents the occurrence beyond reasonable doubt. The principles stated in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217, undoubtedly caution courts against attaching undue significance to minor discrepancies arising from trauma, social inhibition or errors of recollection. That principle, however, cannot render every variation immaterial irrespective of its nature. The present variation concerns whether the principal sexual act alleged against the appellant was attempted or completed and, therefore, requires evaluation along with the medical and other evidence.

22. The medical evidence assumes particular significance because, according to the Investigating Officer, it was upon receipt of the medical opinion that the case was altered from one of attempt to one of completed rape. PW-4 stated that there were no marks of violence on the body of the prosecutrix. On internal examination, she found that the hymen was not intact and opined that sexual intercourse had taken place. She further stated that the prosecutrix was menstruating and, therefore, slides could not be prepared. The medical opinion establishes, at its highest, that the prosecutrix had experienced sexual intercourse. It does not establish when that intercourse took place, whether it occurred on 15.07.2007, or whether the appellant was the person involved. PW-4 expressly acknowledged that she could not state precisely when the intercourse had occurred.
23. Equally, the medical finding cannot determine whether the intercourse was consensual or non-consensual. That issue

necessarily depends upon the oral and surrounding evidence. The absence of injuries cannot, by itself, establish consent or falsify an allegation of rape; nor, conversely, can an old or unspecified finding of sexual intercourse, without more, establish that the particular act alleged against the appellant occurred. Thus, although the medical evidence is not inconsistent with the possibility of sexual intercourse, it does not provide independent corroboration regarding the identity of the appellant, the date of the act, or the circumstances in which the intercourse occurred. This limitation assumes importance because the medical report was the circumstance upon which the investigating agency proceeded from the initial case of “attempt” to the completed offence.

24. There is also a material lack of clarity regarding the timing of the medical examination. PW-4 stated that the prosecutrix was produced before her after about five days of the occurrence. PW-3, on the other hand, gave evidence suggesting that she was taken to the hospital much earlier, while PW-2 disputed the five-day version. Ordinarily, delay in the medical examination of a victim of sexual assault is not by itself fatal to the prosecution case. Nor can delay in reporting or medical examination be assessed without regard to the social circumstances surrounding an allegation of sexual assault. The issue in the present case, however, is somewhat different. The prosecution relies upon the medical examination as the principal circumstance explaining the alteration of the case from an attempt to completed rape. Uncertainty as to when that examination occurred consequently assumes evidentiary relevance.

25. The fact that no slides could be taken because the prosecutrix was menstruating provides an explanation for the absence of such material. Nevertheless, the result remains that no biological or forensic material was obtained which could connect the appellant with the alleged sexual act. The non-conduct of radiological examination is of no consequence because the prosecution case does not depend upon the prosecutrix being below the statutory age of consent. The evidence of PW-5 regarding the appellant's capability to perform sexual intercourse does not materially advance the prosecution case. Capability to perform intercourse cannot establish that the appellant committed the particular act alleged against him. PW-5 himself was unable to offer a definitive opinion concerning the appellant's condition on the date of the alleged occurrence.
26. The defence has further relied upon a number of discrepancies in the prosecution evidence, including the place where PW-1 was working on the relevant day; the timings of PW-2's return and PW-1's arrival; the persons who accompanied the prosecutrix to the police station and hospital; the manner in which the complaint was prepared; the timing of the medical examination; and certain answers of PW-3 concerning when her father returned and when the complaint was lodged.
27. It is well settled that minor discrepancies, normal errors of observation and variations attributable to lapse of memory do not justify rejection of otherwise trustworthy evidence. The maxim *falsus in uno, falsus in omnibus* has no general application in Indian criminal jurisprudence. The Court must distinguish discrepancies

affecting the core of the prosecution case from those concerning collateral details.

28. Viewed individually, several discrepancies relied upon by the defence are plainly peripheral. Whether PW-1 was working in a field or as a cook away from home, and minor variations in estimates of time, cannot by themselves affect the prosecution case. Similarly, the prosecutrix's approximation of the duration of the occurrence cannot reasonably be treated with mathematical precision. The Court, however, cannot examine the discrepancies in isolation. Their cumulative effect has to be considered together with the more fundamental variation between the earliest allegation of an attempt and the subsequent allegation of completed rape, as also the uncertainty surrounding the medical examination. It is this cumulative assessment, rather than any single minor discrepancy, which is determinative.
29. The occurrence is alleged to have taken place on 15.07.2007 and FIR No. 309/2007 bears the date 16.07.2007. On the documentary record, therefore, no substantial delay in registration of the FIR is established. The stray answers elicited from PW-3 suggesting a longer interval cannot override the date borne by the contemporaneous record. Likewise, the evidence of PW-2 that the prosecutrix was crying and disclosed the occurrence upon her return is a relevant circumstance lending assurance to the fact that some distressing incident was reported by the prosecutrix. Such disclosure, however, cannot by itself resolve the material

inconsistency regarding whether the act initially reported was an attempt or a completed act, particularly when PW-2 was not an eyewitness.

30. The absence of an independent eyewitness is not, by itself, a circumstance adverse to the prosecution. An offence of the nature alleged is ordinarily committed in privacy, and the mere fact that no neighbour witnessed the occurrence cannot furnish a ground for acquittal. Similarly, the testimony of PW-1 and PW-2 cannot be discarded merely because they are related to the prosecutrix. Their evidence must nevertheless be assigned its proper evidentiary value. Since neither witnessed the alleged sexual act, their testimony principally corroborates the surrounding circumstances and the fact of disclosure. It cannot independently establish the precise nature of the sexual act allegedly committed inside the house.

31. The appellant pleaded that he was in Srinagar on the relevant day and claimed that he was working there with Khazir Ganie. The burden of establishing a plea of alibi lies upon the person setting it up, and such a plea must exclude his presence at the place of occurrence. See *Dudhi Nath Pandey v. State of U.P.*, (1981) 2 SCC 166 and *Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283. The plea has not been satisfactorily established. Khazir Ganie, whom the appellant himself identified as the person best placed to establish his presence in Srinagar, was not examined. The testimony of DW-1 is also internally inconsistent and does not establish with the requisite certainty that the appellant was elsewhere at the precise time of occurrence. The fact that the appellant was arrested in

Srinagar several days later does not establish his whereabouts on 15.07. 2007. Failure of the appellant to prove the alibi, however, cannot be converted into affirmative proof of the prosecution case. The prosecution must succeed on the strength of its own evidence and not upon the weakness of the defence. The same principle applies to the alleged monetary dispute. Even if the appellant fails to establish a motive for false implication, that failure does not relieve the prosecution of its burden to prove the charges beyond reasonable doubt.

32. The allegations under Sections 450 and 506 RPC form part of the same transaction. PW-3 attributed to the appellant the entry into the house, bolting of the door and threat to her life. Ordinarily, credible testimony of the prosecutrix could constitute sufficient proof of these acts. In the present case, however, these allegations cannot be entirely divorced from the Court's assessment of the prosecution narrative as a whole.
33. Once the cumulative circumstances concerning the material alteration in the earliest version, the limitations of the medical evidence and the inconsistencies discussed above create a reasonable doubt regarding the occurrence as alleged, it would be unsafe to selectively accept parts of the same transaction for maintaining the convictions under Sections 450 and 506 RPC. Those convictions must therefore abide by the ultimate assessment of the prosecution case and the benefit of doubt arising therefrom. The evidence has to be assessed cumulatively and not by examining each infirmity in isolation. It is true that a conviction for an offence of sexual assault

may rest upon the sole testimony of the prosecutrix where such testimony is of sterling quality and inspires confidence. Equally, where material circumstances create a reasonable doubt regarding the prosecution version, the Court cannot dispense with the settled requirement that guilt must be established beyond reasonable doubt.

34. In the present case, the earliest version assumes considerable significance. The complaint, the FIR and, as admitted by the Investigating Officer, the statements of the material witnesses recorded during investigation referred to an “attempt” to commit rape. The prosecution case thereafter developed into one of completed rape upon receipt of the medical opinion. This is not merely a discrepancy concerning an incidental detail; it relates to the very nature of the principal act alleged against the appellant. The explanation offered at trial for this variation does not entirely remove the doubt arising therefrom. The Investigating Officer acknowledged that the witnesses had initially spoken of an attempt, whereas at trial PW-1, PW-2 and PW-3 asserted a completed act. The medical opinion could establish, at the highest, that the prosecutrix had previously experienced sexual intercourse; it could neither determine when such intercourse had occurred nor identify the person involved. Consequently, the medical opinion could not, by itself, convert an uncertain initial allegation into proof beyond reasonable doubt of the completed offence alleged against the appellant.
35. The medical evidence also requires cautious appreciation. PW-4 found no mark of violence upon the prosecutrix. No slides were

obtained and no biological or forensic material connecting the appellant with the alleged act was collected. More importantly, PW-4 could not state when the sexual intercourse reflected by her examination had taken place. The finding that the prosecutrix was not a virgin and that her hymen was not intact establishes neither the date of intercourse nor the identity of the person concerned. Nor can such findings, standing alone, establish that the intercourse was non-consensual. There is, in addition, uncertainty regarding the timing of the medical examination. While PW-3 and PW-2 gave a version suggesting examination shortly after the occurrence, PW-4 stated that the prosecutrix was produced before her after about five days. This assumes relevance because the prosecution has relied upon the medical examination as corroboration for its subsequent case of completed rape. The medical evidence, therefore, cannot be regarded as furnishing independent corroboration connecting the appellant with the alleged offences.

36. The discrepancies in the prosecution evidence cannot all be characterised as peripheral. There are variations regarding the place where PW-1 was working on the relevant day, the time at which PW-2 returned home, the time when PW-1 returned, the persons who accompanied the prosecutrix to the police station, the timing of the complaint and the medical examination, and, above all, whether the earliest allegation was of an attempted or completed act. Any one of these discrepancies, viewed separately, may not be sufficient to discard the prosecution case. The Court, however, is required to consider their cumulative effect. When the variation concerning the

very nature of the alleged sexual act is read together with the uncertainty regarding the medical examination and the absence of forensic material connecting the appellant with the occurrence, the prosecution version does not remain free from reasonable doubt.

37. The appellant's plea of alibi may not have been established with the degree of certainty required in law. The non-examination of Khazir Ganie, whom the appellant himself described as a material witness to his presence in Srinagar, undoubtedly weakens that defence. The testimony of DW-1 is also not free from inconsistency. That, however, cannot relieve the prosecution of its primary burden. A weakness in the defence cannot supply a deficiency in the prosecution case. The appellant is entitled to succeed if the prosecution fails to establish its case beyond reasonable doubt, irrespective of whether the alternative defence set up by him is affirmatively proved.
38. Likewise, the alleged monetary dispute between the appellant and PW-1 need not be affirmatively established before the appellant can claim the benefit of doubt. The decisive question remains whether the prosecution evidence, considered on its own strength, proves the charges beyond reasonable doubt.
39. This Court is conscious that minor discrepancies, ordinary errors of recollection and absence of injuries cannot, by themselves, constitute grounds for rejecting the testimony of a victim of sexual assault. The present case, however, does not turn upon any single minor discrepancy. The doubt arises from the cumulative effect of circumstances touching the core prosecution case: the earliest

version referring to an attempt; the subsequent alteration to an allegation of completed rape; the Investigating Officer's acknowledgment regarding the initial statements; the inability of the medical evidence to determine when the intercourse occurred or connect it with the appellant; the uncertainty regarding the timing of the medical examination; and the other inconsistencies appearing in the prosecution evidence.

40. Criminal conviction requires proof beyond reasonable doubt. Where two reasonably possible views emerge from the evidence, the view favourable to the accused must prevail. The benefit of doubt is not a matter of grace but a necessary consequence of the prosecution's failure to cross the required threshold of proof. On an independent reappraisal of the entire evidence, this Court is unable to hold that the prosecution has established the charges against the appellant beyond reasonable doubt. The findings of the Trial Court, therefore, cannot be sustained.

41. Accordingly, the appeal is **allowed**. The judgment of conviction dated 10.10.2023 and the order of sentence dated 07.11.2023 passed by the learned Additional Sessions Judge (Fast Track), Budgam, in FIR No. 309/2007 of Police Station Budgam, insofar as they convict and sentence the appellant for offences under Sections 376, 450 and 506 RPC, are **set aside**. The appellant, Mohammad Ashraf Ganie, is **acquitted of all the charges by extending to him the benefit of doubt**. He shall be released from custody forthwith, if not required in connection with any other case. The Trial Court record be returned forthwith along with a copy of this judgment. A copy of

this judgment shall also be transmitted forthwith to the Superintendent of the concerned Jail for compliance.

42. The appeal stands disposed of in the above terms.

(Sanjay Parihar)
Judge

Srinagar

29.09.2026

Ajaz Ahmad, Secretary

Whether approved for reporting? Yes.

