

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

Criminal Acquittal Appeal No. S-2/2015  
MP Nos. 61/2015, 59/2015, 01/2016

Date of decision: 23.02.2017

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State of J&K	vs.	Gulzar Ahmed Bhat and others
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**Coram:**

**Hon'ble Mr. Justice Janak Raj Kotwal, Judge  
Hon'ble Mr. Justice B. S. Walia, Judge**

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**Appearing counsel:**

For appellant (s):	Mr. M. A. Rathore, AAG
For respondents:	Mr. P. N. Raina, Sr. Advocate with Mr. J. A. Hamal, Advocate and Mr. Y. E. Tak, Advocate

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(i)	Whether to be reported in Press, Journal/Media	:	Yes/No
(ii)	Whether to be reported in Journal/Digest	:	Yes

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**Per Kotwal-J**

1. State is in appeal against the judgment of acquittal dated 12.02.2015 rendered by the court of learned Sessions Judge, Budgam in Session Case No. 142/S, whereby respondents-1, 3, 5 and 6 have been acquitted after their trial for offences under sections 376, 109 RPC arising in FIR No. 40/2013 of Police Station, Khansahib. When this appeal came up before a Division Bench of this Court at Srinagar on 03.03.2015, the learned Bench stayed the impugned judgment to the extent of respondent No. 1, Gulzar Ahmad Bhat (hereinafter, for short, R-1) and issued direction for taking him in judicial custody.

2. We have heard learned counsel for the parties and perused the record.
3. Facts of the prosecution case as set out before the trial court are that R-1 was running a religious institution, namely, Noorni Fatima Zuhra (Radia-allah tallah Anhuma) at Shamsabad, Chadoora. PWs 1 to 5 (names not to be disclosed herein) had secured admission in this institution. On 18.05.2013 PWs 1 to 4 lodged a written information (for short the FIR) to the Dy. S. P. Budgam alleging that R-1 has repeatedly raped them. They alleged in the FIR that R-1 had been calling them individually in his room, he used to play his tape recorder at such high volume that their voice and screams were not heard outside the room and to make them unconscious by administering magic or reciting mantras. All this continued up to 06.12.2012 they alleged. On this information, offence under section 376 RPC came to be registered at Police Station, Khansahib on 19.05.2013 as FIR No. 40/2013 and investigation by the police commenced.
4. The Investigating Officer (I.O.) prepared sketch map of the place of occurrence, he seized articles like mattresses, tape recorder etc. from the bedroom of R-1 and sent some of the seized items for chemical analysis to the Forensic Science Laboratory, Srinagar. PWs 1 to 4 were got medically examined. R-1 was also got medically examined for his potency check up. Statements of PWs 1 to 5, were recorded in terms of section 164-A of the Code of Criminal

Procedure (Cr.PC). On investigation it was found that R-1 committed rape on PWs 1 to 4, whereas respondents 2 to 13 facilitated and assisted in commission of the offence by R-1. Commission of offence under section 376 RPC was thus, established against R-1 and offence under section 376/109 RPC was established against the other respondents. Respondents 1 to 6 were arrested whereas others could not be arrested as they had absconded.

5. On completion of investigation the SHO, Police Station, Khansahib preferred charge-sheet for commission of offence under section 376 against R-1 and section 376/109 RPC against the others in the committal court. Learned committal court initiated proceedings under section 512 Cr. PC against respondents 7 to 13 and committed the case to the court of learned Sessions Judge, Budgam for trial. The trial court vide its order dated 16.09.2013 framed charge under section 376 RPC against R-1 and 376/109 RPC against respondents 2 to 6. They denied the charge and claimed to be tried. Prosecution thus, entered its evidence and, besides PWs 1 to 5, produced twelve other witnesses, namely, PWs 1-5, Gh. Rasool Bhat (PW-6), Shabir Ahmad Bhat (PW-7), Gh. Mohammad Bhat (PW-8), Nazir Ahmad Ganaie (PW-9), Bashir Ahmad Bhat (PW-10), Dr. Shaheena Mir(PW-11), Dr. Misbah Samad (PW-12), Syed Ahmad Shah, Sub Inspector (PW-14), Gh. Jeelani, Sub Inspector (PW-15), Bashir Ahmad Dar, Dy.SP, SDPO, Khan Sahib, (PW-16), Harmeet Singh, Additional SP, Budgam (PW-17) and HC

Nazir Ahmad (PW-18). Mohammad Hussain Shah, cited as PW-13 in the charge sheet, however, died before his evidence in the court.

6. The trial court examined respondents 1 to 6 in terms of section 342 Cr. PC and vide order dated 27.11.2014 acquitted respondent Nos. 2 and 4 in terms of section 273 Cr.P.C. Respondents 1, 3, 5 and 6 produced six witnesses in their defence, namely, Sami Jan (DW-1), Sakeena Maqbool (DW-2), Latifa Banoo (DW-3), Irshad Rashid Wani (DW-4), Gulzar Ahmed Bhat (DW-5) and Mohammad Altaf Parray (DW-6). Learned trial court vide the impugned judgment dated 12.02.2015 acquitted respondent Nos. 1, 2, 5 and 6 holding that prosecution has failed to prove guilt against them beyond any shadow of doubt.
7. The judgment rendered by the learned trial court is assailed in this appeal *inter alia* and primarily on the grounds that the same suffers from non application of mind by the learned trial judge, undue weightage has been given to the factum of delay in lodging the FIR and the consistent, coherent and overwhelming depositions of the victims have been brushed aside on flimsy grounds.
8. The submissions advanced on behalf of the respondents mainly revolved around the scope of interference by this Court in appeal against a judgment of acquittal recorded by the trial court. It was contended by the learned Senior Advocate, Mr. P. N. Raina, appearing on behalf of the

respondents that in an appeal against an order of acquittal, it is not open for the appellate court to interfere with the finding recorded by the trial court unless it is shown that such finding could not have been arrived at and the reasoning recorded by the trial court is perverse. Learned counsel cited various authorities of the Supreme Court to emphasize that the presumption of innocence, which every person carries as a fundamental principle of criminal jurisprudence, is reinforced by the acquittal secured by him from the trial court and ordinarily appellate court should interfere only if there are compelling reasons. Mr. Raina argued that appellate court has not only to see whether conclusion other than that recorded by the trial court could have been arrived at but must also closely and carefully examine the reasons that impelled the trial court to acquit the accused and should interfere only if satisfied after examination of record on trial court file that judgment of the trial court is patently wrong and perverse. Mr. Raina sought to point out by reading the impugned judgment that learned trial court has recorded well founded and cogent reasons for not relying upon the evidence of PWs 1 to 5 in backdrop of the inordinate delay of about six months in lodging the FIR, enmity of witnesses towards R-1 and absence of any other corroborating evidence. Mr. Raina, thus, supported the impugned judgment and submitted that no case for showing indulgence by this

court is made out and the appeal deserves dismissal on this score only.

9. Per contra, learned Additional Advocate General, Mr. M. A. Rather, argued that judgment rendered by the trial court is perverse inasmuch as learned trial Judge has rejected prosecution version for peripheral reasons, like delay in lodging FIR, which has been sufficiently explained, and assumed enmity of the victims of offence towards R-1, without even discussing the evidence of the victims of ghastly acts of repeated rape committed on them by the head of a religious institution in whom parents of these young girls had reposed confidence by entrusting their care and protection to him for undergoing religious education. Mr. Rathore submitted that the judgment rendered by the learned trial court is perverse and there are no limits to the jurisdiction of this court in interfering with such a judgment so that ends of justice are not defeated.
10. Before taking up the rival contentions on their merits, we would be reminding ourselves about the legal position in regard to the power of the appellate court in hearing appeals against acquittal.
11. In **Chandrappa and others v State of Karnataka, (2007) 4 SCC 415**, cited on behalf of the respondents, Supreme Court after surveying leading decisions on the point starting from the decision rendered by the Judicial Committee of the Privy Council in **Sheo Swaroop v R.**

**Emperor, AIR 1934 PC 227** has formulated following 'general principles regarding the powers of the appellate court, while dealing with an appeal against an order of acquittal' in para 42 of the reporting:

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(underlining by us)

12. In **Ganesh Bhavan Patel and another v State of Maharashtra, (1978) 4 SCC 371**, cited on behalf of the respondents, which is not referred to in Chandrappa's case, a learned three Judge Bench of the Supreme Court has held that 'High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal'. In **Awadhes and another v State of Madhya Pradesh, (1988) 2 SCC 57**, cited on behalf of respondents, which too is not referred to in Chandrappa's case, it is held that 'unless the conclusions of the trial court drawn on evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal'.
13. In **M/s Siya Ram and others v State of M.P. 2009 CrLJ 2071** cited by learned AAG, Supreme Court has held that there is no embargo on the appellate court reviewing the evidence on which the order of acquittal is based but generally the order of acquittal shall not be interfered with because the presumption of innocence is further strengthened by a acquittal. Nonetheless, Court has further reiterated that 'the paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice



which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.

14. In **Dilawar Singh v State of Haryana, (2015) 1 SCC 737** Supreme Court has referred to Chandrappa's case with approval and has further reiterated that 'unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal'. In **Vinod Kumar v State of Haryana, (2015) 3 SCC 138**, Supreme Court once again has referred with approval to Chandrappa's case and reproduced a passage from an earlier judgment of the Court in **Jadunath Singh v State of U.P. (1971) 3 SCC 577**, where the Court has reiterated the constantly taken view that 'in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon the evidence the order of acquittal should be reversed'.
15. In the series of decisions on the point, the latest reported case is **Bhawan Jagannath Marked and others v State of Maharashtra, AIR 2016 SC 4531 decided on 04.10.2016**. Their Lordships have held in para 28 of the reporting:

"28....There is no doubt about the proposition that the appellate court has to arrive at an independent

conclusion about the credibility of the evidence and to reappreciate the evidence to arrive at a just conclusion. If the appellate court is to reverse the judgment of the trial court, the reasoning of the trial court has to be adverted to and reversal of acquittal is permissible only if the view of the trial court is not only erroneous but also unreasonable and perverse. At the same time, the appellate court has full power to review the evidence and to reach at its own conclusion. The appellate court has to consider the fact that the trial court has the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the acquittal. If two reasonable conclusions can be reached, the appellate court should not disturb the finding of the trial court in the present case, the High Court has followed the above principles.”

16. The legal position is, thus, clear too and we are sure enough that we have no confusion in our minds in this regard. The appellate court has the power as well as duty to review, appraise and accord consideration to the evidence led by the parties at trial and arrive at its independent conclusion. Since, however, the acquittal has doubled and reinforced the presumption of innocence in favour of an accused, which every person carries as a fundamental principle of criminal jurisprudence, a duty is cast on the appellate court to accord consideration to the reasoning recorded by the trial court in support of the order of acquittal and to set aside the acquittal only if there are compelling reasons, that is, the reasoning given by the trial court is found not only erroneous but unreasonable and perverse and the acquittal is not justified. Purpose to be achieved is that ends of justice are not defeated by unjustified acquittal of a guilty.

17. We may here state briefly the scheme of the evidence recorded by the trial court. Eighteen witnesses have been cited in the charge sheet. Seventeen of them have been produced and examined before the trial court, whereas one, namely, Mohd. Hussain Shah, Executive Magistrate (PW-13) died before his statement could be recorded. We, however, have noticed that learned trial court has mentioned in the judgment, which seems inadvertence, that 21 out of 22 witnesses were produced and examined by the prosecution. PWs 1 to 4 as per the charge-sheet are victims of the alleged offence and therefore, the eye witnesses. PW-5 is also a victim on whom allegedly attempt to rape was made by R-1. PWs 6 and 7 are cited as supporting witnesses. PWs 8, 9 and 10 are witnesses to various seizures said to have been effected by the I.O. PW-11 is the doctor, who examined the victims(PWs 1 to 4) and PW-12 is the doctor, who examined R-1 to check his potency. PWs 14 to 17 are Police Officers, who remained associated with investigation of the case at different times. PW-18 is a Head Constable before whom accused No. 1 is said to have made confessional statement.
18. Besides the witnesses produced by the prosecution, learned trial court has summoned and examined two Judicial Magistrates, Ms. Fouzia Paul and Mr. Gowhar Majeed Dalal, who had recorded statements of the victims in terms of section 164A Cr. PC. The trial court also allowed

the prosecution to produce two Chemical Analysis reports (Ex.PW-MAQ and Ex.PW-AG) and to call and examine two Scientific Officers, namely, Manzoor Ahmed Qadri and Abdul Gani as prosecution witnesses.

19. Detailed resume of the depositions of the witnesses is given in the trial court judgment. Here we give gist of the important evidence of each of the five eye witnesses (victims) and the two supporting witnesses, shorn of unessential:
  - i) **PW-1**, whose statement was recorded on 28.11.2013, deposed before the trial court that in the month of June of the preceding year, R-1 had organized a religious gathering in their village in which R-1 was introduced as 'Alambardar' having been sent as a Messenger of God for kashmiri people. In that gathering it was said that in the religious institution at Shamasabad, Holy Quran is being taught and forms were distributed. She also got her name registered. Another religious gathering was held in their village and after that she, Masrat, Dilshada and her brother Tariq Ahmed Wagay went to Shamasabad. After completion of two months, one Afshana informed her at about 10/11 P.M. that 'Bub' is calling her. She was excited on knowing that 'Alambardar' was calling her. She entered the room where R-1 asked her to bolt the door. He enquired about her family from her and said that he possesses seven positions and will give one of them to her but she should

not divulge this secret to anyone. She was happy knowing that she may get some position. R-1 then asked her to give her hand in his hand and to swear in the name of God that she will not divulge this to anyone and the matter shall remain confined to both of them. R-1 then told her that her body is like fire whereas his body is 'Noor' (blessing). He further said that any part of her body, which would be touched by his body, will remain safe from fire of hell. He then gave her water to drink and took her up on the bed. He undressed her 'salwar' (trousers) and underwear. She was watching everything but was unable to speak or cry. R-1 kept the tape recorder at high volume and used to gag her mouth whenever she cried. He then committed forcible sexual intercourse with her and thereafter, said that she has to sleep naked with him. After committing sexual intercourse with her, R-1 spoke to her in a way as if he has done nothing. He told her that she will not conceive so she should not worry in this regard and should not divulge this secret to anyone, even to her family members. He then again gave her water to drink and asked her to go. The lady, who had earlier called her, was present outside the door. She embraced and tried to console her saying that you are lucky to have got such a status from 'Bub'. R-1 committed rape on her thrice in the same manner. One day she, Rutba, PW-2 and PW-3 were sitting together whereas their fourth friend PW-4 had gone to her house. PW-2 said that whatever they are doing here is wrong.

They were planning to prepare a video and show it to all. Their discussion was overheard by one Khalida, who informed the Ameer (head), Naseema. Naseema then enquired from her and she told her that she has been raped two/three times. R-1 then called them in his room one by one and threatened them that in case they disclose the matter to anyone their family members will be harmed. The female accused persons then confined them in different rooms and were not allowing them to talk to each other. PW-2 established telephonic contact with her family members from the bathroom and narrated the incident to them. Maternal uncle and paternal uncle of PW-2 came there. The female accused persons tendered their apology to them and asked them not to publicize this secret. She and PW-3 met the uncles of PW-2 and on their asking we told them that they have been raped. R-1 was called there. PW-2 stood up and told him that he had called her at 11 O'clock in the night and committed sexual intercourse on her. On this the maternal uncle of PW-2 inflicted a fist blow on waist of R-1. There was a quarrel between the supporters of R-1 on one hand and PW-2 and her uncles on the other. People present there started saying that they were telling lie. On this Rutba said that let anyone of them be got medically examined to ascertain the truth. After that they left that place at 3 O'clock in the night. Afterwards they approached Asiya Andrabi and went to Bandipora for seeking justice. As none came forward for

redressal of their grievance, they went to SSP, Ajaz Malik. The uncle of PW-2 got an application (Ex.PW-2) scribed on their dictation. Later their statements were recorded under Section 164-A Cr.P.C. In cross-examination she has stated PWs 2 o 4 are her close friends. She was not taken to the place of occurrence during investigation and the tape recorder in question has never been shown to her. She had not stated before the police that accused used to recite 'mantras' though she had stated so before the Judge. The water in question used to be given to everybody who would enter the room, sick or healthy. The water was of common nature and not bitter. She had become unconscious and motionless though she could see and hear. Police had not got the place of occurrence or the bed on which act was committed identified from her. They had left the institution in December, 2012. They again met in the month of June, 2013 and went to SSP, Ajaz Malik. Molvi Mohd. Amin is not known to her nor she has heard about him. She had not gone to Islamabad to meet Molvi Mohd. Amin. She does not know whether in her statement under Section 164-A Cr.P.C. she had made a mention of any Molvi Mohd. Amin of Islamabad. She did not narrate the incident to anyone after December, 2012 till 18.06.2013. However, she had narrated the incident to those four persons who had arranged her admission in the institution. Their names are Gulzar Ahmed, Tariq, Touseef and Sher Mohd. Wani. She had stated in her statement under Section 164-A Cr.PC

that they had gone to Molvi Mohd. Amin at Islamabad and in that, what she stated in the Court that she does not know Molvi Mohd. Amin is wrong and a lie. The statement recorded in the Court was not read out and explained to her. She had remained in that institution from June 2012 to December, 2012 and in this period she did not narrate this incident to anyone because they had been threatened with dire consequences. However, R-1 neither was a militant nor was possessing any weapon. She met Asiya Andrabi and Molvi Nazir Ahmad.

- ii) **PW-2**, whose statement was recorded on 01.10.2013, has stated that she had secured admission in Darul-Uloom at Latter Chadoora. Everything was well during first two months. After two months, R-1 called her through accused No.5 and told her that she is going to be made a teacher. Accused No. 5 had advised her that she should not divulge to anyone whatever happens to her inside the room. As soon as she entered the room of R-1 the latter enquired about her family from her. She stated about her family. Nothing more happened at that time and she came out. Two/three days later accused No. 7 Shakeela told her that as you are going to be made a teacher you should not share with anyone the happenings inside the room of R-1. Accused No.7 then took her up to the room of R-1, which was called as 'Hujjra Pak' at 11.30 in the night. R-1 gave her water to drink. He told her that God has given him seven positions and one position he is conferring on her. She



became happy as R-1 used to pose himself as 'Alambardar'. R-1 then asked her to make a promise that she will not divulge to anyone whatever happens in the room and that she has to perform Nikha-i-Rehbari with him. Besides, R-1 told her that her body is a fire and his body is Noor and in case the two bodies meet, her body will also become Noor and will be saved from fire of hell. After that R-1 gave her water and made her to sit on his bed and committed sexual intercourse with her forcibly. She was seeing all this but was not in a position to move because something had happened to her after drinking the water given to her by the accused. During the commission of this act, R-1 had kept electricity on and tape recorder at high volume so that her voice does not go out and used to close her mouth by his hand. The accused then gave her some water and told her that she need not take bath and can recite Quran. Accused Shakeela was present at the door when she came out of the room. She took her to her room and told her that she is lucky for having been touched by R-1. She believed in what Shakeela told her as she was elder to her and an educated person. Twelve days later, accused No.6, Khalida told her that R-1 was calling her and she took her forcibly to the room of R-1 where R-1 raped her. He gave her some water to drink undressed her and undressed himself also. He applied some oil on his penis and committed sexual intercourse with her. She cried but he gagged her mouth. She understood that all this was wrong

and conveyed this to Khalida Bhat. Khalida and Naseema told her that R-1 is a messenger of God and Naseema further told her that in case she will defame R-1 her family members will suffer from bad health. Khalida also told her that same thing will happen with her (witness) sister tomorrow. She told accused No. 4 also but she gave a beating to her and asked her to remain quiet. R-1 got information of all this. He called her in his room. He asked her to keep quiet and by keeping Holy Quran on her head asked her to swear that she will not narrate the incident to anyone. She telephoned her paternal uncle and told him that wrong is being committed to the girls in the institution. Phone was provided to her by R-1 as she used to provide phone to a girl with whom he used to have sex. After that her maternal uncle and paternal uncle reached there at 10 in the night. In the meantime, she had approached the other two girls with whom also R-1 had committed sex. Number of persons had collected there. R-1 and his associates were also present. She said in presence of all that R-1 has raped her and that she be got medically checked. R-1 flatly denied. She said that let all the girls be got checked up but R-1 did not agree. She left the institution along with her maternal uncle and paternal uncle on 06.12.2012. After that they tried to raise this matter at various forums including Darul-Aloom, Bandipora and also went to Asiya Andrabi but they did not intervene. On 22.06.2012, they went to Police Station, Budgam and

made a statement. They submitted a written application (EX PW-2). In cross-examination, she has stated that she has read up to 9<sup>th</sup>, she left school in 2011 and her date of birth is 04.05.1996. Her elder sister was also studying in Darul-Aloom. She remained in the said institution for five months. During this period she used to go to her home for one or two days every month and once had remained in her home for one and a half months as her uncle had died. R-1 had raped her twice. He raped her prior to death of her uncle also but at that time she did not narrate the matter to her family members as conditions in her family were not good. She did not disclose the matter to her sister as she was feeling ashamed. She was feeling that whatever R-1 was doing to her was wrong. She used to cry on feeling pain but R-1 used to gag her mouth. She used to talk to PWs 3, 4 and 5. One and a half month after leaving the Darul-Aloom they had gone together to Darul-Aloom, Bandipora and to Asiya Andrabi. At Bandipora they met Mufti Nazir Ahmad. Her uncle and father of Roohi had accompanied them to Bandipora.

- iii) **PW-3**, whose statement was recorded on 14.10.2013, has stated that she was admitted in the institution set up by the accused persons on 11.01.2011 and left it on 06.12.2012. R-1, Gulzar Ahmad was head of the institution, he was imparting religious education and used to call himself a religious head. Khalida, Gazala, Arshida, Naseema, Jabeena etc. were working as Madams in the

institution. Once Haseena called her and informed that Baba, that is, R-1 is calling her. She got excited thinking that she is likely to get something. She entered the room. On asking of Baba she put tobacco in the hubble-bubble lying there and in the meantime on asking of Baba she narrated her family affairs to him. The Baba said that he is bestowed with seven positions such as 'Zakir Alfaaz', 'Chaar Zarub', 'Muqaami Mehmood', 'Almi Ludni' etc. and that he will give one position to her today. He said that this should remain a secret between them and in case she divulges it to anyone she will incur risk to herself and to her family members. R-1 then put his hand on her hand and asked her to swear in the name of God and her Prophet not to divulge this secret to anyone. He then said that her body is 'Naar', that is, fire, whereas his body is 'Noor' and in case their bodies meet together, her body will also become 'Noor'. He then made her to sit on the bed. He undressed himself and also undressed her and committed sexual intercourse with her. He then said that they have not committed any sin and this should remain a secret between them. While committing sexual intercourse with her R-1 had switched on a light and played the tape recorder at high volume and gagged her mouth when she screamed. When she came out of the room she found Gazala there, who congratulated her saying that the Priest has given her a position, which she should not feel bad about and that the same would be a secret between her

and R-1. She also said that Nikah with Guide is necessary even though she may not have worldly Nikah. They had not been breaking this secret due to fear and terror. She had been thinking that all this is wrong but was unable to divulge this to anyone. She was raped more than ten times. Once PW-2 confided with her and said that she has also been raped. Both of them then vowed that they will save the other girls undergoing education in the institution from these acts of rape. They then consulted PWs- 4 and 5, who had also been raped by R-1. PW-2 rang up her family on 06.12.2012. Her family members came to the institution. On their asking as to whether she has also been raped, she replied in affirmative. On this R-1 called her in her room threatening that she and her brothers would be killed. He put her hand on Quran and asked her not to divulge the matter to anyone. After that she came out of the room of R-1 when accused Naseema and Jabeena asked her to swear in the name of Hazrat Fatima that she will not divulge the secret to the parents of PW-2 and any sin in this regard would be on their heads, that is, Naseema and Jabeena. She, however, informed the family members of PW-2 about the incident. This caused a commotion. They asked that let R-1 be brought there and they will say everything at his face. R-1 in the meantime had called his associates and he said that PW-2 be asked as to whether he has committed rape on her. On this, PW-2 said in the presence of all that yes this has happened. Accused No. 2

said that they are telling lie. On this Bisma said that let they or any other girl residing in the institution be got medically examined. After that she, PW-2, PW-5 and Asiya left the institution with the family members of PW-2. Thereafter they visited many institutions and leaders including Asiya Andrabi and Mufti Nazir but did not get justice anywhere. They then lodged report with the police. They had gone to Police Station, Humhama with the uncle of PW-2 where report (EXPW-2) was lodged. Her statement under Section 164-A Cr.PC was recorded in the Court. In her cross-examination, she has stated that she has read in Alnoor English Medium School at Mundina, Pulwama up to 8<sup>th</sup> class. She has passed 12<sup>th</sup> standard. Her date of birth is 05.05.1994. She had given her 10<sup>th</sup> class certificate to police. R-1 used to keep the tape recorder at high volume so that her screams due to the pain of sexual intercourse do not go out of the room. She was raped in the year 2011 but she cannot state the exact day and date. The FIR was lodged two and a half years after the commission of act with her. All of them had met two/three times before lodging the FIR. They had not named the other accused in the FIR though they were knowing all of them even at that time as they were under impression that they will state their names when proceedings on their report is initiated. She knows PW-5, who was also undergoing education in the said institution. She had left that institution earlier than 6<sup>th</sup> December. R-1 used to make them motionless by

reciting 'mantras' though they could see everything. She cannot say whether she used to become unconscious by reciting of mantras or by drinking the water. R-1 used to give water from a Jug kept in his room. Madams present outside the room used to console them. R-1 did not allow her to go her home for first three months though her parents used to come there. Her parents had come there five/six times. She does not know anything about marriage or sex in bed. She can make out difference between profit and loss and sin and virtue. She, PW-2 and PW-1 had gone to Molvi Mufti Nazir to Bandipora accompanied by her father and uncle of PW-2. They narrated whole story to him. Entire story was narrated to him by her and PW-2 one after the other. PW-Rasool Bhat did not accompany them to Bandipora. They had gone to Mufti Nazir with the idea of knowing as to whether the act which R-1 had committed with them was religiously right or wrong. Molvi Nazir had said that 'committing such act is a sin'. They had gone to Mufti Nazir for obtaining a religious legend certificate but he did not give the certificate in writing. Molvi Mohd. Amin of Anantnag is not known to her and she or the other girls had not gone to him. Molvi Mohd. Amin had not brought them to Police Post, Humhama. She had a meeting with Asiya Andrabi only once. She was accompanied by other witnesses and her father and uncle of PW-2. They had gone to Asiya Andrabi so that they could get justice and narrated their woeful story. She assured that action in the matter

will be taken so that justice is done to them. However, no action was taken. They did not approach any pro India leader or any person other than Asiya Andrabi and Mufti Nazir. They did not approach any higher or superior police officer. She did not go to the institution after having left the same and did not identify to the police, the room in which she was raped. R-1 used to gag her mouth with her hand not to allow her to cry.

- iv) **PW-4**, who was examined on 06.02.2014 has stated that she had got admission in Darul-Aloom of R-1 at Shamasabad. The other accused were engaged as teachers there. In first phase she stayed there for one and a half month. After that she came to her house and returned back after one month. A few days after her return accused Haseena called her at 11.30 in the night and informed that accused, that is, 'Bub' is calling her. She went to the room of R-1. On his asking she bolted the room. R-1 then enquired about her family and said that God has bestowed him seven positions, one of them being 'Almiludini' and that a Muslim will not be a true Muslim until and unless he has faith in him. He said that he is going to give one position to her, which she should not divulge to anyone and further that in case she confides with anyone she and her home would suffer harm. He kept his hand on her hand and obtained a promise in the name of Quran Pak. He then gave her water to drink and took her on her bed where he committed illicit act with her. He was playing a tape



recorder at high volume which did not allow any noise to go out. On coming out of the room she found Naseema and Jabeena outside the room, who said that this was a guidance and there was nothing wrong. They said that in case he calls her during her prayers she will have to go. R-1 had said that whatever part of her body he would rub with his hands that part would not burn in hell of fire. Likewise, she was called by Shubi of Tangmarg saying that 'Bub' was calling her in the night and at that time also illicit act was done with her. At that point of time, she felt that this is wrong and she talked to PW-3. She then pretended with R-1 and others that she has to go to Amritsar for her treatment and left that place at 11 O' Clock in the day. On the same day, they locked PWs- 1, 2 and 3. The maternal uncle and paternal uncle of PW-2 came to her house and they informed her that these witnesses have been kept in confinement by R-1 and that illicit act is being done there. They enquired from her whether illicit act has been done to her also and she replied in affirmative. Till then she had not disclosed this to her family members. Thereafter they went to many places for redressal of their grievance. Everyone would say that they would solve the matter but nothing happened. They then went to one Mohd. Amin hailing from their locality but he showed his helplessness and advised them to approach the police. They first enquired from him whether this was the religion, who replied in negative and advised that approach the police

for action. They then went to police station, Humhama accompanied by her brother and maternal and paternal uncles of PW-2. They lodged report (EXPW-2) there. Their statements were recorded under Section 164-A Cr.P.C. In cross-examination, she has stated that she does not know her date of birth but her age is 18 and it is not correct that her age is 32. She had remained in Darul-Aloom for two/three years. Attendance was marked there. During this period she had gone to her house number of times. First time she stayed at her home for six/seven months. After that she remained in the institution for one month but returned to her home due to ailment of her father. During these three years, neither anyone had told her that wrong has been done to her nor did she tell anybody that wrong has been done to her. R-1 used to give her water to drink whenever he committed wrong with her but she cannot say how many times this was done. She used to lose sense whenever water was given to her. She never accompanied police to that room. She had screamed but nothing could be heard in the noise created by tape recorder. She had screamed on first two occasions and never after that. She did not narrate the incident to her family members or to her friends out of shame. Ten days prior to her last departure from the institution, rape was committed on her. She had left the institution on 6<sup>th</sup> December and she had been raped ten days prior thereto. She was not knowing this from her childhood. She knows

Molvi Mohd. Amin, he also runs a Darul-Aloom at Islamabad. His father knows Molvi Mohd. Amin and he had told her about him. She left Darul-Aloom last time in the month of December and two/three months thereafter her father came to know about the wrong having been done to her. She had told her brother, Khursheed Ahmad Ganai, that wrong has been committed with her. Her brother did not go to police but had gone to Asiya Andrabi and others. She does not remember on which day or in which year they had gone to Asiya Andrabi or had lodged the report. However, report was lodged after three months. She had lodged a complaint with her native villagers, that is, Dr. Nazir Ahmad, Mohd. Ayoub, Reyaz Ahmad, Muzaffer Qadir Teli and Firdous Ahmad etc. She had gone to Molvi Mohd. Amin once only with her brother and PWs 1, 2 and 3. Uncle of PW-2 was also there. She had gone with them to Asiya Andrabi but did not accompany them to Bandipora. She had complained before Asiya Andrabi, Molvi Mohd. Amin besides Nazir Ahmad etc. Dr. Nazir Ahmad and Muzaffer Ahmad did not say that she was telling lie when complaint was lodged to them. However, later they had said that she was telling lie. It is not true that Molvi Mohd. Amin had used them and hatched a conspiracy in order to defame the Darul-Aloom of R-1 which had gained popularity and people of his area were also going there. They had gone to Molvi Mohd. Amin after having gone to Dr. Nazir Ahmad and others. Wrong has been committed to her and she is

not making a wrong statement. She had gone to police at Humhama and was accompanied by her brother, Khursheed, maternal and paternal uncle of Rutba and three witnesses. Mohd. Amin had said in Islamabad to go for police action and he had accompanied them up to Humhama and had left after that. Mohd. Amin did not hand them over to any police officer.

- v) **PW-5**, whose statement was recorded on 21.02.2014, has stated that she had joined the institution at Shamasbad in the month of March, 2012. In first phase, she remained there for one month. During this period, once, one of the accused had called her at 11.30 in the night and had said that she has been called by Peer Sahib. Two girls were already sitting there. Peer Sahib told her to get ready, learn Quran and that she has to bring other girls from her locality. He then gave her water to drink and she left. Five/eight days later Gazala, who was a Madam there, called her at 11.45 in the night. Two girls were already sitting in the room, who left the room on her reaching there. R-1 asked her to close and bolt the door. He asked her to give her hand in his hand and make a promise that she will do whatever he tells her. She said OK. He said that she has to perform divine Nikah with him and asked her to sit on the bed. He said that he will have sex with her. He pushed her back and she was about to fall from other side of the bed. Before she could say yes or no the accused gave a bite on her cheek. She started weeping and tried to stand

up. There was a bottle of oil which fell on her clothes. She started running away from there but R-1 asked her not to run away as he has to tell her something. She did not stop there and asked accused, Khalida to accompany her to washroom. After coming out of the washroom, she rested her head on the shoulder of Khalida and started weeping profusely. On being enquired by others about cause of her weeping she said that she is feeling home sick, she does not want to stay there and wants to go to her home as she is feeling home sick. Those people, however, told her that she would not understand all this at that stage but would realize later as to what guidance means. She then said that she will stay there only on the condition that she is not again invited in the room of R-1. She remained there for one month more and after that left for her home for filling up her examination form and in connection with marriage of her brother. She returned after about two months and was never called alone. She returned back to her home after remaining there for nine/twelve days after collecting her clothes etc. After that quite often she had been getting telephonic calls from the management of the institution calling her back but she replied that she is unable to return as her examinations were going on and did not return at all. She got information through net and newspaper that case has been registered. Her father was informed by Police Station, Pampore that she has been called by the police. She went to Police Station, Budgam along with her

father. She told the police that nothing has happened to her. On her return to her house, she narrated to her father as to what had happened with her. Her father then accompanied her for recording her statement (EXPW-5) under Section 164-A Cr.P.C. in the Court. In cross-examination, she stated that she has completed graduation and is preparing for post-graduation. Her date of birth is 05.06.1996. PW-1 is not known to her but she knows PWs 2, 3 and 4. They are not her friends but she had seen them in the institution. She never narrated this incident to these witnesses nor did they ever tell her anything in this regard. She had never discussed this case with the other witnesses until she got information through internet and newspapers. During the period of her stay in the institution, she had seen marks of bite on cheeks of a number of girls like the one which R-1 had inflicted on her cheek. She had seen such a mark on the cheek of PW-3 also and the arm of accused Khalida. R-1 had inflicted the bite on her left cheek and its mark had continued for two or three days.

- vi) Evidence of **Ghulam Rasool Bhat, PW-6**, is that his daughter, PW-2, was given admission in that Darul-Aloom in March, 2012 and she had remained there for one and a half months. Once he had gone to bring back his daughter in connection with marriage of his son where she had told him that she does not want to stay there and will go to college from her home. In the month of December, Ajaz,

the uncle of PW-2 a resident of Wuyan contacted him on telephone and asked as to what has happened at Shamasabad as his daughter has telephoned him and she was weeping. He replied that he does not know anything. He rang up Shah Sahib, the accused No. 2, and enquired from him. Accused No.2 told him that there is something among the girls, that he should not come there and that he will call him back. He did not get any call from Shah Sahib. As he was getting repeated telephone calls from Wuyan so he asked them to come to his house. The two brothers, Ajaz and Shabir, came to his house on their scooter. At their insistence he took them to Shamasabad in his vehicle. Shah Sahib came to them also brought R-1. On his asking he said that nothing has happened. Ajaz asked him as to where the girls were and in the meantime four girls came there, two of them were sisters. Three girls said something to their uncles, Ajaz Ahmad and Shabir Ahmad, which he did not hear and on this Ajaz Ahmad and Shabir Ahmad caught hold of and pounced on R-1. About 30/40 girls collected there and there was a commotion and fight between two sides. R-1 was taken to another house. In the meantime, Noor Mohd. Parray, Tariq Ahmad Kakpora and Irshad Ahmad Wani also reached there. He enquired from the girls as to what is the matter who said that they have been ruined and that R-1 has raped all three of them. Irshad Ahmad and Tariq Ahmad said that they will find out some solution. He (witness) suggested that the institution

should be closed for the time being and all 30/40 girls should be sent to their homes. However, Irshad Ahmad did not agree to this. Girls were not willing to stay there and Shah Sahib was saying that they would be sent back the next day or day after next. He boarded two girls in his vehicle and two girls were boarded in the vehicle of Noor Mohd. He dropped those girls in their homes. He enquired from his daughter about the situation at Darul-Aloom, who replied that situation is bad there and she will not go there. After that in January or February, 2013, he was called by the police and he had given his statement. In cross-examination, he stated that once his daughter had wept on phone and had asked as to when he was coming there as she wants to come home. She did not say anything about the institution, when she had come home. On his asking about cause of her weeping she had said that situation was not good there and she wants to come back. The girls hailing from village Wuyan were known to him as they used to come near their field for collecting Saffron. Police Station, Pampore had informed him to visit Police Station, Khan Sahib. SDPO, Khan Sahib was not known to him up to that time. Police Station, Pampore has asked him to go along with his daughter to Police Station, Khan Sahib. This was in the year 2013 but he does not remember the month.

- vii) Evidence of **Shabir Ahmad Bhat, PW-7** is that his niece, PW-2, was reading in the Darul-Aloom of R-1, Gulzar



Ahmad, for religious education. She was admitted there in last six months of 2012 and remained there for 5/6 months. Once she rang up his sister, she was weeping and informed that R-1 has committed illicit act with her. His sister informed him in this regard. He called his brother and reached Shamasabad along with one Ghulam Rasool of Andrusa. They reached there at 10 in the night. He found his girl and two other girls weeping. All of them told him that wrong has been committed to them. R-1 was also called there and at his face, his daughter (PW-2) stood up and said that he has committed wrong with her. On this he slapped R-1 and in the meantime, people starting collecting there. His brother sustained injury and R-1 was taken away from there. Those people rang to different places and number of persons collected there. One person hailing from Magarmal Bagh took him and his brother to a room and asked him to take his girl from there whereas they will not release the other two girls. One girl hailing from Pulwama begged before him to get her released from there. She also rang to her father. They then brought the girls from there in two vehicles. Doctor and Shah Nawaz, who are persons of his father's stature asked him not to lodge FIR as they will sort out the matter. Shah Nawaz gave his telephone number to him but did nothing. He thought that if no action is taken many other girls will get victimized. He then approached Darul-Aloom, Bandipora along with his girl and another girl where their statements

were taken. They assured that they will enquire into the matter but nothing was done. Then he went to Asiya Andrabi but nothing was done by her also. Then one person, who was head of some Molvi Organization came to Anantnag and said that action shall be taken through police. They then went to Ajaz Malik of Police at Humhama. The police personnel present there got the report written. In cross-examination he has stated that he is a driver by profession if there is a fight, one will lodge report at police station. They had first approached Darul-Aloom so that some action is taken there. He knows Irshad Ahmad of Magarmal Bagh to whom he had said that they will lodge FIR against the accused but he had requested not to do so. After that they went to many places for redressal of their grievance but nothing was done. They lodged a report at Police Station, Humhama. They were accompanied by Molvi Mohd. Amin and one civilian had written the FIR.

20. Defence set out by the respondents before the trial court was strong denial of the charge and the entire implicating evidence and a plea that they have been falsely implicated. It was contended by R-1 in the explanation given in his statement under Section 342 Cr.PC that lot of people had been attending his religious gatherings, which had caused great worry to his opponents who in a well planned conspiracy have got him implicated in a false case. He never claimed to be an 'Alambardar' (Prophet). He

preaches peace and tranquility and advises the people to follow tenets of their religion, that people of all religions have a right to live and religion should not be imposed upon any person. In regard to PWs 1 to 5, R-1 alleged that they had been adopting a wrong way of life and creating indiscipline in the institution. They had been talking to outsider boys on telephone and indulging in wrong activities. The management of the institution had been restraining them from their activities, which had caused worry to them. They got annoyed after their such activities were banned and in connivance with his opponents they hatched a conspiracy against him and got him involved in this false case. He has stated also that due to his increasing popularity conspiracy against him was hatched by one Mohd. Amin, who is a neighbour of PW-4 Shaheena and was running his own religious institution, which had only five to seven students.

21. The bottom line of the evidence rendered by the defence witnesses is in line with the plea of R-1 as also his allegation against PWs 1 to 5. In context of defence plea it is important to refer to the defence evidence:

- i) **Sami Jan- DW-1** claims to have been a student of the institution in question. According to her, PWs 1 to 5 were not having good character, they used to live separately and to go to washroom together. They used to talk on cell phone even though there was clear ban on use of cell phone in the institution. They were advised and

admonished by students, namely, Gazalla, Irshada, Naseema and Jabeena. There had been no complaint of rapes in the institution. She had never seen any girl entering room of R-1 alone. It is in her evidence that on 06.12.2012 PWs 1 to 5 had called their family members in the institution, who created commotion there and proclaimed that they will not spare the institution as the same has attempted to defame them. On that day sister of PW-2, who was also a student of the same institution, had thrashed PW-2 saying that she has not mended her behavior even after joining the institution and as to why she was defaming R-1. In cross-examination, she stated that she had been the student of the institution for six/seven years.

- ii) **Sakeena Maqbool-DW-2** claims that she had been visiting the institution for five/six years though she had completed her course in six months. PWs 1 to 5 had also been undergoing education in the said institution along with her. PWs 1 to 5 have levelled false allegation of sexual assault against R-1. These witnesses used to indulge in wrong activities in the institution and on a complaint lodged against them by the management they were searched and a phone and photograph of some boy was recovered. She (witness) is M.A./M.Ed. The students and others had protested against arrest of R-1 as everyone was saying that he was innocent. The police of Kothibagh had arrested her and others too and had been insisted upon them to make

statements against R-1, which they had refused. In cross-examination she has stated even though she had completed her course in six months but she remained associated with the institution for 5/6 years. About ten thousand girls have acquired education from this institution. R-1 neither used to call anyone in his room nor meet anyone individually.

- iii) Evidence of **Latifa Bano-DW-3** is in line with that of DW Sakeena Maqbool. She in particular stated that character of PWs 1 to 5 was not good, a cell phone and photograph of a boy was recovered from them, the management had decided to inform their family members which had annoyed them and they were saying that they will teach lesson to R-1. PW-2 had called her family members in the institution, who created awkward scene there and even her sister, Asma, who was also reading in the same institution had said to PW-2 in presence of all that she had been doing wrong in the house and mohallah and has not mended herself in the institution also. She had also said that God will punish her for leveling wrong allegations against R-1. It is also in her evidence that R-1 and others were gentle and honest persons. They had taken a procession against arrest of R-1, which was joined by thousands of people. Police had arrested and brought them to Police Station, Khansahib, where Dy.SP Bashir Ahmed Dar had insisted upon them to give false evidence against R-1 but they had refused. In cross-examination she

has stated that she has studied in the said institution for three/four years. She has come to the court of her own for appearing as a defence witness.

- iv) **Arshad Rashid Wani-DW-4** has stated that on 06.12.2012 he had gone to the institution on receiving a phone call from there. A number of people had assembled there. On enquiry by him PW-1 had said that nothing has been done to her but she wants to go to her home for the reason that her close friends, PWs 2 and 3 were also going. On enquiry PWs 2 and 3 had said that R-1 has committed rape on them, which had astonished him. The elder sister of PW-2, namely, Ashia who was also there said to PW-2 that she has not mended herself even in the institution and that as to why she was telling lie for which she will earn displeasure of God. He then enquired from 80 to 100 girls of the same institution collected there to verify the allegation of PWs 2 and 3 but they said that character of PWs 1 to 5 was not good and they had complained against them to R-1. Those girls also told him that Irshada, Naseema, Haseena and Gazala etc. had searched the bag of PW-2 and had found photograph of a boy in that bag and after that it was decided that their family members would be informed in this regard but before that these girls informed their family members upon which father of PW-5 and paternal and maternal uncle of PW-2 came in this institution on 06.12.2012 and created ugly scene there. PWs 1 to 5 had threatened that they will teach lesson to

the institution and R-1 for having defamed them. The witness has further stated that he was also arrested by the police and detained at Police Station, Khan Sahib for 23 days. SDPO, Khan Sahib had been compelling him to make a statement against R-1 which he had refused. Further he has stated that he had been visiting the institution for last about fifteen years and the character of R-1 all along had been very good. In cross-examination he has stated that he had been visiting the institution of R-1 from last fifteen years and so had been his wife and her parents. The institution comprises of four building and in one of them R-1 resides along with his family members.

- v) **Gulzar Ahmad Bhat, DW-5**, has stated that he has worked as domestic help with R-1 for five years and used to share room with him. None other than mother, sister and brother was allowed to enter that room. None of PWs 1 to 5 ever visited that room. In cross-examination, he has stated R-1 generally used to remain busy in prayers inside his room and no girl was allowed to enter in his room.
- vi) **Mohd. Altaf, DW-6** claims to be Sarpanch of the area. On 06.12.2012 he had reached the institution at Shamsabad on getting a telephone call at about 10.30 in the night. Some responsible persons had already reached there. On having been told about the incidents of sexual assault in the institution, they gathered all the people who comprised of 80/90 students of the institution. All the girls except four of them refused any such incident having taken

place and stated that allegation was false. On our enquiry about allegation of those four girls, we were told that they were involved in objectionable and suspicious activities in the institution which were brought to the notice of R-1. R-1 had been advising them which had annoyed them and they had threatened to teach a lesson to him. It is also in his evidence that he and his family members had been visiting the institution of R-1 from last ten years for acquiring religious education. His wife and sister were so impressed by teaching in the institution that they had started using veil and sitting in prayer. There had been no bad activity there. Police had arrested him also in connection with this case and had released him as he was found innocent. Police had been pressurizing him for asking his sister to make a statement against R-1, which he had refused. In cross-examination he has stated that he has stayed in the institution along with his wife and sister about fifteen times. It is correct that sound created inside room of R-1 was not audible outside. One attendant of R-1, namely, Gulzar Ahmad used to stay with him. It is correct that R-1 has divorced his wife and has not married after that. There was no bed in the room of R-1.

22. We now proceed to determine the rival contentions raised on behalf of the parties on merits. As we are dealing with acquittal appeal, where the presumption of innocence in favour of the respondents has been reinforced by their acquittal by the trial court, we have carefully read and



analyzed the impugned judgment to underline the main grounds and the reasons on which the trial court has based the order of acquittal in order to determine whether the judgment deserves interference by this Court or not.

23. The impugned judgment on a plain reading would show that the learned trial court has rejected the evidence rendered by PWs 1 to 5, who claim to be the victims of the alleged offence, primarily for three reasons; *i)* that unexplained delay in lodging the FIR causes a very serious infirmity in the case of the prosecution, *ii)* that the inimical attitude of the four girls, PWs 1 to 4, who lodged the FIR, was the root cause of false implication of the accused persons and *iii)* that no independent witness has been produced. Besides, learned trial court on analyzing the relevant evidence has held that seizure of the articles has not been proved and that 'the prosecution in order to make their case strong, a false seizure of articles has been shown'. Trial court has also held on analyzing the evidence that sealing of the seized property has not been proved. While referring to the evidence of PW-11, Shaheena Mir, who examined the four victims, PWs 1 to 4, learned trial court seems to have noticed that doctor did not find any spermatozoa or any mark of violence on their person and that radiological or dental examination record was not produced and that the age certificates produced by these girls were taken back. Besides, learned trial court held that the prosecution has failed to prove by cogent evidence

‘that any magical spell was being castled or exercised by R-1 upon the victims’ and that on chemical analysis the liquid (water) seized from the room of the accused was found to contain mixture of sugar cane juice. Learned trial Court also rejected the contention that R-1 used to recite mantras which would have rendered the victims unconscious. Learned trial court also pointed out that the semen stains found on the mattress said to have been seized from the room of the accused were not compared with the semen of R-1.

24. We have noticed that as per the evidence rendered by PWs 1 to 5 the alleged incidents of rape in the institution run by R-1 would have taken place at different times in the years 2011-2012. According to PW-1, R-1 had raped her thrice and according to PW-2 she was raped twice. Likewise, according to PWs-3 and 4 they were raped ten times and three times respectively. It has sufficiently come in the evidence led by both the sides that the alleged incidents of rape in the institution came in the limelight on 06.12.2012 when two uncles of PW-2 and the father of PW-5 on getting some information in this regard had come in the institution and there was a commotion and fight between the relatives of PW-2 and the supporters of R-1. The FIR, however, came to be lodged on 18.05.2013, that is, more than five months even after the incident of 06.12.2012.

25. The charges against the respondents were sought to be established primarily through the evidence of the four victims, that is, PWs 1 to 4 and PW-5 who also claims to have faced a similar attempt by A-1. Besides, there is evidence of PW-6, who is an uncle of PW-2 and PW-7, who is the father of PW-5. There is no medical evidence or any other implicating evidence, whatsoever.
26. After registration of the FIR on 19. 5. 2013, the four victims were examined by the doctor, PW-11, on 20.05.2013, that is, more than five months after the alleged incident came to limelight on 06.12.2012. Absence of any implicating medical evidence after such a long gap of time is not unnatural or abnormal and of its own cannot be used to reject or entertain doubt about the prosecution version. Nonetheless, fact remains that long delay in lodging the FIR has deprived the prosecution of the benefit of medical opinion which is important piece of evidence to prove the factum of the commission of sexual intercourse, more so a sexual intercourse amounting to rape. The situation rendered due to lack of medical evidence is that even for the proof of the factum of the commission of sexual intercourse with the victims, the available evidence is their depositions alone.
27. Before dealing with the evidence of PWs 1 to 7, we may refer to the other evidence, which we, however, have found of no value. Through the evidence of PWs 8, 9 and

10, the prosecution has sought to prove the seizure of certain items comprising of mattresses, quilt, plastic jar, tape-recorder etc. from the site of alleged incidents. None of these three witnesses, however, have supported the prosecution case inasmuch as they, as rightly noticed by the learned trial court, have stated that certain items were shown to them by the police at the Police Station. Even otherwise, such recovery, had it been proved, has no evidentiary value in support of the prosecution case for the reason that there is no evidence to show as to how the site of the incidents was identified by the I.O. or that the place of recovery was the room in which the alleged incidents of rape had taken place inasmuch it has come in the evidence of the victims that the police never took them to that room during investigation of the case and the I.O. PW-14, who effected the recovery, has admitted in cross-examination that he did not take the four victims for identification of the room wherefrom the recovery was made. There is another reason that renders the recovery useless for evidentiary purpose, which is this. Collective reading of the evidence of PW-14 and the evidence of the Scientific Officer, Manzoor Ahamad Qadri, read with the chemical analysis report (Ex. PW-MAQ) proved by him, would show that two mattresses and two quilt-covers were sent for chemical analysis to FSL laboratory, semen/human spermatozoa was detected on one of these mattresses, whereas no vaginal fluid or blood stain was detected on

these items. Mere recovery of semen-stains from the mattress of its own, however, has no usefulness as evidence, particularly when there is no evidence of their matching with the semen of R-1 as rightly pointed out by the learned trial court.

28. The implicating evidence is coming through the depositions of PWs 1 to 5 and the supporting evidence of PWs 6 and 7, which, however, is confronted with long delay of more than five months in lodging the FIR even after the alleged offence came in limelight on 06.12.2012. This delay in lodging the FIR is the main plank on which the defence has based its plea of false implication and the main reason for the learned trial court in rejecting the evidence of PWs 1 to 5. Before advertent to take up the core questions as to whether evidence of PWs 1 to 4 of its own or read with the evidence of PWs 5, 6 and 7 is sufficient to establish the charge against the respondents ignoring the long delay in lodging the FIR and absence of the medical evidence or any other corroborating evidence and whether the trial court has fallen in error in acquitting them, we may refer to the legal position in regard to the effect of delay in lodging the FIR and the evidentiary value of and the importance to be given to the evidence of the victim of a sexual assault.
29. The contention raised by the defence before the trial court was that the inordinate delay in lodging FIR has not been explained by the prosecution and this unexplained delay is

fatal to the prosecution case, benefit whereof must go to the accused persons and earn them acquittal. Similar contention has been vehemently urged before this Court also by learned counsel for the respondents.

30. While supporting the impugned judgment, learned Senior Advocate, Mr. P. N. Raina appearing on behalf of the respondents argued that inordinate delay of more than five months in lodging the FIR makes entire prosecution story incredible and supports the defence version that there was a well planned conspiracy by the opponents of A-1 to implicate him in a false case and in that the four girls become instrumental as they had developed enmity against staff of the institution after their bad activities in the institution were curtailed. Mr. Raina argued also that general principle that in sexual offence cases there is reluctance in approaching police to save the honour of the victim and the family is not attracted for the reason that the victims and their family members, as per their own say, had been approaching different quarters and thereby making the incident public so there should have been no hesitation in approaching the police at appropriate time. Mr. Raina urged that the delay in lodging the FIR has not been explained inasmuch as no evidence has been led by the prosecution in support of the plea of the victims that they had been approaching social organizations/public figures. Mr. Raina sought to point out from the defence evidence that R-1 had gained popularity in the locality to

the dislike of his opponents and argued that the prosecution evidence would indicate that persons like Molvi Mohd. Amin, who was running a religious institution of his own, were instrumental in getting R-1 involved in false case.

31. Per contra, learned Additional Advocate General, Mr. M. A. Rathore, while opposing the impugned judgment, argued that the incident had occurred in a religious institution of repute indeed, so there was natural indecision on the part of the victims and their kin to approach the police straightway and in their wisdom they had opted to approach social organizations/public figures. Mr. Rathore argued that even though delay in lodging FIR in criminal cases assumes importance but delay of its own cannot be a ground for rejecting the evidence which is otherwise reliable, particularly in sexual offences in which there is general reluctance in quick reporting of the matter to police. Learned AAG urged that delay in lodging the FIR has been satisfactorily explained and all the four victims have given vivid account of the manner in which they were sexually exploited by R-1 with the assistance of the other respondents, which is sufficiently corroborated by the evidence of PWs 5 to 7, who are independent witnesses, so the learned trial court has fallen in grave error of law in ignoring the evidence of the victims and giving undue importance to well explained delay in lodging the FIR. Learned AAG urged further that learned trial court in

acquitting the respondents has ignored well settled principles governing the evidence of a victim of sexual assault and the acquittal, therefore deserves setting aside by this Court.

32. Law in regard to the effect of delay in lodging the FIR by now is well settled. In **Kanhaiya Lal and Ors. v State of Rajasthan, (2014) 4 SCC 715** the Supreme Court has reiterated that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory. Supreme Court in this case has referred to an earlier three-Judge Bench decision of the Court in **State of H.P. v. Gian Chand, (2001) 6 SCC 71** where their lordships have held:

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the



delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

**33. In Satpal Singh v. State of Haryana, 2010 Cr.L.J 4283**

Supreme Court while dealing with question of delay in lodging FIR in a rape case has held in paras 14 and 15 of the reporting that:

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [vide State of Andhra Pradesh Vs. M. Madhusudhan Rao (2008) 15 SCC 582].

15....no straight-jacket formula can be laid down in this regard. In case of Sexual offences criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to court or not. In such a fact situation, near relations of prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that *ordinarily the family of victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is*

*normal phenomenon* ( vide Satyapal v. State of Haryana, AIR 2009 SC 2190).”

34. In **Satpal Singh’s case**, Supreme Court has quoted following passage from an earlier decision in **Prem Singh’s case**, AIR 2009 SC 1010:

“so far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weight in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.”

35. Legal position in regard to the importance of the evidence of victim of sexual assault is well settled too. We may extract para-9 from the Supreme Court judgment in **Aslam v State of U. P. (2014)13 SCC 350**:

“9. This Court has held that if, upon consideration of the prosecution case in its entirety, the testimony of the prosecutrix inspires confidence in the mind of the Court, the necessity of corroboration of her evidence may be excluded. This Court in [Rajinder v. State of Himachal Pradesh](#), has observed as under: (SCC pp.77-79, paras 18-19):

“18. This Court, in [State of Punjab v. Gurmit Singh](#), (1996) 2 SCC 384 made the following weighty observations in respect of evidence of a victim of sexual assault: (SCC pp. 395-96, para 8)

“8. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against

her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.” (emphasis in original)

19. In the context of Indian culture, a woman—victim of sexual aggression—would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

36. We may also extract para-6 from the judgment in **Hem Raj v State of Haryana, (2014) 2 SCC 395:**

“6. In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible, if it inspires total confidence, it can be relied upon even sans corroboration. The court may, however, if it is hesitant to

place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice. (See *State of Maharashtra v. Chandraprakash Kewalchand Jain*). Such weight is given to the prosecutrix's evidence because her evidence is on a par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it."

37. Now comes the core question relating to the reliability and sufficiency of the evidence of PWs 1 to 4 and the evidence of PWs 5, 6 and 7. We have noticed that accusation against the respondents as briefly stated in the police charge-sheet is that respondents 2 to 13 had been enticing PWs-1 to 4 to the room of R-1 for the purpose of commission of sexual intercourse with them by R-1 and R-1 committed forcible sexual intercourse with them at different times. PWs 1 to 4 in their evidence before the trial court have given matching versions of the incident that allegedly occurred with each one of them. They have similarly given vivid description as to how R-1 had been calling them in his room in the night, giving them impression of his spiritual powers and tempting them with the promise of conferring one of his spiritual powers on them and committing sexual intercourse with them. He used to keep tape-recorder at such high volume so that their screams were not heard outside and gag their mouth if they cried. Their evidence also gives impression that R-1 used to render them semi-

conscious by making them drink water from a jug kept in his room. Contextually, it was mentioned in the FIR (Ex. PW-2) lodged by them that R-1 used to render them unconscious by reciting some 'mantra'. The questions arising for determination by us are, whether the evidence rendered by PWs 1 to 4 is wholly reliable or whether their evidence cannot be relied upon without corroboration and whether such corroboration is available in the evidence produced by the prosecution.

38. We have noticed that as per the evidence of PW-1 she had remained in the institution run by R-1 from June to December 2012 and in this period R-1 raped her thrice. According to her she did not narrate the incident to anyone as they had been threatened with dire consequences. Likewise, according to PW-2 she remained in that institution for five months before she left the same on 06.12.2012 and that R-1 raped her twice. It is in her evidence that her elder sister was also studying in the same institution. During her stay she had been visiting her home every month. Once she had visited her home in connection with the death of her uncle. She was raped by R-1 prior to that visit also but she did not narrate the matter to her family members for the reason, according to her, that conditions in her family were not good. She did not confide even with her elder sister out of shame. PW-3 claims to have joined the institution in January 2011. According to her R-1 had raped her more than ten times.

Her parents had come there five/six times. She did not break the secret out of fear and terror. According to PW-4 she remained in that institution for two/three years and during this period she had visited her house number of times. According to her R-1 raped her thrice. She did not narrate the matter to her family members out of shame. Contextually, we have noticed that the charge-sheet filed by the prosecution sans any reference to the age of the victims and in that it is not the prosecution case that the victims were girls of tender age or below a particular age as at the time of the alleged incidents of rape. We have noticed in the evidence of doctor, PW-11 that she had referred all the four victims for ossification test for determination of their age but no such evidence has been brought before the trial court by the prosecution. Contextually, it is stated in the impugned judgment that during the pendency of trial prosecution placed on record the Date of Birth certificates of these girls but no evidence was led to prove them.

39. On thorough scrutiny of the entire deposition of each of the four girls (PWs 1 to 4), we could not persuade ourselves to visualize any justification in their conduct in not informing or confiding with anyone about the alleged gruesome act being done to them in the institution and allowing such act to continue more than once and in one case for ten times. We cannot realize that it was not possible or was difficult for all of them to inform their

parents or any member of their families at the very inception about all that allegedly had been happening to them. From the evidence, we are unable to realize also that any such situation had been created by R-1, which had made it possible for him to subject the victims to repeated acts of inhumanity and offence with impunity inasmuch as there is no evidence to show that the water which these girls were allegedly made to drink by R-1 was having any magical power. This aspect of the conduct of PWs 1 to 4 strikes first note of caution in our minds about the veracity and credibility of their version and puts us on our guards in placing implicit reliance on their depositions.

40. The incident that occurred on 06.12.2012, about which we find sufficient material in defence evidence also, is important in the sequence of events. Evidence of PWs 1, 2 and 3 would show that they had got together to expose all that has allegedly been happening in the institution and PW-2 had managed to give a telephonic information to her paternal uncle. PW-7 is the parental uncle of PW-2. According to PW-7 the telephonic information given by PW-2 was received by his sister. As per the evidence of PWs 6, who is father of PW-5, and the evidence of PW-7 they and a brother of the latter had gone to the institution on 06.12.2012. A number of persons had gathered there. As per the evidence of PW-7, PW-2 and two other girls had said that wrong has been committed to them. PW-2 had



said that wrong has been committed by R-1 and on this PW- 7 had slapped R-1. Evidence of PW-6, however, does not show as to what they were told by the girls as according to him the girls had said something to their uncles, which he did not hear, and the uncles had pounced upon R-1 and there was commotion between the two sides. Contextually, we have noticed the evidence of the six defence witnesses and have noticed also that whatever stated by them has neither been tested much nor is shaken in their cross-examination.

41. There is almost unanimity in the evidence led on behalf of both the sides in regard to the incident of 06.12.2012 to the extent that PWs 6 and 7 and a brother of PW-7 had gone to the institution, that a number of persons had gather there, that PW 2 and two other girls had alleged that R-1 has committed rape on them and that R-1 was attacked by the two uncles of PW-2 and there was commotion between the two sides. Another aspect, however, has surfaced through the defence evidence, which indicates towards objectionable behaviour and way of living of PWs 1 to 5 in the institution and shows that on 06.12.2012 a number of other girls present there had given adverse information about PWs 1 to 5 and even a sister of PW-2, who was also a student of the same institution, had cursed the former saying *inter alia* that she was telling a lie and defaming R-1.

42. We on reading and sifting the depositions of the defence witnesses have not found any reason for excluding the evidence rendered by them out of our consideration. In taking comparative and holistic view of the entire evidence we may say the least that the incident of 06.12.2012 does not render a satisfactory and reliable support or corroboration to the allegations of the victims, PWs-1 to 4 against R-1.
43. It would be in place here to refer to and analyze the evidence of PW-5 to address the contention raised on behalf of the appellants that she is an independent witness and her evidence provides valuable corroboration to the evidence of the four victims. On thorough scrutiny of the deposition of PW-5, we, however, are not persuaded to rate her evidence any better or more than the evidence of PWs 1 to 4. Her say is that in the initial days of her stay in the institution somewhere in March, 2012, R-1 had made an attempt to have a sexual intercourse with her but she had managed her escape from the room. She had left the institution one month after that incident. She claims to have got information through print and electronic media about registration of the case and to have gone to Police Station, Badgam and stated there that nothing had happened with her but thereafter having told her father as to what had happened with her and made a statement under section 164-A Cr.P.C. On collective reading of the evidence of PW-5 and her father, PW-6, it emerges that

PW-5, who as admitted by her, was a graduate at the relevant time had not confided with anybody not even to her father about what allegedly happened with her somewhere in March 2012 up to the time of registration of case in May, 2013. We are conscious of a general reluctance on the part of victim of a sexual offence and her kin to make public the incident but we find no explanation as to how such reluctance, if it was, got diluted after more than 13/14 months.

44. We now pass on to the delay of more than five months in lodging the FIR even after 06.12.2012. The charge-sheet filed by the police, it is noticed, is silent about this delay or any explanation in this regard. General and unanimous say of PWs-1 to 4, however, is that after the incident of 06.12.2012 they approached various public figures, like one Asiya Andrabi and a Darul Aloom at Bandipora, who had assured them that action would be taken but they did not get justice anywhere and ultimately they lodged report with a Dy. SP at Budgam. It has also come in the evidence of PWs-1 to 4 and 7 that in the end they had approached one Molvi Mohd. Amin of Anantnag, who guided them to the Dy. SP for lodging the report. It is contended on behalf of the appellant-State that delay has been satisfactorily explained. Contextually, evidence of DW-7, the paternal uncle of PW-2, needs to be noticed as it gives some more detail in this regard. In his chief-examination he states that one Doctor and Shah Nawaz, who are the persons of his

father's stature, asked him not to lodge report and they will sort out the matter. Shah Nawaz even gave his telephone number to him but did nothing. He says further that they then approached Darul Aloom, Bandipora where statements of the girls were taken. They assured to look into the matter but nothing was done. He then approached Asiya Andrabi but nothing was done by her also. In the end one person from Anantnag, who was head of some Molvi Organization, had said that action shall be taken through police and they then approached the Dy.SP.

45. Legal position in regard to delay in lodging FIR, as we have referred to above, is well settled. Even though delay in lodging the FIR will not by itself be a ground for disbelieving the prosecution story, but a duty is cast on the prosecution to explain the delay and an obligation is cast on the court to take notice of such delay and to adjudicate whether explanation tendered by the prosecution is satisfactory and real. If a particular fact is tendered as cause of delay, the prosecution is required to prove the same by leading evidence. Even in cases involving sexual offences delay is required to be explained though criteria involved in such cases may not be that high as it is in other offences.
46. Here it is not the prosecution case that the victims or their parents/family members were unwilling to publicize the matter by bringing it to the notice of the police or court. Clear indication emerging from the evidence of PWs 1 to 4

rather is that they wanted action to be taken against the respondents and not any compromise or settlement with R-1. It, however, is not understandable as to what prevented them from approaching any law enforcing agency like police or a court and instead prompted them to approach public personalities/figures. Contextually, we have noticed with surprise that the parents of the four girls are nowhere in picture in these proceedings. Their reaction to alleged incident involving their daughters is not known. As we have indicated hereinabove also, the investigating agency seems to have ignored this aspect inasmuch as it is not even referred to in the charge-sheet and it appears the I.O. did not even contact the parents of these four girls to ascertain their view in the matter.

47. Be that as it may, no evidence has been led by the prosecution in support of the contention of PWs 1 to 4 that they had been approaching public figures, like Asia Andrabi, for seeking justice. None of these public figures or the persons who allegedly had assured action in the matter have been cited as a witness. Prosecution has thus failed to produce sufficient evidence to show that explanation tendered for delay in lodging the FIR is real and it cannot be said that the delay has been satisfactorily explained.
48. Matter needs to be looked from another angle also. If it is presumed that PWs 1 to 4 had been approaching public

figures and some other persons for seeking justice, in that case no response or action from their side cannot be ignored or brushed aside without consideration. It has been noticed that according to the victims and PW-7 those public figures including Asiya Andrabi, the persons connected with Darul-Aloom, Bandipora and the two persons whom PW-7 had approached, who according to him were of his farther's stature, had promised to take action in the matter but they did not do anything inasmuch as the two persons, namely, Dr. Nazir Ahmed and Muzaffar Ahmed, at a later stage had said to PW-4 that she was telling lie. No action or response from their side cannot be construed only a failure on their part but also leads to a *bona fide* inference that they might have enquired into and verified the matter at ground level and had not found any substance in the allegations.

49. For the reasons stated and discussed above, we feel clear hesitation in relying upon the depositions of PWs 1 to 5 as the evidence rendered by them fails to inspire our confidence and we are not in a position to categorize the same as wholly reliable evidence.
50. For all that said and discussed above, the judgment of acquittal rendered by the learned trial court does not call for any interference by this Court and this appeal is, therefore, dismissed as without any merit. Respondent No. 1 shall be released from custody forthwith, if not required

in any other case. Registry shall immediately issue a docket to the Superintendent of the Jail concerned.

51. Record of the trial court be sent back along with a copy of this judgment.
52. Disposed of.

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

**(Janak Raj Kotwal)**  
**Judge**

**Jammu:**  
**23.02.2017**  
Pawan Chopra