

(1999) 02 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Criminal Revision Petition No.26 of 1998

State of J & K

APPELLANT

Vs

Ramesh Singh

RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 268, 269
Ranbir Penal Code, 1989 — Section 302, 376

Citation : (1999) 1 SriLJ 205 : (1999) SriLJ 205 : (1999) SriLJ 77

Hon'ble Judges : M.Y.Kawoosa, J

Bench : Single Bench

Advocate : Seema Shehkar, M.S.Bhat, Gagan Basotra, Advocates appearing for the Parties

Judgement

Kawoosa, J.—By way of this Criminal revision, petitioner prays for settling aside the order of discharge passed by learned Sessions Judge,

Kathua on 03.02.1998.

2. This revision petition emanates from criminal case under section 302 and 376 R.P.C. registered against respondentaccused On the allegations

that the deceased Ram Piary, aged about 32 years, a house wife from village Kathua of Tehsil Billawar had taken meals from her home for her

husband, who was working at his Garath on 27.08.1997. While returning back after serving meals to her husband she allegedly has been assaulted

by the accused/Respondents gang raped and thereafter murdered her. Report was lodged to the Police, who found the other day the body of the

deceased covered under bushes towards the garath side. At a distance of 3 feet, her Shilwar and ear rings were also found on the ground in

accordance with the disclosures statement made by the accused. Shilwar and ear

rings were seized by the police at the instance of accused. After the case was committed to the Sessions Court for trial. Sessions Judge framed charge under Section 302 read with Section 34 of the R.P.C. Only against the accused persons, but they were discharged for the affiance under Section 376 RPC.

3. State has questioned the Judgment to the extent of discharging the accused persons under Section 376 RPC.

4. Heard learned counsel for the parties and I have gone through the file. Learned Government advocate has forcefully contended that the accused could not have been discharged merely on the ground that the postmortem report shows no internal and external injury on the hymen of the deceased and no semen was found.

5. Learned counsel for the otherside urged before me that there is not an iota of evidence, which involves the accused persons with the commission

of rape. He has relied upon postmortem report and has stated that there is no evidence on which reasonable inference can be drawn that the

accused has committed the rape. I have gone through the post mortem report. The postmortem report reveals that no external and internal injuries

found around vagina, no foreign material found per vagina and the cause of the death of the deceased shown as haemorrhage and shock from head

injuries. So far the order passed by the learned Sessions Judge is concerned, I am of the view that he has rightly come to the conclusion that no

rape appears to have been committed, because there is no eye witness and circumstantial evidence also does not lead to draw reasonable

inference that gang rape has been committed. This finding is virtually based on postmortem and there is no other evidence at all, so I cannot take

any exception to the findings arrived at by the learned Sessions Judge regarding allegations of rape, but at the same time the contention of the

learned Government Advocate to the extent that even if rape is "not" committed, but the attempt has been made for that. I see some substance in

this argument, because the young lady of 32 of age, who was returning to home after serving the meals have been assaulted by the accuse persons

as alleged and there must be some motive behind assaulting the lady, when she was seen alone. Secondly, when the dead body was found covered

by bushes, at a distance of 3 feet her shilwar and ear rings were also found on

the ground, whereby nexus of attempt to commit rape emerges.

Shilwar has been opened from the deceased, it was found at a distance of 3 feet from the dead body alongwith ear rings. Injuries were on the part

of the body including head injury, which shows that she has resisted the attempt to the last. Whether they have raped or not and as per medical

report, no rape seems to have been committed, but at the same time opening of the shilwar of the lady does not rule out the attempt of rape. It is

true that generally to the commission of such offence, eye witnesses are exceptionally not available, mostly in such cases reliance is laid on

circumstantial evidence. Here in this case, lady was young coming on the road side alone. She was assaulted by the accused, lady has resisted to

the last. She has received injuries on other parts of the body including head injury. Her Shilwar has been opened and it was found at some distance

of the dead body, no other motive is alleged or inferred, which could rule out the attempt of rape.

6. For these reasons, therefore, I am of the view that the trial court has not properly applied its mind, so the order of discharge is modified to the

extent that the accused persons, who have been framed charges under section 302 RFC, charge will be framed by the trial court against them

under Section 376/5II RFC attempt to commit rape. The trial court will expedite the proceedings. Prosecution is directed to cooperate with the

court in the disposal of the case at an early date and the prosecution will give the consecutive dates till the matter is disposed of.