

**HIGH COURT OF JAMMU AND KASHMIR**

**AT JAMMU**

CRAA No.45/2017

Date of order: 30.10.2017

State through P/s Malhar

v.

Muzaffar Iqbal

**Coram:**

**Hon'ble Mr. Justice Alok Aradhe, Judge.**

**Hon'ble Mr. Justice Tashi Rabstan, Judge.**

**Appearing counsel:**

For the Appellant/petitioner(s) : Mr. L K Moza, AAG

For the Respondent(s) : Mr. Arun Dev Singh Thakur, Advocate.

i/ Whether to be reported in : Yes/No  
Press/Media

ii/ Whether to be reported in : Yes/No  
Digest/Journal

**Per Alok Aradhe,J:**

Heard.

2. This criminal acquittal appeal has been filed against the judgment dated 14.05.2016 passed by the Trial Court by which respondent has been acquitted in respect of offence under Section 376 of the RPC.
3. Prosecution story in nutshell is that on 07.12.2012, complainant PW-Sher Mohd father of the prosecutrix lodged the report that in the night intervening 27<sup>th</sup> – 28<sup>th</sup> of March, 2012, when prosecutrix and her other family members were sleeping at home, accused entered the house and kidnapped the prosecutrix on gun point. It was further stated that the prosecutrix was taken to nearby forest where she was subjected to rape. It was further stated that he tried to intervene, thereupon he was threatened by the accused that if he tried to intervene, he will shoot him with his gun. It was also stated in the report that the age of the prosecutrix is between 13-14 years. On the basis of the aforesaid written report, FIR was registered for offences under Sections 366/376 of the RPC and 4/25 of the Arms Act against the respondent and the investigation commenced. The statement of the prosecutrix under Section

164-A CrPC was recorded. The police after completion of the investigation filed the charge sheet against the respondent.

4. The prosecution in order to prove its case examined as many as 19 witnesses, namely, viz., PW-1, the prosecutrix, PW-2, Zaitoon Begum, PW-3, Sher Mohd, PW-4, Kasturi Begum, PW-6, Ali Mohd, PW-Mohd Hafiz, PW-8, Mohd Ayaz, PW-9, Mushtaq Ahmed, PW-10, Rattan Chand, PW-11, Abdul Majid, PW-12, Bhoomi Raj, SG.Ct, PW13, Moinder Singh, PW-7, Dr. Talib, PW-15, Dr. Susheel Sharma, PW-16, Dr. Dheeraj Sharma, PW-17, Pankaj Singh, PW-18 Shiv Dev Singh, PW-19, Rajeev Vaid. The trial Court vide impugned judgment has acquitted the respondent for the offence alleged against him
4. Learned AAG submitted that from the statement of the prosecutrix itself, it is evident that she was subjected to the offence in question and therefore the trial Court grossly erred in acquitting the respondent. It is further submitted that the trial Court has failed to view the evidence on record in its correct perspective which has resulted in erroneous findings and the consequent judgment.
5. We have considered the submissions made by learned counsel for the parties and have perused the record. Father of the prosecutrix has been examined as PW-3, namely, Sher Mohd in his cross examination who has admitted the suggestion that PW Zaitoon Begum had lodged a criminal case against Rehman, Khurshida Begum, the prosecutrix, Kasturi Begum and 2-3 more persons. He also admitted the suggestion that the aforesaid persons, against whom PW Zaitoon Begum had lodged a criminal case had asked her to lodge a report for offence u/s 376 RPC against the accused and when she objected to it, she was beaten up. He has further stated that PW-Zaitoon Begum refused to lodge a report, the aforesaid persons prepared his daughter for lodging the report. He went on to admit the suggestion that the case, that has been lodged against accused, is false. PW-2, Zaitoon Begum who is the

cousin of the prosecutrix has turned hostile but has corroborated the aforesaid statement of PW-3, namely, Sher Mohd inasmuch as she was beaten up and wrongfully confined in a room by her father, PW Sher Mohd and Mohd Sadiq. It has further been stated that she rescued herself from the confinement and lodged a report against them. It has further been stated that PW-3, Sher Mohd got a false report lodged against accused by his daughter, the prosecutrix. PW-Mushtaq Ahmed the material uncle of the prosecutrix during his cross examination admitted the suggestion that when PW Zaitoon Begum refused to lodge a false case against the accused, complainant prepared his daughter to file a false case. The aforesaid assertion of witness is also confirmed by the statement of PW-18 Shiv Dev Singh who is the Investigating officer, who has admitted that complainant and his associates had compelled PW Zaitoon Begum to lodge a false case against the accused and when she refused to do so, she was beaten up.

6. Besides that, it is pertinent to mention here that there is delay of 7 to 9 days in lodging the first information report though the father of the prosecutrix was away in the State of Himachal Pradesh, however, that by itself is not a justifiable reason for such an inordinate delay in lodging the first information report. Thus the delay in lodging the first information report is not satisfactorily explained. The prosecutrix in his cross examination has stated that she has identified the accused from his voice and there was darkness at the place where she was sleeping and also the place where she was taken by the accused. She has admitted that she has not seen the face of the accused. PW-4, Kasturi Begum the mother of the prosecutrix was also not present in the house. Similarly, PW-Mohd Ayaz was not present where the prosecutrix was sleeping. From the statement of PWs Kasturi Begum and Mohd Ayaz as well as prosecutrix, it is evident that they did not see the accused but they identified from his voice, therefore, identity of the assailant is highly doubtful and the prosecution has failed to prove the same. PW- Zaitoon

Begum who has been declared hostile in her statement under Section 164-A CrPC had deposed that she as well as the prosecutrix had run away from their home. The medical evidence prepared by PW-7, Dr. Talib also does not support the prosecution case.

7. In view of the overwhelming evidence available on record, in the considered opinion of this court, the trial Court on the basis of meticulous appreciation of evidence on record has held that the prosecution has failed to prove the offence beyond reasonable doubt against the respondent. It is well settled in law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the Trial Court is also a reasonable view of the evidence on record and the findings recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse. (See **Ram Swaroop and others. Vs. State of Rajasthan, (2002) 13 SCC 134, Vijay Kumar v. State by Inspector General, (2009) 12 SCC 629 and Upendra Pradhan vs. State of Orissa (2015) 11 SCC 124.**)
8. From perusal of the judgment of the Trial Court, we find that the findings recorded by the trial Court can neither be termed as perverse, contrary to the evidence or erroneous, therefore, no case for interference in this acquittal appeal is made out. In the result, the appeal fails and is hereby dismissed.

( Tashi Rabstan )  
Judge

(Alok Aradhe)  
Judge

Jammu  
30.10.2017  
Raj Kumar