

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

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**Cr. Acq. Appeal No.160/2013**

Date of order:- 23.04.2015

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State through SSP, Samba  
V.  
Subash Singh

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**Coram:**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge  
Hon'ble Mr. Justice B. S. Walia, Judge**

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**Appearing Counsel:**

For the Appellant (s) : Mrs. Seema Shekhar, AAG.  
For the respondent(s) : Mr. Jagpal Singh, Advocate.

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| (i)  | Whether to be reported in Press,<br>Journal/Media | Yes |
| (ii) | Whether to be reported in<br>Journal/Digest       | Yes |
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**Per-Yaqoob –J.**

1. Moral degradation is the worst enemy of social order. When mankind stoops low, boundaries of discipline get demolished which give rise to unfortunate and unacceptable situations. Moral conviction wards off all acrimonious situations. Animosity at times owes its origin to a behavioural problem.
2. It is the facts and circumstances of this case which persuade the court to make above observations.
3. Respondent has faced the trial for commission of offence punishable under Section 376 RPC. The prosecutrix is none else but

the minor daughter of the respondent. During the trial, what surfaced is that the respondent was a drunkard and his behaviour towards his family, which comprises of his wife and three daughters, was nasty. His wife and three daughters to his disliking used to leave the house which was being objected by him. He used to beat them. It is in the same back-ground, trial Court has concluded that the allegation of rape by the respondent (father) upon his daughter (prosecutrix) is not proved as such appears to be cooked up.

4. The story unfolded by the prosecution in the charge-sheet as set out is that the prosecutrix (Ms. "z") 12 years' old at the time of the occurrence at about 9 pm went to fetch water from another room of her house where she was caught hold of by the respondent and forcibly raped. She stated to have cried as a result whereof, her mother had come near the door of the room which was bolted from inside. The accused opened the door and fled away from the scene of the occurrence.

5. On completion of the investigation of the case, charge-sheet (challan) was presented. Same was committed to the Court of Sessions Judge, Samba for trial. Accused was put to trial for having committed the offence under Section 376 RPC. Prosecution led the evidence. On closure of the prosecution evidences, accused has been examined under Section 342 Cr.PC. Thereafter, accused has also produced witnesses in defense.

6. Learned trial Court has referred to the evidence as has been brought by the both sides and has concluded that the case is not proved as it shall be totally unsafe to record conviction on the sole shaky testimony of the prosecutrix.
7. While going through the evidence as led by the prosecution, what appears is that it is only the prosecutrix who has stated as to what had happened to her but no other witness including the another star witness i.e. her mother have supported her.
8. It is trite that sole testimony of the prosecutrix if inspires confidence shall be enough for recording conviction irrespective of any corroboration.
9. The testimony of prosecutrix in the case on hand in favour of the prosecution case has to be valued provided her credibility is not impeached. Every case has its own facts and features. So result of each case depends on its own facts.
10. It shall be quite advantageous to precisely notice as to what prosecution witnesses have deposed.
11. Prosecutrix PW-1 has stated that accused is her father. About 1 (one) year back, her mother was ill. She was not in a position to get

up, so it is she who asked her to bring water from another room at 9 pm. When she went there, the accused gagged her mouth and bolted the door, thereafter, committed rape upon her. She was threatened to death in case incident is narrated to anyone. When she raised an alarm, her mother knocked at the door. Accused opened the door and fled away. The second day, report was lodged with the police station. Her clothes were seized. On the cross examination has stated that accused was heavily drunk at the time of the occurrence. He was not in a position to talk even. The accused is a habitual drinker. For that reason, she and her mother are very unhappy. The houses of her uncles as well as of some neighbours are adjacent to their house but those people did not come to her house. She has narrated the incident to her uncle. Her mother narrated the incident to village Lambardar and Chowkidar (village guard), who directed them to lodge the report in the police station. She has suffered bruises and injuries on her body which were shown to the doctor. The accused held her for three hours. During this period, she cried and mother came but no neighbour came there even after hearing her shrieks.

12. PW-7 Rajni Gupta has stated that on 3.1.2009 at SMGS Hospital, Jammu, she examined the prosecutrix. On local examination, no marks of external violence were seen. Slides were made posterior

fonix did not show the presence of spermatozoa. In her opinion, there was no recent evidence of sexual intercourse. Medical certificate issued bears her signatures. Same stand exhibited ExT-P10.

13. Learned trial Court while noticing the statement of the prosecutrix and that of the doctor has observed that in case the prosecutrix would have been held for three hours and she would have cried, atleast neighbours would have come and in case prosecutrix being 12 years' old would have been raped, then there would have been evidence of recent sexual intercourse. Doctor has clearly stated that there is no recent evidence of sexual intercourse.

14. **Sushma Devi PW-4** has stated that accused is her husband. She is married to him about 20 years back. From the wedlock she has three daughters. Accused is a drunkard, used to beat her and her daughters. One year back i.e. date of occurrence, accused had come home fully drunk, started beating her and the prosecutrix regarding which FIR was lodged. She was declared hostile but in the cross-examination of the PP, she has stated that accused has caused injuries on her hand. She had sent her daughter to bring water. When she did not turn back. She knocked the door which was opened by the accused. Daughter (prosecutrix) told her that the accused has beaten

her, then has qualified that it is wrong that the accused tried to rape her daughter. In the cross-examination of the counsel for the defense, witness stated that on the date of occurrence, accused had consumed lot of liquor. He was not in his senses, nor was in a position to stand. She used to go out with her elder and younger daughter which was being objected to by the accused. She had lodged the complaint against accused regarding beating and consuming of liquor. The sole purpose was to keep him in jail so that he may give up the habit of drinking. The said witness mother of the prosecutrix being the star witness has totally demolished the prosecution case and even she has created lot of doubt about the credibility of the testimony prosecutrix. Even though she was declared hostile but in the cross-examination of the PP, she has further demolished the prosecution case by stating that the accused had not raped her daughter. Then the position of the entire plot gets exposed when in her cross-examination has stated that the accused used to beat them and the sole purpose of registering the case was to keep him in jail so that he may give up the habit of drinking.

15. The position as projected by the witness-Sushma Devi, mother of the prosecutrix is supported by other prosecution witness Parveet Singh PW-2 though declared hostile. In cross-examination of the PP has stated that the accused and his wife used to quarrel with each

other as she did not obey him. In the cross-examination of the counsel for the defense has qualified that the wife of the accused used to leave house alongwith her daughters without the knowledge of the accused who used to advise her not to leave house with his daughters because it brings bad name for them. On this count was having enmity with her. Therefore, she made a false case against him in connivance with her brothers.

16. Darshan Lal PW-3 Village Guard though declared hostile but has in the cross-examination of the counsel for the accused stated that Sushma Devi was not under the control of her husband(accused). She would leave house on her own sweet will and remain missing for some 3/4 days. She used to take her daughters which was objected by the accused by saying that it brings bad name. It is correct to say that wife of the accused was having enmity with the accused, based on which false case in connivance with her brothers has been lodged.

17. Tehel Singh PW-6 Brother in law of the accused has stated that the accused is a habitual drunkard. He too has been declared hostile but on the cross-examination of PP has stated that accused used to beat his sister then in the cross-examination of the counsel for the defense has stated that the accused under the influence of liquor used to beat his sister and nieces. The daughters of the accused were

working in the factory which was not liked by the accused. He has asked his wife to stop going there but she did not obey. On such count, case has been prepared.

### **Defence Evidence**

18. DW-1 Balbir Singh has deposed that a false case has been filed against the accused because he never liked his wife and daughters to go out which they did not stop. Therefore, they were quarreling. Accused used to beat his wife for not obeying.
19. DW-2 Ranjit Singh has stated that Sushma Devi is the wife of the accused. They have three daughters. Accused used to beat his wife and his daughters as they were not obeying his direction of not going out. He used to advise them that their going out to work in a factory would bring bad name to their family. It is on that basis accused has been implicated in a false case.
20. In the aforesaid backdrop, the question is as to whether statement of the prosecutrix is credible and as to whether same inspires confidence for accepting her inculpatory testimony. Though there is no quarrel on the settled norms i.e. even on her sole statement, conviction can be recorded but her statement for the reasons and circumstances in the background of the other evidence



as has been led does not inspires confidence to hold she to be truthful. Her mother has belied her. Mother being the important witness present in the house has not supported the allegation of rape.

21. The following circumstances as appeared in the statements of the prosecution witnesses gave rise to a doubtful position:

(a) The accused was heavily drunk at the time of the occurrence, as such, was not in a position even to talk or stand.

(b) Prosecutrix cried for three hours. Her uncles and other neighbours did not come

(c) She narrated the occurrence to Lambardar and Chowkidar.

22. Is it possible that:

(a) When a person cries for three hours, no one will catch attention to reach to the place of occurrence?

(b) When the accused was drunk, he was unable to talk, could he commit the illegal act of intercourse?

(c) According to mother of the prosecutrix at the time of occurrence, the accused was not in his senses nor was in a position to stand. According to PW-7 Doctor Rajni Gupta, there was no evidence of recent sexual intercourse. All these

facts and circumstances are such which negate the theory of rape.

23. All other witnesses as produced by the prosecution and the defense are consistent in stating that the accused was a drunkard, he used to beat his children and wife. The position of the wife and her daughters leaving the house without his permission and their working in a factory unacceptable to the accused then their quarreling, beating coupled with the specific statement of Sushma Devi wife of the accused that the purpose of lodging the case was to see him in the jail so that he may give up the habit of drinking, would suggest that the theory of rape by the prosecutrix has been only with the object of adding gravity to the case so that her mother and two sisters would get rid of unacceptable behaviour of their father.

24. The statement of the prosecutrix does not inspire confidence as being not reliable in absence of corroboration. No other witness has supported the allegation of rape. In our view, we are fortified by the judgment rendered by the hon'ble Apex Court in the case of State of Rajasthan v. Babu Meena (2013) 4 SCC 206.

25. Learned trial Court has properly appreciated the entire evidence as has been produced by the parties. The conclusions drawn for the reasons recorded therein and the reasons recorded herinabove

do not call for any interference. Appeal as such being devoid of merit is **dismissed**.

26. Trial court record along with copy of the judgment be sent to the trial court for further follow up.

**(B. S. Walia)**  
**Judge**

**(Mohammad Yaqoob Mir)**  
**Judge**

**Jammu**  
23.04.2015  
Raj Kumar