

(1999) 02 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Criminal Revision Petition No. 26 of 1998

State of J & K

APPELLANT

Vs

Romesh Singh and Another

RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Ranbir Penal Code, 1989 — Section 376, 511

Citation : (2000) KashLJ 113

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

Bench : Single Bench

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

Judgement

1. By way of this Criminal Revision, Petitioner prays for setting aside the order of discharge passed by learned Sessions Judge, Kathua on

03.02.1998.

2. This revision petition emanates from a 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 Khanthu 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 disclosure 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 offence under Section 376 RPC.

3. State has questioned the judgement 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 post mortem report shows no internal and external injury on the hymen of the

deceased and no semen was found.

5. Learned counsel for the other side 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 postmortem 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 hemorrhage 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 load to draw reasonable

inference that gang rape has been committed. This finding is virtually based on postmortem report 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 the 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

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

accused 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 deadbody 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, eyewitnesses are exceptionally not available, mostly in such cases

reliance is laid on circumstantial evidence. Heard 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 deadbody, 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 RPC, charge will be framed by the trial Court against them

under Sections 376/511 RPC 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.