



**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 23.07.2026

Pronounced on: 31.07.2026

Uploaded on: 31.07.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

CRAA No.23/2013

c/w

CRAA No.27/2014

STATE OF J&K

ABDUL MAJEED BEIGH

... APPELLANT(S)

Through: - Mr. Jagingeer Dar, GA.

Vs.

MOHAMMAD RAMZAN MIR

STATE OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Mir Naveed Gul, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

01. By this common judgment, afore-titled two appeals, one filed by the State and the other filed by the complainant, challenging the judgment dated 31.12.2012 passed by the learned Principal Sessions Judge, Bandipora (hereinafter "the trial court"), whereby the respondent-accused has been acquitted of the charges under Section 363 and 376 RPC, are proposed to be disposed of.

02. As per the charge sheet filed by the Investigating Agency

before the learned trial Court, on 26.07.2007, the

CRAA No.23/2013 c/w

CRAA No.27/2014



complainant-PW Abdul Majeed Beigh, lodged a report with Police Station, Bandipora, alleging therein that on 22.06.2007 his daughter (the prosecutrix), had left her house but did not return and after launching a search, it was found that she has been kidnapped by the accused/respondent with a view to commit sexual intercourse upon her. On the basis of this report, FIR No.120/2007 for offence under Section 363 RPC came to be registered and investigation of the case was set into motion.

03. During the course of investigation, the prosecutrix was recovered from the possession of accused/respondent and after conducting her medical examination, it was found that she had been sexually assaulted. Accordingly, offence under Section 376 RPC was also found established against the accused.

04. During investigation of the case, the prosecutrix made a statement alleging therein that on 22.06.2007, when she had set out of her home towards Bandipora, on reaching Gulshan Chowk, she met the accused. She further stated that the accused enticed her and made her to go with him, whereafter she was taken to some unknown place. She further stated that she was taken by the accused to different places and he



also committed rape upon her. She also stated that whenever she tried to raise an alarm, the accused would threaten to kill her.

05. After completion of the investigation of the case, offences under Sections 363 and 376 RPC were found established against the accused/respondent and the charge-sheet was laid before the learned trial Court. On 01.08.2008, charges for offences under Sections 363 and 376 RPC were framed against the respondent/accused. The accused denied the charges and claimed to be tried.

06. In order to prove its case, the prosecution examined all the eight witnesses cited in the challan. After the completion of prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the accused and his explanation was sought. In his statement recorded under Section 342 J&K Cr.P.C, the respondent/accused submitted that the prosecutrix had accompanied him out of her own free will and volition and that she has contracted marriage with him. He further stated that the prosecutrix stayed with him as his wife and in this regard, a marriage agreement was executed by the parties. He further stated that he did not kidnap the prosecutrix and that



she has deposed against him due to pressure from her family members.

07. The respondent/accused entered his defence and examined two witnesses in defence.

08. The learned trial Court has, after analysing the evidence on record and after hearing the parties, concluded that the prosecutrix had voluntarily joined company of the accused and that she had entered into wedlock with him. It has been observed by the learned trial Court that the charges against the respondent/accused have not been proved beyond reasonable doubt. Accordingly, the respondent/ accused has been acquitted of the charges.

09. The appellants have challenged the impugned judgment passed by the learned trial Court on the grounds that the same is against the facts and law and that the learned trial Court has failed to appreciate the evidence in its proper perspective. It has been contended that the prosecutrix was minor at the time of the occurrence and, as such, her consent was immaterial. It has also been contended that the prosecutrix had clearly supported the prosecution case and her testimony could not have been discarded by the learned trial Court.



10. I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and record of the trial Court.

11. Before dealing with the grounds of challenge projected by the appellant-State, it would be necessary to notice the principles laid down by the Supreme Court governing the scope of interference by the High Court in an appeal filed by the State against an order/judgment of acquittal recorded by the trial Court.

12. In **Rajesh Prasad v. State of Bihar and another**, (2022) 3 SCC 471, the Supreme Court, after considering its earlier judgments on the issue, observed as under:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal following words: [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

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

(2) The Criminal Procedure Code, 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 of 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 emphasise 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 strengthened by the trial court. and

(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.”

13. Again, in **H.D. Sundara & Ors. v. State of Karnataka**, (2023) 9 SCC 581, the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an acquittal appeal under Section 378 of the Cr. P. C. The relevant extracts of the said judgment are reproduced hereunder:

“8.1. *The acquittal of the accused further strengthens the presumption of innocence;*

8.2. *The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;*

8.3. *The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view*



taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. *If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*

8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

14. Taking note of the ratio laid down by the Supreme Court in the aforesaid judgments, the said Court, has, in the case of **Babu Sahebagouda Rudragoundar and others v. State of Karnataka**, (2024) 8 SCC 149, made the following observations:

“41. *Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:*

41.1. *That the judgment of acquittal suffers from patent perversity;*

41.2. *That the same is based on a misreading/omission to consider material evidence on record; and*

41.3. *That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

42. *The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.”*



15. In the light of the aforesaid legal principles, let us now advert to the facts of the present case. The learned trial Court has acquitted the respondent/accused, primarily, on the ground that the evidence on record establishes that the prosecutrix had accompanied the accused out of her own free will and volition and that the sexual intercourse between the parties, if at all the same has taken place, was consensual in nature and, therefore, it is not a case of rape.

16. In the above context, it is to be noted that the alleged occurrence has taken place in June 2007. The age of consent as per Section 376 RPC, which was applicable at the relevant time, was 16 years. It is only by virtue of the Jammu and Kashmir Criminal Laws (Amendment) Act, 2013, which came into effect from 22.03.2014, that the age of consent in the erstwhile State of Jammu and Kashmir was raised to 18 years.

17. In the present case, there is plethora of evidence on record to show that the prosecutrix had crossed the age of 16 years at the time of the alleged occurrence. We have on record the registration card issued by the Jammu and Kashmir State Board of School Education pertaining to the prosecutrix. As per the said document, the date of birth of the prosecutrix is



07.09.1989. Mother of the prosecutrix, PW-2, Mst. Sharaf Majeed, has, in her cross-examination, stated that date of birth of the prosecutrix is 07.09.1989. Even PW-7, Dr. Anjum Nazir, has deposed that approximate age of the prosecutrix was 18 years or more.

18. Thus, the material placed on record by the prosecution itself goes on to show that the prosecutrix was more than 16 years of age at the time of alleged occurrence and, as such, in terms of the law applicable at the relevant time, she had attained the age of consent.

19. The next question that falls for determination is whether the prosecutrix had accompanied the accused out of her own free will and volition or whether she had been forcibly taken away by the accused and whether he had committed sexual intercourse upon her under threat or coercion. In this context, the statement of the prosecutrix recorded during trial of the case assumes great significance and relevant excerpts of the same are being narrated hereinafter.

20. The prosecutrix has, in her examination-in-chief, deposed that the accused had forcibly kidnapped her, whereafter she was taken inside a shop and was raped over there. She further stated that she stayed with the accused for



one month and seven days, whereafter she was recovered by the police. She further stated that the accused kept on changing hideouts.

21. In her cross-examination, the prosecutrix stated that the accused made her to board a Sumo vehicle. She did not know as to who was driving the said vehicle. She has stated that she was taken to some unknown place. She further stated that she used to answer the call of nature in the same shop in which she was residing; that she was made to stay inside the shop and during the daytime, the accused would leave and would come back in the evening; that she would not ask the accused as to where he was going; that she was taking food and was also changing her clothes while staying in the shop; that there was no bathroom inside the shop and that she would stay inside the shop throughout the day. Even when the accused was going out, she was not raising any alarm; that she does not know to whom the shop belonged. The prosecutrix denied her signatures on the marriage agreement and also denied having executed the said agreement in presence of a Judge. She further stated that she asked the accused to set her free, but he did not accept her request. She stated that when she was taken inside the shop, it was open. She further stated that she did not go to the STD



booth nor had she told anyone after coming out of the shop. She stated that after coming out of the shop, they boarded a vehicle in which three more persons were also travelling but she did not raise any alarm. She further stated that the vehicle was checked by the police and that there were other vehicles in which people were travelling but she did not narrate anything to anyone. She denied the suggestion that she was recovered by the police from Gulshan Chowk, Bandipora.

22. From the aforesaid statement of the prosecutrix, the only inference that can be drawn is that she had accompanied the accused out of her own will and volition. She has admitted that she stayed with the accused for a period of one month and seven days in a shop. She also admitted that during the daytime the accused would go out of the shop, leaving her behind. The prosecutrix did not make any effort to set herself free from the clutches of the accused. From this conduct of the prosecutrix, it can safely be inferred that she was staying in the company of the accused out of her free will and volition. The prosecutrix has also admitted that she travelled in a passenger vehicle in which other persons were also travelling and that the vehicle was checked by the police at a Naka. Even on that occasion, she neither raised any alarm nor



narrated anything about her alleged kidnapping or rape. This also goes on to show that her statement, that she was forcibly kidnapped by the accused and thereafter subjected to sexual assault, is doubtful and hence unreliable.

23. The respondent/accused has taken a defence that he had entered into a marriage with the prosecutrix. In this regard, he has placed on record a photocopy of the marriage agreement, which, it seems, has been registered by Sub-Registrar, Kargil. Although the prosecutrix has denied her signatures on the said document, yet the defence witness, DW-Bashir Ahmad Mir, who is also a witness to the said agreement, has clearly stated that the prosecutrix had executed the marriage agreement before Sub-Registrar, Kargil. The statement of DW Bashir Ahmad Mir coupled with the copy of the marriage agreement, which has been placed on record, probablises the defence of the accused that he had entered into a wedlock with the prosecutrix.

24. From the foregoing analysis of the evidence on record, it can safely be concluded that the prosecutrix had accompanied the accused out of her own free will and volition and it is not a case of kidnapping and rape, as has been alleged by the prosecution. The learned trial Court has



properly analysed and appreciated the evidence on record and has arrived at a conclusion which is irresistible having regard to the nature of evidence on record.

25. For the foregoing reasons, I do not find any ground to interfere with the impugned judgment passed by the learned trial Court. Both the appeals, being devoid of merit, are dismissed accordingly.

26. The trial Court record, along with a copy of this judgment, be sent back forthwith.

Srinagar,
31.07.2026

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES**



(Sanjay Dhar)
Judge