

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

Crl A (D) No. 5/2021
Crl M No. 253/2021

**Reserved on : 29.07.2022
Pronounced on : 02.09.2022**

Liaqat Ali age 34 years s/o Ghulam Rubani R/O Appellant/convict(s)
Sumber Tehsil & District Ramban

Through :- Sh. Arjun Singh Raju, Advocate

V/S

1. Union Territory of Jammu & KashmirRespondent(s)
through SHO Ramsoo;
2. Superintendent District Jail Udhampur.

Through :- Sh. Eishaan Dadhichi, GA

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

J U D G M E N T

Per-Mohan Lal-J

1. Instant Criminal Conviction Appeal is directed by appellant/convict against the judgment and order dated 12.01.2021 rendered by the court of learned Principal Sessions Judge Ramban in the case File No. 02/challan bearing case CNR No. JKRB010000382016 titled **State vs Liaqat Ali**, whereby, appellant/convict has been held guilty, convicted and sentenced to undergo rigorous imprisonment for a period of 20 years for commission of offence punishable u/s 376 RPC and to pay fine of Rs. 50,000/- and further sentenced to simple imprisonment for a period of two (2) years for commission of offence punishable u/s 506 RPC and in default of payment of fine, appellant/convict has been directed to further undergo simple imprisonment for the period of 06 months.
2. Aggrieved of and dissatisfied with the impugned judgment, appellant/convict has questioned it's legality, propriety and correctness and has sought it's setting aside/quashment on the following grounds:
 - (i) that the prosecutrix has filed an application for registration of FIR on 04-12-2011 after the lapse of more than 08 months from the date of incident, there has been delay in registration of FIR which has remained unexplained, the learned trial court has not taken a view on this fact;

- (ii) that the prosecutrix has never mentioned in her statement recorded before the trial court that appellant/convict has ever committed rape upon her, she has only stated that the appellant/convict committed "**Beparadgi**" upon her, which by no stretch of imagination can be construed as rape;
- (iii) that the learned trial court has considered the age of prosecutrix as 16 years and a minor, whereas, prosecutrix has stated before the trial court that she is illiterate, however, PW-8 Mohd Mudasir a teacher in Govt. Upper Primary School Digog Ramban has stated before the trial court that the prosecutrix was admitted in the school on 16.04.2001 with her date of birth recorded as 12.12.1995, the statements of PW8 Mohd Mudasir and that of the prosecutrix are totally contradictory to each other regarding date of birth, therefore, the learned trial court has fallen into an error by considering the prosecutrix as minor and has wrongly convicted the appellant/convict by virtue of impugned judgment and order;
- (iv) that the material witnesses of the prosecution viz; I.O and doctor have not been examined by the prosecution which has cast a serious dent in the credibility and genuineness of the prosecution case;

3. Sh. Arjun Singh Raju learned counsel for the appellant/convict has vehemently argued, and has sought the setting aside/quashment of impugned judgment and the acquittal of appellant/convict on the following counts:-

- (i) It is argued, that the FIR has been lodged by the prosecutrix on 04-12-2011 on a written application after a delay of more than 08 months from the date of occurrence, prosecution has not tendered any plausible explanation for such delay, the learned trial court has not considered this aspect of delayed FIR which leaves a mark of doubt to treat the testimony of the prosecutrix as natural and truthful to inspire confidence which gives rise to sense of doubt regarding the genuineness and credibility of the prosecution case.
- (ii) It is argued, that the prosecutrix has never mentioned in her statement recorded before the trial court that appellant/convict has ever committed rape upon her, she has only stated that the appellant/convict committed "**Beparadgi**" upon her, which by no stretch of imagination can be construed as rape;
- (iii) It is moreso argued, that the learned trial court has considered the age of prosecutrix as 16 years and a minor, whereas, prosecutrix has stated before the trial court that she is illiterate, however, PW-8 Mohd Mudasir a teacher in Govt. Upper Primary School Digog Ramban has stated before the trial court that the prosecutrix was admitted in the school on 16.04.2001 with her date of birth recorded as 12.12.1995, the statements of PW8 Mohd Mudasir and that of the prosecutrix are totally contradictory to each other regarding date of birth, however, the learned trial court has fallen into an error by considering the prosecutrix as minor and has wrongly convicted the appellant/convict by virtue of impugned judgment and order. Reliance has been placed on (i) **2013 Legal Eagle (SC) 182** [Rajesh Patel versus State of Jharkhand], (ii)

2009(8) Supreme 20 [Sunil-Appellant versus State of Haryana-Respondent] & **(ii) 2011 Legal Eagle (SC) 523** [Krishan Kumar Malik versus State of Haryana];

(iv) It is vehemently argued, that that the material witnesses of the prosecution viz; I.O and doctor have not been examined by the prosecution for reasons best known to it, trial court has committed serious error in relying upon the sole testimony of the prosecutrix to convict the appellant, for non-examination of I.O & doctor a serious dent has been cast upon the credibility and genuineness of the prosecution case. To support his arguments, Ld. Counsel for appellant/convict has relied upon the decisions reported in, **(i) 2012 Legal Eagle (SC) 369** [Rai Sandeep @ Deepu versus State of NCT of Delhi & **(ii) 2017 Legal Eagle (J&K) 615** [State of J&K versus Sham Singh & Ors.]

4. Sh. Eishaan Dadhichi, learned GA, per contra, has supported the impugned judgment of conviction awarded by the trial court. He has vehemently argued, that PW8 Mohd. Mudasir (Govt. teacher) has proved the date of birth certificate of the prosecutrix as 12.12.1995 and therefore at the time of occurrence prosecutrix was less than 16 years of age and was a minor, and even the consent of minor is immaterial, as the prosecutrix in her deposition before the trial court has categorically admitted the correctness of her statement recorded before the Judicial Magistrate u/s 164-A Cr.pc during investigation, and therefore, has proved that she was subjected to "Beparadgi" and forcible sexual intercourse/rape by the appellant/convict, which fact also gets confirmed that the prosecutrix delivered a child, and she in her deposition before the trial court categorically deposed that the child born to her is the biological child of the appellant/convict. It is argued, that appellant/convict has not led any rebuttal evidence to disprove that the child born to the prosecutrix is not his biological child, the impugned judgment is reasoned one and does not call any interference by the appellate court and deserves to be upheld/confirmed.

5. In a bid to prove it's case against appellant/convict, prosecution before the trial court out of total 11 prosecution witnesses has examined only 05 witnesses viz; PW3 Prosecutrix, PW5 Mohd. Sharief, PW6 Abdul Guffar Bali, PW7 Mohd. Reyaz SPO/654 & PW8 Mohd. Mudasir. Be it noted, that PW1 Ct. Khawaj Din 581/Rbn, PW2 Mohd Khalid 411/SPO, PW4 Mst. Zarifa Begum (m/o prosecutrix), PW9 Smt. Reeta Kotwal (MO), PW10 Irfan Wani SI (I.O of initial investigation) & PW11 Sukhdev Singh Jamwal (Inspector/SHO No. 4364/NGO/I.O who completed the investigation) have remained unexamined for reasons best known to the prosecution. The

prosecution examined oral witnesses and led documentary evidence as under: -

| PWs. | Name of PW | Role/fact which PW is to prove |
|------|----------------------|---|
| PW-3 | Prosecutrix (Victim) | To Prove FIR |
| PW-5 | Mohd. Sharief | Witness to support FIR |
| PW-6 | Abdul Guffar Wani | Witness to seizure of child |
| PW-7 | Mohd. Reyaz Ahmed | Witness to seizure of child |
| PW-8 | Mohd. Mudasir | Witness to prove the date of birth certificate of prosecutrix |

6. Before coming to the conclusion whether prosecution has successfully substantiated charges against the appellant/convict beyond hilt and the impugned judgment of conviction is legally sustainable, we have found it pertinent to give a brief resume of the evidence tendered by the prosecution witnesses before the trial court. Relevant portions of the testimonies of the prosecution witnesses are summarized as under:

7. P R O S E C U T I O N E V I D E N C E:-

PW-3 Prosecutrix (victim) in her examination-in-chief has deposed, that she knows the accused who is her uncle (Puffa). She is illiterate. Four (4) years ago accused was running a shop in Magarkote. She was alone in her house. Accused came in her house and committed her bepardagi and told her that if she narrated it to someone he would cut her into pieces. She felt ashamed, therefore, she did not tell it to anyone. When she was having a child in her womb, her father asked her as to why her belly has swollen, then she told that it is the child of the accused, thereafter, she gave birth to male baby. When she was pregnant and was having 7 months child in her womb, then at that time report was lodged with police. Then police took her before Judge and got her statement recorded. She has heard the contents of her statement recorded u/s 164-A Cr.pc, its contents are true and correct, she identifies her thumb impression on it and it is exhibited as Ext.P3. Police has given the child on her supardari. Supardari memo is true and correct, she identifies her signature on it and it is exhibited as Ext.P3/1. Her father had lodged written report in police station. On this written report she has appended her thumb impression, the same is annexed with the file, its contents are true and correct, it contains her thumb impression which she identifies and it is exhibited as Ext.P3/2. Copy of FIR is annexed with the file, it bears her thumb impression and she identifies it and it is exhibited as Ext.P3/3. In cross-examination deposes, that her father had lodged report with Ramsoo police. She has no knowledge from whom the report was got written as she was in the Varanda and her father had gone inside the room to lodge the report. Report was submitted to SHO who was having 3 stars. On the same day when report was lodged FIR was registered. She has never gone to School, therefore, she has no knowledge on which date report was lodged, on which date FIR got registered. 4/5 months after lodging report she gave statement before Judge. Again deposes, that when report was lodged in police station, she had not given birth to the child. However, after she gave birth to a child she got recorded her statement before Judge. In the court police had accompanied her at the time of recording her statement.

When her statement was recorded police was accompanying her. The day on which accused came in her house and committed wrong act with her, one month after that, her father had come home and thereafter he had remained at home. In this regard she has not narrated the occurrence to anyone because accused had threatened her to cut into pieces, and for the said reasons/threat she had not narrated the occurrence to her father and mother. She used to work in the house in presence of her parents. On the day when her father asked her regarding, her belly, prior to this, none had asked her anything. One month before the birth of child, police had taken her to the doctor. Lady Doctor had examined her in the Hospital. Neither police nor the doctor took her clothes and she had not provided her wearing clothes to the police. When FIR was lodged accused had absconded and after 5/6 months he was arrested. She does not want the child. The child has been given to someone by the brother of accused. Her father had brought up the child for one year. She used to wear Bhurka at home but not at the time when she used to work. Only one room is in her house where they used to prepare and take the meals and in the said room, occurrence had taken place. During the days when she became pregnant none came in her house. Before the occurrence, accused used to come to their house because he was her Uncle (Puffa). Before occurrence, she had no illicit relations with the accused. After registration of FIR, police had come to their house. She had earlier given statement to police and thereafter before the Judge. Her mother is alive and is a simple/rustic lady.

PW-5 Mohd Sharief (father of prosecutrix, witness to prove FIR) in examination-in-chief has deposed, that he identifies the accused. About 3 years ago, he had gone to Srinagar for labour and when he came back, he saw that abdomen of her daughter was bulky. On enquiry, her daughter had disclosed that she was pregnant and conceived the child from Liaqat Ali. Thereafter he filed a report at Ramsoo Police Station. The statement was recorded in the court. Abdul Guffar was also accompanying him for filing the report. The objection raised by defence counsel for the exhibiting of statement recorded under Section 164-A Cr.P.C was over ruled and the statement of the witness under Section 164-A Cr.P.C was exhibited as EXTP-5 on the admission of the witness of the contents of the statement under section 164-A Cr.P.C. The contents of the supardnama of the child was also admitted by the witness and the same has already been exhibited as EXTP-3/1. **In cross-examination** has deposed, that Abdul Guffar has also put his signatures on EXTP-3/1. He has further stated that he remained in Kashmir for 06 months. He was working with Ashraf contractor in Kashmir. No other person from his village was working there. There are two more houses near his house and he is having cordial relation with them. Report was filed in the police station and he is unable to say who has written it, as he is unable to recollect the memory. The statement of the victim was also recorded in the court. He is an illiterate person and he is unable to say whether his statement was recorded after 05 months, rather he was brought by the police for recording his statement. There was no police personnel while recording his statement by Presiding Officer.

PW-6 Abdul Guffar Bali (witness to seizure of child) in examination-in-chief has deposed, that he identifies the accused present in the court. The contents of the seizure memo of child are correct and bears his signature and the said seizure memo has already been exhibited as EXTP3/1. **In cross-examination** has stated that he has signed two papers. The father of the victim has also signed the said seizure memo of child apart from him. These documents were prepared after 20/25 days after the registration of FIR.

Child was born out after one and a half month and the said child has been given on supardnama after two days of his delivery. He has never seen the victim during pregnancy.

PW-7 Mohd Reyaz SPO/654 (witness to seizure of child) in examination-in-chief has stated that he identifies the accused. It is on 29.01.2012 he alongwith PP Incharge Ukhral went to hospital Banihal where the victim had given a birth to a child. The said child was handed over to the victim on the supardnama and in this regard documents were prepared. He has also put his signature as witness on the said memo. Seizure memo of child appended with the file bears his signature and the contents of the seizure memo are also correct and exhibited as EXTP 6. The contents of the memo of supardnama are also correct and it has already been exhibited as EXTP-3/1. The documents were prepared in the Police Station Ramsoo.

PW-8 Mohd Mudasir (Govt. Teacher in Primary School Digog, witness to prove D.O.B certificate of prosecutrix/victim) in examination-in-chief has deposed, that he identifies the victim who is daughter of Mohd Sharief. He was posted as a teacher in Govt. Upper Primary School Digog. The victim was admitted in the school on 16.04.2001 and her date of birth has been written as 12.12.1995 as per admission No. 209. The admission record of the school was issued which bears the signature of headmaster on 16.05.2012 alongwith his signature. As per original record the contents of the certificate (Mark-A) issued by him are, correct. **In cross-examination** has deposed, that victim was admitted in his school and during those days he was not posted there. When the certificate was issued neither he was the admission Incharge nor headmaster. Mr. Devinder Singh was the Incharge Headmaster. It is correct to say that he has prepared the certificate on the direction of the police.

8. The 1st argument canvassed by Ld. Counsel for appellant/convict is, that there has been delay of 8 months in lodging FIR, the delay has remained unexplained, which leaves a mark of doubt to treat the testimony of prosecutrix as natural and truthful to inspire confidence, which gives rise to sense of doubt regarding the genuineness and credibility of the prosecution case.

It is apt to reiterate here, that the first information report (FIR) in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of FIR can hardly be overestimated from the stand point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstance in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of the spontaneity danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation

and consultation. It is, therefore, essential that the delay in the lodging of first information report should be satisfactorily explained. Be it clearly stated, that delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case, regard being had to the trauma suffered by the prosecutrix and various other factors such as fear of social stigma. In the case in hand, FIR has been lodged on 04-12-2011 after a laps of about 8 months from the date of occurrence i.e. 04-04-2011. It is admitted case of the prosecution that there is a delay of about 8 months in lodging the FIR. The prosecutrix has satisfactorily explained the delay that she was under the threat of being killed by appellant/convict and therefore when her father came at home from Kashmir and enquired from her regarding her putting on flesh, she told her father that she is having child of accused in her womb. The important thing that the court has to bear in mind is that what is lost by a rape victim is the face. The victim loses value as a person. Ours is a conservative society and therefore, a women and moreso a young unmarried women will not put her reputation in peril by alleging falsely about forcible sexual assault. Hon'ble Supreme Court of India while observing that the evidence of prosecutrix does not need corroboration for sustaining conviction of accused where prosecutrix has no motive to falsely implicate the accused risking her own reputation, in a case law titled State of U.P.—Appellant Versus Chhoteylal—Respondent [2011 (1) Supreme 418] in para 22 held as under:-

(22) The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. **Ours is a conservative society and, therefore, a woman and moreso a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault.** In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. **A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and moreso by a young woman, roping in somebody falsely in the crime of rape.** The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in the

case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* (1983) 3 SCC 217 deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows:

“9. In the Indian setting, **refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury**. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical.....”

Ratio decidendi deduced from the cases law (Supra) makes the legal proposition abundantly clear, “that evidence of prosecutrix does not need corroboration for sustaining conviction of accused where the prosecutrix had no motive to falsely implicate the accused risking her own reputation, a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault, the courts must be sensitive and responsive to the plight of the female victim of sexual assault, society’s belief and value systems need to be kept uppermost in mind as rape is the worst form of woman’s oppression, a forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is therefore most unlikely of a woman and moreso by a young woman roping in somebody falsely in the crime of rape, in the Indian setting refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury and therefore the sole testimony of prosecutrix without corroboration can be relied upon for sustaining conviction against accused, a woman’s body is not a man’s plaything and he cannot take

advantage of it in order to satisfy his lust and desire by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it”.

We, in view of the settled legal position aforesaid, are of the opinion, that as the prosecutrix who is minor has no motive to falsely implicate the appellant/accused risking her own reputation in peril by alleging falsely about forcible sexual assault by appellant. The delay of 08 months in lodging FIR by the prosecutrix (victim) has been reasonably explained by her. Arguments portrayed by Ld. Counsel for appellant/convict that the delay in the case in hand has not been satisfactorily explained by the prosecutrix, in view of the aforesaid discussion, are not worth acceptance, the same are repelled, rejected and discarded.

9. The 2nd argument portrayed by Ld. Counsel for appellant/convict is, that the prosecutrix has never mentioned in her statement recorded before the trial court that appellant/convict has ever committed rape upon her, she has only stated that the appellant/convict committed "**Beparadgi**" upon her, which by no stretch of imagination can be construed as rape.

We have thoroughly scanned the deposition of the prosecutrix made by her before the trial court. Prosecutrix/victim (PW-3) in her examination-in-chief before the trial court has categorically tendered evidence, “that she was alone in her house, accused came there, committed her bepardagi and told her that if she narrated the incident/occurrence to anyone he would cut her into pieces, she felt ashamed and did not tell it to anyone, whereby, she got pregnant and when her father asked her as to why her belly has got swollen, she then told her father that she is having a child of the accused in her womb, whereafter, the report was lodged in police station, her statement was got recorded by police before Judge u/s 164-A Cr.pc, whose contents are true and correct.” Deposition of Pw-3 (prosecutrix) made before the trial court categorically establishes/proves that accused entered in her house and committed her bepardagi. The word “bepardagi” is Urdu vernacular word which clearly means to undress or make someone nude. The prosecutrix has testified the correctness of the contents of her statement recorded u/s 164-A Cr.pc before Judicial Magistrate during the course of investigation which clearly establishes/proves that she was subjected to the act of forcible sexual intercourse/rape by appellant/accused. Needless to say that the statement of the witness has to be read as a whole and merely by laying a stress on part of statement on particular word the accused cannot derive any benefit.

Arguments advanced by Ld. Counsel for appellant/convict that the word “bepardagi” does not mean rape and the prosecutrix nowhere has stated before the trial court that she was subjected to forcible sexual intercourse/rape, in view of the cogent, credible and sterling quality of evidence led by the prosecutrix, are legally unsustainable, repelled, rejected and discarded.

10. The 3rd argument vehemently urged by learned counsel for the appellant/convict is, that the learned trial court has considered the age of prosecutrix as 16 years and a minor, whereas, prosecutrix has stated before the trial court that she is illiterate, however, PW-8 Mohd Mudasir a teacher in Govt. Upper Primary School Digog Ramban has stated before the trial court that the prosecutrix was admitted in the school on 16.04.2001 with her date of birth recorded as 12.12.1995, the statements of PW8 Mohd Mudasir and that of the prosecutrix are totally contradictory to each other regarding date of birth, however, the learned trial court has fallen into an error by considering the prosecutrix as minor and has wrongly convicted the appellant/convict by virtue of impugned judgment and order.

There is no doubt that the prosecutrix has stated that she has never gone to school, but equally true is that the prosecution has examined PW-8 Mohd Mudasir who was a teacher in Govt. Primary School Digog Ramban to prove the date of birth certificate of the prosecutrix. Pw-8 Mohd Mudasir has categorically deposed before the trial court that victim/prosecutrix is daughter of PW-5 Mohd. Sharief, she was admitted in the school on 16.04.2001 with her date of birth written/reflected in the school admission record as 12.12.1995 as per Admission No. 209 and as per original record contents of date of birth certificate issued by him (Mark-A) are correct. Be it noted, that the critical appreciation of the evidence of PW-8 Mohd Mudasir clearly establishes/proves that the date of birth of the prosecutrix is 12-12-1995. Nothing has been put by defence counsel to PW-8 Mohd Mudasir in his cross-examination to disprove/discredit his evidence that the date of birth of the prosecutrix is not 12-12-1995. Appreciation of evidence of PW-8 Mohd Mudasir leads to the conclusion that the date of birth of the prosecutrix is 12-12-1995 and at the time of occurrence on 04.04.2011 her date of birth when calculated comes to **15 years and about 04 months**, and therefore, the prosecutrix/victim (PW-3) at the time of occurrence on 04.04.2011 was minor and under 16 years of age.

In AIR 2018 SUPREME COURT 4212 [State of Madhya Pradesh V. Preetam] Hon'ble Supreme Court while observing that the testimony of school teacher and school certificate produced by him to prove the age of prosecutrix is relevant and authentic document, in paragraphs 11 & 12 held as under:-

(11) In our considered view, the answer elucidated in the cross-examination of Dr. Vasnik (PW-6) cannot be taken as a final opinion on the age of the prosecutrix (PW-1). It is to be relevant to note that before the trial court the prosecution has examined Bhaulal (PW-8), Head master/Head teacher of Primary School Chor Pind Ke Par, District Balaghat. In his evidence, Bhaulal (PW-8) has stated that the date of birth of the prosecutrix (PW-1) was 16th May, 1981 which means that on the date of the occurrence i.e. 6th March, 1993, the prosecutrix (PW-1) was only aged about 12 years. The trial court has neither acted upon the evidence of Bhaulal (PW-8) nor on the school certificate on the ground that the person who has admitted the prosecutrix in the school was not examined.

(12) In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. **The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise.** In our view, considering the evidence of head master, Bhaulal (PW-8), and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence.

Ratio of the judgment (Supra) makes the legal proposition abundantly clear, that School registers are the authentic documents which are maintained in the official course by a public servant while discharging his official duty are entitled to credence of much weight unless proved otherwise, and the School certificate regarding the age of victim/prosecutrix in the case in hand has to be believed as genuine & authentic document and a relevant fact u/s 35 of the Evidence Act. Ratio of the judgment (Supra) squarely apply to the facts of the case in hand. It is pertinent to mention here, that the date of birth certificate of the prosecutrix/victim (PW-3) Mark-A has been prepared by PW-8 Mohd Mudasir a Govt. Teacher being a public servant in discharge of his official duty after comparing it with the original record/register, is a genuine & authentic document and is a relevant fact admissible u/s 35 of the Evidence Act, hence, is conclusive proof regarding age of the prosecutrix. Therefore, the date of birth of the prosecutrix is proved as 12-12-1995 and at the relevant time of occurrence on 04-4-2011 her age was 15 years and about 4 months and she was minor. The judgments relied by Ld. Counsel for appellant/convict reported in (i) **2013 Legal Eagle (SC) 182** [Rajesh Patel versus State of Jharkhand], (ii) **2009(8) Supreme 20** [Sunil-Appellant versus State of Haryana-Respondent] & (iii) **2011 Legal Eagle (SC) 523** [Krishan Kumar Malik versus State of Haryana] in view of the facts of the case in hand and the evidence adduced by the prosecution before the trial

court, are quite distinguishable. Arguments, therefore, putforth by Ld. Counsel for appellant/convict that the prosecutrix at the time of occurrence was major and consenting party, are legally unsustainable, repelled, rejected and discarded.

- 11.** The 4th argument putforth by Ld. Counsel for appellant/convict is, that for non-examination of material witnesses of the prosecution viz; I.O and doctor, the prosecution case has suffered serious dent, which has cast serious doubt upon the credibility and genuineness of the prosecution case.

It is apt to reiterate here, that Hon'ble Supreme Court of India in a case law titled **Ganga Singh—Appellant Versus State of Madhya Pradesh—Respondent [(2013) Supreme (SC) 594]** held, that where the accused has failed to prove defence of false implication and where there are some defects in the investigation, that cannot be ground for acquittal of accused. Furthermore, a Division Bench of Hon'ble Supreme Court of India (comprising of K.T. Thomas & A.P. Mishra JJ, their Lordships the then were the Hon'ble Judges of Supreme Court) in a case law reported in **1999 (4) Crimes 171 (SC) Supreme Court of India [State of Karnataka—Appellant Versus K. Yarappa Reddy—Respondent]** in a case of murder trial under section 302 IPC, while appreciating the role of investigating officer (I/O) held, that criminal justice system should not be made the casualty for the wrongs committed by the investigating officers, and even if the investigation is illegal or suspicious, rest of the evidence must be scrutinized independently otherwise criminal law will plummet to the level of investigating officer ruling the roost and the court must have predominance in criminal trials. In the case in hand, I/O's of the case namely PW10 Irfan Wani SI (I.O of initial investigation) & PW11 Sukhdev Singh Jamwal (Inspector/SHO No. 4364/NGO/I.O have not been examined by the prosecution for reasons best known to it. In terms of the ratios of the judgments (Supra) the criminal trial should not be made the casualty for the wrongs committed by the I/O or for the non-examination of the I/O's if rest of the evidence is reliable. In the case in hand, PW-3 Prosecutrix/victim in her deposition before the trial court has categorically proved that she was subjected to forcible sexual intercourse/rape by appellant/convict. We, in view of the evidence available on record and settled legal position, are of the opinion, that as the prosecutrix an unmarried (minor) has no motive to falsely implicate the appellant/convict risking her own reputation in peril by alleging falsely about forcible sexual assault by appellant, therefore, even if

the I/O's, doctor and even the mother of the prosecutrix have remained unexamined by the prosecution, it does not dent or cast a serious doubt upon the credibility of sole testimony of the prosecutrix. The judgments relied upon by the Ld. Counsel for appellant/convict reported in, (i) 2012 Legal Eagle (SC) 369 [Rai Sandeep @ Deepu versus State of NCT of Delhi & (ii) 2017 Legal Eagle (J&K) 615 [State of J&K versus Sham Singh & Ors.] in view of the facts of the case and the settled legal position, are of no help to the appellant/convict.

12. After churning the entire prosecution evidence by us being the first court of appeal, we are of the considered view that the prosecution has been able to prove charges punishable under Sections 376/506 RPC against appellant/convict beyond any reasonable doubt, and therefore, his conviction for the said charges deserve to be upheld. The net result now surfaces is, that instant appeal stands dismissed. Be it noted, that the trial court vide it's judgment of conviction and order dated 12-01-2021 rendered in case File No. 02/Challan has sentenced appellant/convict to undergo rigorous imprisonment (RI) for a period of 20 years and to pay fine of Rs. 50000/- for commission of offence u/s 376 RPC and 2 years imprisonment for commission of offence u/s 506 RPC in default whereof the appellant/convict shall further undergo simple imprisonment for 6 months with further direction that the fine deposited by the appellant/convict shall be paid to the prosecutrix and all the sentences shall run concurrently. It is pertinent to mention here, that the FIR in the case in hand has been lodged on 04-12-2011 for commission of offence of rape u/s 376 RPC committed on 04-04-2011. As per the Jammu & Kashmir Criminal Law Amendment Act 2013 (Act No. XI of 2014) the maximum punishment for commission of offence of rape as mandated u/s 376 RPC is rigorous imprisonment for life and minimum punishment shall not be less than rigorous imprisonment for 10 years and also fine. As the offence of rape has been committed by appellant/convict in the year 2011, therefore, for imposing sentences upon appellant/convict the provisions contained before the Amendment Act of 2013 will apply, therefore, for punishment of rape the minimum punishment shall not be less than 7 years which may extend to life imprisonment or for 10 years and fine also. Ld. Counsel for appellant/convict has strenuously argued, that at present appellant/convict is having age of 34 years, is a young married man having wife, children and parents to look after, belongs to very poor family and is the only bread earning member of his entire

family, therefore, deserves lenient view in imposing sentences. On the contrary Ld. GA has argued, that the trial court has imposed the sentences which is proportionate to the crime committed by the appellant. We have been informed by Ld. Counsel for appellant/convict and Ld. GA that during the pendency of the trial/appeal the prosecutrix (PW-3) has also solemnized marriage. Prosecutrix also belongs to a poor family of rural area and her cry for justice cannot be ignored, as by the crime committed by appellant/convict, the prosecutrix has suffered physical agony and mental trauma which is incalculable. Offence of rape is grave in nature and is the most hated crime in the society. Taking into consideration the mitigating circumstances projected by the appellant/convict, we take a lenient view and uphold the conviction, but only modify the sentence of 20 years rigorous imprisonment imposed upon appellant/convict to minimum sentence of 7 years (RI) for commission of offence of rape u/s 376 RPC without altering the fine component of Rs. 50000/-. However, the sentence imposed by the trial court for commission of offence u/s 506 RPC for 2 years simple imprisonment and fine component shall remain unaltered. Criminal confirmation reference No. & dated Nil is answered accordingly. Criminal Conviction Appeal is disposed off and after due compilation under rules shall be consigned to record. Registry to send the record alongwith copy of the judgment to the concerned trial court for information. Jail Superintendent where appellant/convict is presently lodged be also informed accordingly.

(MOHAN LAL)
JUDGE

(RAJNESH OSWAL)
JUDGE

JAMMU
02.09.2022
Manan

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