HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRA No. 50/2013
IA No. 1/2017, 88/2013
c/w CONF No. 3/2013

Reserved on: 25.05.2023
Pronounced on: 25 .07.2023

….. Appellant(s)

Through: Ms. Deepali Arora, Advocate.

V/s

State of Jammu and Kashmir & Ors.

…..Respondent(s)

Through: Mr. R.S. Jamwal, AAG.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

(Rajesh Sekhri-J)

1. This appeal has been directed against judgment dated 16.01.2013 passed by learned Sessions Judge, Udhampur, (for short, trial Court), vide which, appellant has been convicted for offence under Section 376 (2) (f) of Ranbir Penal Code, 1989 (1932 A.D) (for short, RPC) and sentenced to rigorous imprisonment for life and fine of Rs. 10,000/- and in default of payment of fine, to further undergo imprisonment of six months.

2. Before a closer book at the grounds urged in the memo of appeal, it shall be imperative to have a glance over the background facts of the case.

3. Since factual matrix of the present case relates to the obnoxious incident of rape of a minor child of just one year, therefore, keeping in view the social object of preventing victimization or ostracism of the victims of

sexual offences, the prosecutrix in the present case, hereinafter shall be referred to as victim.

4. On 11.03.2011 PW-8, lodged a written report with Police Station Udhampur stating, *inter alia*, that he along with his family was living in the house of the grandfather of his wife. His one-year-old daughter, used to spend most of the time with the grandfather of her mother. It was alleged by the complainant that on the said fateful day, appellant, who happens to be the maternal grandfather of the victim, took her along to his house in the close vicinity at around 12.30 noon. After some time, the victim was heard crying. PW- , rushed to the room of the appellant, but he fled away. PW- found the victim lying on the bed and bleeding per vagina. As per the prosecution story, the prevailing circumstances suggested that it was the appellant who had raped the child victim. On the basis of this report, FIR No.86/2012 came to be registered against the appellant for the alleged commission of offence under Section 376 RPC and investigation was entrusted to PW-14. During investigation, the victim was evacuated to the hospital and her blood stained trouser "Marked A' was seized in the hospital. The spot was inspected by the IO, which was identified by PW . Another blood stained trouser of the victim produced by PW- , was also seized by the IO. Statements of material prosecution witnesses were recorded before the Magistrate in terms of Section 164-A Cr.P.C.

5. On the completion of investigation, it came to the fore that wife of the appellant had deserted him for the last eight years. Appellant used to spend his time playing with the victim. On the fateful day, parents of the victim left for the routine job, leaving the victim under the supervision of

PW- . Appellant who happened to be maternal grandfather of the victim, took her to his room and raped her. Screams of the victim attracted the attention of PW- , who rushed to the spot and found that appellant had taken-off trouser of the victim and was lying naked by her side on the bed. Victim was bleeding per vagina. Appellant asked PW- that why had she come there and saying so, he ran out of the room and fled away. Appellant was arrested and since complicity of the appellant in the commission of offence was established, investigation culminated into filing of final report under Section 173 Cr.P.C. Accused was charged for offence under Section 376 RPC whereby he pleaded innocence, prompting the trial court to ask for the prosecution evidence and prosecution has examined six witnesses in support of the charge. The appellant in his statement under Section 342 Cr.P.C. denied the incriminating imputations arrogated to him by the prosecution witnesses and examined one witness to rebut the prosecution evidence.

6. Learned trial Court on appreciation of the evidence on record, has concluded that when all the material on record is considered with live judicial conscience, it emerges that appellant has committed the inhuman act of rape on the minor victim. Having said so, Ld. Trial Court has convicted the appellant under Section 376(2)(f) of RPC and he was sentenced as mentioned at the outset.

7. Appellant has assailed the impugned judgment, *inter alia*, on the grounds that Learned trial Court has failed to appreciate the evidence in the right perspective, which being ridden with material contradictions and discrepancies, is unworthy of credence to convince judicial mind to hold the

appellant being involved in the crime and guilt thereof. Learned trial Court with the presumption of appellant being guilty, in focus, engaged itself in textual reading of the evidence which, in no manner, can be said to be appreciation of evidence as warranted under law. Prosecution has failed to prove the motive on behalf of appellant to commit the offence and there is nothing in the evidence to suggest that there was any attempt of penetration. Appellant has also questioned the impugned judgment by referring to the statement of PW- that victim was last left by her parents in the company of her grandfather, namely, Milapu and, therefore, according to the appellant failure on the part of the prosecution to examine said Milapu renders the prosecution case doubtful.

8. Appellant has also assailed the impugned judgment on the ground of old animosity between him and the complainant as also failure on the part of the investigating agency to seize blood-stained mattresses. It is also contention of the appellant that all the witnesses examined by the prosecution being close relatives of the victim, are interested witnesses and prosecution has failed to examine any independent witness for the purpose of corroboration. Appellant has prayed for setting aside of the impugned judgment of conviction and order of sentence.

9. Heard arguments and perused the file.

10. While learned counsel for the appellant has reiterated the grounds urged in the memo of appeal, Mr. R. S. Jamwal, learned AAG is affront with the contention that prosecution by leading cogent, credible and trustworthy evidence has succeeded to make out a fool proof case against the appellant.

PW- has witnessed the victim lying in a pool of blood in the house of the appellant and appellant ran away from his house after the commission of crime. The testimony of PW- that victim was bleeding per vagina stands fortified by Medical expert PW-Dr. Nidhi Mahajan. According to Mr. Jamwal, learned AAG, the sole testimony of PW- , duly corroborated by the Medical expert, is sufficient to upheld the conviction of appellant, as defence has failed to impeach the credibility of any prosecution witness.

11. As the factual narration of the prosecution story would unfurl, on the fateful day, the appellant who happens to be maternal grandfather of the victim, took her along to his room and raped her. The screams of the child victim attracted the attention of PW- , who immediately rushed to the room of the appellant to find the victim lying unconscious and bleeding per vagina and appellant was lying naked by her side on the bed. Appellant on seeing PW- , immediately ran out of the room and fled from the spot. Although there is no direct evidence or eyewitness to the actual act of sexual assault on the victim, however, circumstances prevailing would clearly canvass a picture leading to the only inference that it was the appellant alone who committed rape upon the victim.

12. PW- is star witness of the prosecution case. She being a child witness, a questionnaire was prepared and it is pertinent to note that the answers given by her to the said questionnaire were found coherent and since it was found that she had a rational understanding and was aware of the significance of oath, therefore, her statement was reduced into writing by learned trial Judge. PW- in her statement has given a graphic narration of the occurrence witnessed by her. She has deposed that on 11.03.2012,

parents of the victim left for the routine work, leaving the victim behind under her supervision and that of her grandfather, namely, Milapu. Victim was lying with her grandfather. While she was cooking meals, she heard the victim crying. When she enquired about the victim, Milapu told her that appellant had taken her along. She rushed to the room of appellant and found the victim lying unconscious on the bed with her trouser off. Appellant was also without trouser. She found the victim bleeding per vagina and on this appellant rushed out of the room. Witness has also stated that there was no one else in the room. She goes on to state that she brought the victim back home. When daughter of the appellant reached there, she asked her to call parents of the victim. When mother of the victim returned home at about 2.00 pm, she narrated the entire episode to her. The blood stained trouser of the victim was replaced by another trouser and she was shifted to the hospital. At 5.00 pm, police came to the spot, enquired from her and she produced blood stained trouser of the victim, which was seized by the police vide seizure memo 'Ext.P-1/1'. Her statement 'marked K' was recorded before the Magistrate. In cross examination, she has clarified that trouser of the victim was down on her knees and the pant of the appellant was also down on his knees. She has also stated that blood had spilled on the bed and there were blood stains on the thighs, vagina etc. Police examined blood-stained mattress but same was not seized. She has denied the suggestion that appellant had alleged that mother of the victim, PW- had occupied his property and present case was foisted against him because appellant had asked PW- to vacate his property.

13. As noticed above, PW- has stated that when mother of the victim returned home in the afternoon, she narrated the story to her. Her

statement, in this respect is duly corroborated by PW- , mother of the victim, who has stated that she was living in the house of her grandfather, Milapu, since childhood along with her sister and children. PW- used to look after her children in her absence. Appellant was living at a distance of 50 feet from her house. On 11.03.2012, she left for work at 8.00 am. She was called by the daughter of the appellant. When she returned home along with her husband, she found the victim in a pool of blood and on being enquired, PW- narrated the entire incident to her. The victim was shifted to the hospital where she was advised to lodge police report and therefore, her husband lodged the police report. She has admitted the seizure memo of blood stained trouser of the victim 'Ext.P 1/1'. It is pertinent to mention that the only suggestion made to the mother of the victim PW- was whether victim had any urine problem and was operated upon, to which she denied. Statement of the mother of the victim PW- that she returned home along with her husband and when she was asked by the police to lodge the report, report was lodged through her husband, is fortified by the statement of her husband PW- , who has stated that in March, 2012, he along with his wife had gone for routine work, the victim was left with her grandfather and PW- to be looked after. When at about 2.00 p.m, he along with his wife returned home for lunch, PW- narrated the entire episode to them that appellant took the victim to his room, where he took off his clothes as also clothes of the victim and raped her. The father of the victim has corroborated the statement of his wife PW- that he was advised to lodge the report, so he lodged a written report. He has admitted the written report 'Ext.P8/1'. He has also stated that trouser of the victim was seized and sealed and other trouser of

the victim which she was wearing at the time of occurrence was also handed over to the police which was seized vide seizure memo 'Ext.P 7/1'. He has also stated, in his cross examination, that mattresses of the bed of appellant were also blood stained. Now it is pertinent to mention that PW- has admitted the suggestion in his cross examination that son of the appellant had relationship with PW- and he even kidnapped her and that their relationship was not to the liking of the appellant. The testimonies of these three material witnesses produced by the prosecution are coherent on material aspects of the case. We do not find any material contradiction with respect to the occurrence having been witnessed by PW- , in the statement of these three witnesses, except that the investigating agency did not seize the blood-stained mattresses and that son of the appellant had relationship with PW- and appellant had objected to their relationship, to be discussed in later part of the judgment.

14. Statement of PW- that she found the victim lying naked and unconscious by the side of appellant, who was also lying naked on the bed and victim was bleeding per vagina, projects a picture that victim has been ravished by the appellant and it stands corroborated by the Medical Expert, PW-Dr. Nidhi Mahajan. The doctor, who has examined the victim immediately after the occurrence, has stated that in March 2012, she examined one year old victim. On examination, her hymen was found to be torn and there was fresh injury on her genitals. There were para urethral laceration and slight oozing on her hymen. She has opined that it could be a case of sexual assault. Though she stated that there could be other reasons and one cannot make out a clear cut opinion, but she not only stated that

sexual abuse could not be ruled out, but she clarified in her cross examination that given the injuries found on the victim, one could surely say that it was a case of penetration or even an attempt to commit rape and in such type of penetration, there can be a possibility of discharge of sexual assailant.

15. The other two witnesses examined by the prosecution are PW-Sonu, witness to the superdnama of seal 'Ext.P-7/1' and investigating officer PW-Padamdev Singh. The investigating officer has stated that on 11.03.2012, victim was brought to the Police Station by her parents and written report was lodged alleging therein that victim was raped by the appellant. A case was registered and victim was evacuated to the hospital. He seized trouser of the victim, prepared a sketch map and later seized another trouser of the victim. He arrested the appellant on 12.03.2012. He got statements of the witnesses recorded. A case for commission of offence under Section 376 RPC was proved against the appellant. He has admitted the relevant documents prepared by him. In cross examination, the IO has stated that he did not find blood stains at the place of occurrence, nor did he find blood around the pant. Undergarments of the accused were not seized because he was arrested on the next day.

16. It is evident from a careful appreciation of the prosecution evidence that testimony of the sole eye witness of the case, PW- , has been duly corroborated on material aspects by the parents of the victims and, of course, by the testimony of the investigating officer. Star witness of the case, PW- , despite being a child witness, as already observed, has given a coherent, convincing and credible statement. He has given a panoramic

narration of the incident that parents of victim left for their routine work in the morning, leaving the victim behind to be looked after by her and her grandfather, namely, Milapu. The victim was lying by the side of her grandfather, namely, Milapu. While she was cooking, she heard the cries of the victim, she came out and enquired from Milapu, who told that appellant had taken the victim along to his room. She immediately rushed to the room of the appellant and found that victim was lying unconscious and naked on the bed of the appellant, who was also lying naked by her side. The victim was bleeding per vagina and on seeing her, appellant ran out of the room and fled away. It is pertinent to mention that PW- has also stated that there was nobody else in or around the room. The defence has failed to impeach the credibility of the child witness on cross examination. As already observed by us that the facts and circumstances narrated by the star witness, PW- would lead to the only hypothesis that it was the appellant alone, who after committing rape upon the victim ran away from the spot, leaving the victim lying unconscious in a pool of blood. Statement of PW- is duly supported by Medical Expert PW-Dr. Nidhi Mahajan that hymen of the victim was found ruptured, there was fresh injury on her genitals and there were para urethral laceration and slight oozing on her hymen and she has concluded that it was a sure case of penetration or an attempt to commit rape. The sole testimony of PW- corroborated by the medical expert, is sufficient to sustain conviction of the appellant.

17. Mrs. Deepali Arora, learned counsel appearing for appellant has argued that since PW-Dr. Nidhi Mahajan has stated that there could be other reasons and no clear cut opinion could be formulated and in such type of penetration, there can be a possibility of discharge of sexual assailant and

since investigating agency has failed to obtain seminal stains, therefore, prosecution story is doubtful. Argument of learned counsel for the appellant has been made to be rejected for the following reasons.

18. Hon'ble Supreme Court in **Santosh Kumar v. State of MP** reported as **2000 AIR SCW 4550** and **Sate of Tamil Naidu v. Ravi** reported as **2006 AIR SCW 3444** has referred with approval the opinion expressed by "**Modis' Medical Jurisprudence and Toxicology (23rd Edition) Page 897"**, which reads thus:

> **"Thus to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without emission of semen, or even an attempt to penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."**

19. It is manifest from the aforequoted observation culled from the **Modi's Medical Jurisprudence and Toxicology** that rape cannot be diagnosed by a medical expert, who can only certify with respect to a recent sexual activity. It is also clear that even an attempt of penetration, with or without emission of semen is sufficient to constitute offence of rape. Rape

cannot be diagnosed by a doctor. A medical expert treating a rape survivor can only certify about any evidence of recent sexual activity. It is none of his business to opine whether rape is committed or not. Rape is a judicial determination. Since rape is crime, it is only for a Court to determine whether rape within the meaning of Section 375 IPC is made or not. Offence of rape can be established even without producing any injury to the genitals or leaving any seminal stains. In the present case, however, the doctor, who has examined the victim, has found hymen of the victim ruptured, with fresh injury on her genitals and there were para urethral laceration with slight oozing on her hymen. The doctor has clearly opined that given the injuries found on the victim, it was surely a case of penetration. In such circumstances, absence of seminal stains pales into insignificance and would not come to the rescue of the appellant.

20. Learned counsel for the appellant next argued that prosecution has failed to prove motive behind the occurrence and since victim on the date of occurrence was left under the supervision of her grandfather, namely Milapu, therefore, failure on the part of the prosecution to examine Milapu as a prosecution witness renders the prosecution case doubtful as there may be a possibility that victim was raped by her grandfather, Milapu or anybody else. The argument of the learned counsel for the appellant, on the face of it, being misconceived, merits outright rejection for the simple reason that defence has failed to discredit testimony of star eyewitness of the case, PW- , whose testimony despite being a child witness, is found to be of sterile character. Be it noted that the only defence offered by the appellant in his statement under section 342 Cr.P.C. is plain denial of the occurrence, stating that his son namely, developed relationship with PW- , which was

opposed by him, therefore, this case has been foisted on him on account of this enmity.

21. It is required to be underlined that during cross examination, defence has made three different suggestions to three material prosecution witnesses. PW- has denied the only suggestion made to her that her mother PW- had occupied property of appellant and since appellant had asked PW- to vacate his property, so present case was filed against him. Interestingly, this suggestion has neither been made to PW , the mother of the victim nor to PW- , father of the victim. The suggestion made to PW- is that victim had some urine problem and so she was operated upon, which was denied by her. No defence with respect to any property dispute of the appellant with mother of the victim, PW- , has been set up in her cross examination. The father of the victim, PW- has admitted relationship of son of the appellant with PW- and he has also admitted that appellant opposed their relationship. However, the best witness, who could be confronted on this count, would have been PW- but no question was put to PW- in her cross-examination that she developed relationship with son of the appellant, which was not to his liking and, therefore, appellant has been falsely implicated.

22. There is no doubt that motive is an important aspect to highlight the intention of the accused and it aides in appreciating the totality of circumstances in a case as well as it assists in proper appreciation of the evidence adduced by the prosecution. Therefore, in order to appreciate the evidence in totality and infer a better understanding of the backdrop in which

a criminal offence has been committed, it is essential to examine the motive behind the incidence. However, it may be stated as a general rule of substantive criminal law that motive is irrelevant under the broad spectrum of adjudication because while adjudicating a criminal case, the court judges a man as to what he does and not for the motive for which he does it. In murder cases, where evidence is direct in nature and there are eyewitnesses to the occurrence, motive becomes insignificant. It is trite that motive loses all its importance in a case where direct evidence of eyewitness is available, because even if there may be a very strong motive for the accused person to commit a particular crime, he cannot be convicted if the evidence of eyewitnesses is not convincing. In a case of direct evidence, motive is not necessarily a relevant factor and failure of the prosecution to prove motive may not necessarily weaken the case of the prosecution as held by Hon'ble Supreme Court in **Bipin Kumar Mondal vs State of West Bengal; (2010) 12 SCC 91,** in the following words:

> **"24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance….."**

23. In the context of aforesaid enunciation of law, and in view of unimpeached and credible testimonial potency of PW- , duly corroborated by the medical expert, failure of the prosecution to prove motive in this case pales into insignificance.

24. Be that as it may, in cases related to sexual offences, it is the sexual lust and pervert brain, which, more often than not, would be the motive to drive a man to the sexual brutality, otherwise a saner element would not even think of violating the modesty of his one year old granddaughter. The circumstances prevailing, in the present case, would clearly canvass a picture leading to the only conclusion that it is the appellant and none else, who ravished the victim.

25. Appellant has also assailed the impugned judgment on the ground of failure of the investigating officer to seize the blood-stained mattresses from the scene of occurrence. PW- has stated that blood spilled over the bed sheet and there were blood stains present on the thighs, vagina etc. of the victim. Police examined the blood stained mattresses but same were not seized by the IO. PW- has also stated that mattresses of the bed of the appellant were also blood stained. However, their statements have been belied by the IO, PW-Padamdev Singh, who has stated in cross examination that he did not find any blood stains at the place of occurrence nor there was blood around the bed.

26. There are no rigid rules regarding appreciation of evidence as effect of shortcomings on the part of the investigating officer is the task of a Court in appreciation of evidence. It is for the Court, while appreciating the evidence, to assess the effect of such defects. The shortcomings in the investigation become marginal in case where testimonial potency of eyewitnesses to the occurrence inspire confidence and appear creditworthy. An accused cannot be acquitted merely on account of some lapses on the part of the investigating officer. Cogent evidence of PW- in the present

case cannot be rejected merely on account of failure of the investigating officer to seize blood-stained mattresses. As a general rule, it can be stated that error, remissness or shortcoming in the investigation would not have any impact on the prosecution case unless miscarriage of justice is brought about or serious prejudice is caused to the accused. Since the testimony of PW- , as already observed, is duly supported by the statement of medical expert PW-Dr. Nidhi Mahajan, on material aspects of the prosecution case, therefore, appellant cannot be heard to say that he was prejudiced on account of failure of the investigating officer to seize blood-stained mattresses.

27. Appellant has next challenged the impugned judgment on the ground that all the witnesses examined by the prosecution, being relative of the victim, are interested witnesses. It is settled position of law that statements of related witness cannot be thrown overboard on the mere presumption that they are interested witnesses, if their testimonies on material aspects are corroborated by other evidence on the record. In the present case, as already observed, statement of PW- , star witness of the prosecution that victim was found lying unconscious and naked by the side of the appellant, who was also lying naked and that victim was bleeding per vagina, is duly corroborated by the medical expert, PW-Dr. Nidhi Mahajan, who clinically examined the victim and certified that it was surely a case of penetration.

28. For what has been observed and discussed above, appellant has failed to point out any illegality or perversity in the impugned judgment passed by learned trial court. Viewed from any angle, the prosecution story and evidence led by the prosecution in support thereof, is found credible,

trustworthy and cogent. As already discussed in detail, sole testimony of PW- , duly corroborated by the medical expert, PW-Dr. Nidhi Mahajan, is sufficient to sustain conviction of the appellant. Often sexual offences are committed in utmost secrecy and it is difficult to find an eye witness to the same. However, in the present case, PW- in a way is an eye witness, if not to the actual act of sexual violence upon the victim, but to the facts and circumstances suggestive of the only inference that it was the appellant alone, who raped his minor granddaughter. The offence committed by the appellant is gruesome, which normal human being would not even think of. Therefore, we do not find any illegality or perversity in the impugned judgment of conviction.

29. In so far as sentence to the appellant is concerned, clause (f) of sub Section 2 of Section 376 RPC envisages that ***whoever commits rape on a woman when she is under 12 year of age, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may be for life and shall also be liable to fine***. It is unfortunate that respect for woman in our country is on steep decline. Of late, cases relating to molestation, outraging of modesty and rape are on the rise day by day. Decency, morality and moral values of the Indian society, which we treasured and were proud of, appear to have vanished.

30. Criminal law adheres in general to the principle of proportionality in prescribing liability, according to culpability of each kind of criminal conduct. Proportion between the crime and punishment is a goal respected in principle and remains a strong influence in the determination of sentences. Hon'ble Supreme Court in **Dhananjoy Chatterjee @ Dhana v. State of**

West Bengal reported as **(1994) 2 SCC 220** has observed that shockingly, large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate making justice suffer by weakening the system's integrity.

31. An identical view has been expressed by the Apex Court in **1996 (2) SCC 175**. Therefore, sentence to be imposed must be proportional to the gravity of crime committed.

32. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix of the case, the brutality reflected in the commission of crime and in the light of acceptable materials in the form of oral and documentary evidence led by the prosecution, particularly testimony of eye witness PW- , duly supported by the statement of PW-Dr. Nidhi Mahajan, we concur with the conclusion propounded by Ld. trial court. Shiver runs down the spine to know that a maternal grandfather has gratified his animated passion and sexual lust by ravishing his one year old granddaughter. We do not find any mitigating or extenuating circumstance in the present case, which could dilute the rigor of penal consequences which appellant is bound to bear. It is a case, where the fence itself has eaten the crop. The appellant has committed an outrageous violence of highest order on the private person of a child victim. Nothing has improved even after more than a decade of "*Nirbhaya*". Women also have the right to life and liberty. They also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. Women, in them, have many personalities combined. They are not playthings. Of late, crime against women in general and rape in particular is on the increase. It is a blot on the

society and a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. Therefore, courts shoulder a great responsibility while trying an accused on charges of rape.

33. Having regard to the aforesaid, we do not find any illegality muchless perversity in the well reasoned and lucid judgment of conviction and sentence propounded by learned trial court. Hence, the present appeal being devoid of merit, is **dismissed** and the impugned judgment of conviction and order of sentence are **upheld**. Appellant is directed to undergo the remainder part of his sentence.

34. Reference made by learned trial court is accordingly confirmed.

(RAJESH SEKHRI)
JUDGE

(SANJAY DHAR)
JUDGE

JAMMU:
25 .07.2023
"Paramjeet"

1. Whether the Judgment is speaking? **Yes**
2. Whether the Judgment is reportable? **Yes**