

(2022) 10 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : Criminal Appeal No.13 Of 2013

State Of J & K Though P/S Sumbal	Vs	APPELLANT
Muzaffar Ahmad Hurra & Anr		RESPONDENT

Date of Decision : 28-10-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 365, 366, 511
Code Of Criminal Procedure, 1973 — Section 173
Code Of Criminal Procedure, 1989 — Section 342

Citation : (2022) 10 J&K CK 0032

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : Illias Nazir Laway, A.M. Mir

Final Decision : Dismissed

Judgement

Rajesh Sekhri, J

1. This appeal has been directed against judgment dated 07.09.2012 passed by learned Principal Sessions Judge Bandipora, in a case FIR No. 156/2008 of Police Station Sambal for offences under Sections 366/511/109 of the RPC, 1989 (for short RPC) vide which respondents were acquitted of the charges.

2. Briefly stated the prosecution case is that on 24/06/2008, complainant Ghulam Mohammad Hurra, accompanied by her daughter Mst Tasleema lodged a written report at police station Sumbal alleging inter alia that while her daughter was on her way to a vegetable field along with Shameema & Rozi and when they reached near the vegetable field respondent Muzaffar Ahmad Hurra suddenly appeared and asked her that for how long he shall wait for her. It was further alleged that respondent Muzaffar Ahmad Hurra tried to catch hold of her and asked her to marry him. The victim raised hue and cry, as a result whereof people gathered on the spot and accused fled away. It was alleged that when daughter of the complainant was returning home via general road at Naidkhai, respondent No. 1 came along with Sumo bearing Registration No. JK05-2033

which was being driven by Respondent No. 2 Manzoor Ahmad Hurra. Respondent No. 1 tried to board her in the said vehicle, but she raised an alarm and some people from a nearby bandsaw came on the spot and saved her from the clutches of the respondents. On the receipt of this report, FIR came to be registered for the offences aforementioned and on conclusion of the investigation final report in terms of Section 173 Cr.P.C was laid before CJM Bandipora, wherefrom it was committed to the Trial Court. Respondents were charged on 06.08.2008, whereby they pleaded innocence and claimed trial, therefore, prosecution was directed to lead evidence and prosecution examined five witnesses.

3. Respondents denied the incriminating evidence against them in their statements under Section 342 of the Code of Criminal Procedure 1989 (CrPC for short) and proposed to enter the defence. Respondents examined two witnesses.

4. Learned Trial Court after analysing the prosecution evidence as also the evidence adduced by the respondents in defence has concluded that prosecution failed to establish its case beyond reasonable shadow of doubt and consequently acquitted the respondents.

5. The Appellant-State has questioned the impugned judgment inter alia on the grounds that learned Trial Court has failed to appreciate the prosecuting evidence in the right perspective. According to the appellant all the prosecution witnesses have corroborated each other on material aspects and the copious evidence both oral and documentary placed on record by the prosecution has escaped the attention of learned Trial Court.

6. Before a closer look on the grounds urged in the memorandum of appeal, it shall be apt to give a brief resume of the prosecution evidence, which runs as below.

7. PW-Ghulam Mohammad Hurra, is the complainant and father of the victim. He has deposed that on 24.06.2008, when he was in his field, he heard some noise. Tasleema along with two girls were carrying a basket of cow dung. Accused pushed Tasleema, and when she raised noise, people come to the spot and accused fled away. Accused again appeared with a Sumo bearing Registration No. 2033-JK05 and stop the vehicle in front of his daughter. Tasleema ran away, took shelter in a bandsaw, where labourers were working and she informed them regarding the incident. From the bandsaw, Abdul Ahad and Mohammad Afzal brought her daughter to her house. He further deposed that Muzaffar Ahmad Hurra had asked for the hand of his daughter but his daughter was not willing to marry him. On cross- examination he has stated that accused was drunk. The occurrence was narrated to him by his daughter and he does not have personal knowledge with respect to the occurrence.

8. PW-Tasleema has deposed that last year at about 10 a.m. while she was going to her vegetable field along with two other ladies, accused No. 1 was following them. Accused pushed her, as a result, the basket of cow dunk fell on her. When

she reached in her vegetable field, accused brought a Sumo and forcibly tried to board her in the vehicle, which was being driven by accused Manzoor Ahmad Hurra. She went to a bandsaw, raised hue and cry, people came to the spot and saved her. Thereafter, she went to her home and narrated the story to her parents. In cross-examination she has stated that vegetable field is located in the locality but none from the locality came to the spot. People were also working in their fields. When accused tried to board her in the vehicle, many vehicles were plying on the road.

9. PW-Shameema has deposed that about an year ago while she along with Tasleema and Rozi were going towards vegetable field, accused attacked Tasleema and her basket of cow dunk fell on the ground. Accused caught her from her hand. When she asked accused not to harass Tasleema, she was also threatened by accused. Tasleema went to bandsaw wherefrom 2-4 persons came on spot. In cross-examination she has deposed that people were working in the vegetable field, which is away from the locality and accused had pushed Tasleema.

10. PW-Rozi has deposed that she along with Tasleema was going towards the vegetable field. Accused asked Tasleema to talk with him, but she refused. On their way back home accused came with a Sumo and tried to board Tasleema in the vehicle. She raised hue and cry, some people came on the spot and saved them. In cross-examination she has stated that police recorded her statement on the spot but she signed the statement in the police station. Place of occurrence is surrounded by the vegetable fields and many people are residing there. Vehicle was standing in between the residential locality where many people came and beat the accused.

11. PW-Ab Ahad has been declared hostile as he stated that respondent No. 1 did not commit any wrong with Tasleema.

12. This is the crux of the prosecution evidence and as already stated, since accused denied the incriminating evidence against them, they enter the defence and examined following witnesses.

13. DW-Mohammad Ashraf Najar has deposed that case against accused persons is baseless and concocted. In cross-examination he has stated that on the day of occurrence he was present in the locality.

14. DW-Gh. Jeelani has stated that case against the accused persons is baseless and concocted. In cross-examination he has stated that there was heated exchange of words between complainant and the accused party. He has denied that accused tried to kidnap the prosecutrix.

15. Having heard learned counsels on the rival sides, I have carefully gone through the record and given my thoughtful consideration to the facts and circumstances attending the present case as also the law governing the field.

16. While Mr Ilias Nazir Laway, learned Government Advocate, has reiterated the

grounds urged in the memorandum of appeal, learned counsel appearing for the respondents has submitted that besides serious contradictions in the statements of the prosecution witnesses, non-examination of the medical officer and the investigating officer in the Trial Court goes to the root of the entire prosecution case, and, therefore, respondents have been rightly acquitted by learned Trial Court.

17. Case of the prosecution is that on 24.06.2008, the complainant accompanied by his daughter lodged a written report alleging inter alia that while his daughter namely Tasleema along with Shameema and Rozi was on her way to the vegetable field, respondent Muzaffar Ahmad Hurra came in front of her and asked her that for how long he shall wait for her. He tried to catch hold of her and asked her to marry him. It is alleged that when victim raised hue and cry, people came on the spot and respondent No. 1 fled away. It is further case of the prosecution that when daughter of the complaint was returning home through general road at Naidkjhai, accused came with a Sumo bearing Registration No. 2033 JK05, which was being driven by respondent No. 2 Manzoor Ahmad, accused tried to board her in the vehicle, but she raised an alarm and people from a nearby bandsaw came to the spot and rescued her from the clutches of the accused persons. However, when the prosecution evidence is carefully analysed, it is evident that there are serious contradictions in the statements of the prosecution witnesses on material aspects.

18. None of the prosecution witnesses has deposed during the trial that while the victim Tasleema was on her way to the vegetable field, respondent Muzaffar Ahmad Hurra came in front of her and asked her that for how long he shall wait for her and asked Tasleema to marry him. It is not the prosecution case that daughter of the complainant namely Tasleema was carrying cow dung and when respondent No. 1 pushed her the cow dung fell on her or fell down

19. It is pertinent to mention that although the complainant in his chief examination stated that when occurrence took place he was in his field and he heard the noise. He deposed that while his daughter along with two girls were carrying a basket of cow dung, respondent pushed his daughter, his daughter raised noise people came to the spot and respondent fled away. The complainant has further stated that respondent No. 1 again appeared on the spot with a Sumo, stopped the vehicle in front of his daughter, but Tasleema ran away and took shelter in a bandsaw where labourers were working and she informed them about the incident. It is pertinent to underline that complainant has not stated that accused tried to board his daughter in the Sumo, contrary to the statements of rest of the prosecution witnesses including Pw's Tasleema, Shameema and Rozi. PW-Tasleema has also stated that while she was on her way to the vegetable field along with two other ladies, respondent No. 1 followed him and pushed her as a result of which her basket of cow dung fell on her. Contrary to this PW-Shameema has stated that while Tasleema along with her and Mst Rozi were going towards the vegetable field accused attacked Tasleema and her

bucket of cow dung fell on the ground. Here it is pertinent to underline that it is neither the prosecution case nor the statement of any other prosecution witnesses that respondent No. 1 at any point of time attacked the victim-Tasleema. Now the statement of PW-Rozi assumes significance as she has deposed that while she along with Tasleema were on way to the vegetable field, respondent No. 1 asked Tasleema to talk with him but she refused to talk with respondent No. 1. PW-Rozi has not stated about the presence of PW-Shameema on the spot.

20. Another glaring contradiction in the statement of prosecution witnesses is that the complainant Ghulam Mohammad Hurra has stated that his daughter took shelter in a bandsaw, from where Abdul Ahad and Mohammad Afzal brought her daughter to her house. But the victim PW-Tasleema has stated that people came to the spot and saved her and thereafter, she went to her house and narrated the story to her parents. PW-Tasleema has nowhere stated that Abdul Ahad and Mohammad Afzal took her to her house

21. As already stated, the complainant PW-Ghulam Mohammad in chief examination has made an endeavour to give a graphic narration of the occurrence as eye witness but he admitted in the cross-examination that he does not have personal knowledge of the occurrence and the occurrence was narrated to him by his daughter only.

22. Respondents have been charged with offences under Sections 366/511 RPC, that is attempt to kidnap or abduct a woman with intent to compel her to marry against her will. It is trite that mere kidnapping or abduction of women will not bring the accused under the ambit of Section 366 RPC and the prosecution is obliged to prove that accused had kidnaped or abducted the women with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will or in order that she may be forced or seduced to have illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

23. Although, it is the prosecution case that respondent No. 1 Muzaffar Ahmad Hurra, came in front of the victim, asked her that for how long he shall wait for her and tried to catch hold of her and asked her to marry him, but as already discussed, none of the prosecution witnesses including the complainant and the victim have said so in their depositions during the trial. Unless the prosecution proves that a woman has been kidnaped or abducted for the purposes mentioned in Section 366 RPC, accused cannot be held guilty and punished under Section 366 RPC.

24. Considered thus, besides serious contradictions in the prosecution evidence, the prosecution in the Trial Court has failed to bring home guilt of the respondents within the meaning of Section 366 RPC.

25. Having regard what has been observed and discussed hereinabove, I do not find any illegality much less perversity in the impugned judgment. Learned Trial

Court has appreciated the prosecution evidence in the right perspective and impugned judgment being well reasoned dos not warrant any interference. Therefore, the present appeal being devoid of merit, is dismissed and the impugned judgment is upheld. Interim direction, if any, shall stand vacated.

26. Record of the Trial Court be returned.