
(2023) 03 J&K CK 0046

Jammu And Kashmir High Court

Case No: Criminal Appeal (AD) No. 18 Of 2019

State Of J&K

APPELLANT

Vs

Surinder Kumar

RESPONDENT

Date of Decision: March 28, 2023

Acts Referred:

- Jammu And Kashmir State Ranbir Penal Code, 1989 - Section 109, 303, 363, 366, 376
- Code Of Criminal Procedure, 1973 - Section 161, 164A

Hon'ble Judges: Rajnesh Oswal, J; Puneet Gupta, J

Bench: Division Bench

Advocate: Amit Gupta, Rajnish Raina, Surinder Kumar

Final Decision: Dismissed

Judgement

Rajnesh Oswal, J

1. The present acquittal appeal is directed against the judgment dated 30.01.2016 passed by the court of learned Principal Sessions Judge, Samba

(hereinafter to be referred as the trial court) in case titled "State of J&K Vs. Surinder Kumar" whereby the respondent has been acquitted of the

charge for commission of offences under Section 363/376 RPC in FIR bearing No. 178/2013 registered with Police Station, Samba.

2. The judgment of the acquittal has been assailed by the appellant on the ground that the prosecution had established the case against the respondent

by adducing documentary as well as oral evidence, which in the ordinary course was sufficient to convict the respondent but the learned trial court has

failed to appreciate the prosecution evidence in its right perspective and acquitted the respondent erroneously.

3. Mr. Amit Gupta, learned AAG argued that the victim/prosecutrix was minor and the learned trial court has failed to appreciate her testimony in

right perspective and acquitted the respondent despite the fact that the prosecution had proved the case beyond reasonable doubt.

4. Mr. Rajnish Raina who volunteered to represent the respondent, argued that the learned trial court has meticulously considered the evidence

brought on record and the conclusion drawn by the learned trial court cannot be said to be perverse or contrary to the evidence brought on record and

as such, the appeal is misconceived and deserves its out- right dismissal.

5. The case set up by the prosecution is that one Hussain had initially lodged a missing report in respect of his daughter-aged 15 years on 29.08.2013

with Police Station, Samba. Thereafter, on 30.08.2013 he lodged a written report in Urdu with Police Station, Samba stating therein that he had lodged

a missing report with Police station, Samba and now he had come to know that Surinder Kumar and Suresh Kumar had allured his daughter and

kidnapped her.

6. On receipt of the said information, FIR bearing No. 178/2013 was registered against both the accused for commission of offences under Section

363/366/109 RPC. PSI-Nadeem was appointed as the Investigating Officer. He prepared the site plan and started search of both the accused. The

victim was recovered from Dhannivasta. Investigating Officer prepared the site plan and recorded the statements of the witnesses under Section 161

Cr. P.C. Accused- Suresh Kumar and Surinder Kumar were also arrested. Statement of prosecutrix was recorded under Section 164-A Cr. P.C. She

did not depose anything against the accused-Suresh Kumar and as such, Suresh Kumar was dropped from the array of accused. Victim was minor

but as she was illiterate, so no documentary evidence could be placed on record by her father to demonstrate the minority of his daughter. After

completion of the investigation, the Investigating Officer proved the offences against the respondent under Section 363/376 RPC. The charge-sheet

was laid before the learned Chief Judicial Magistrate (CJM), Samba on 28.10.2013. The same was committed to the learned trial court on the same

date. The learned trial court vide order dated 28.12.2013 framed the charge against the respondent for commission of offence under Section 363/376

RPC. As the accused did not plead guilty to the charge, the prosecution was directed to lead evidence and out of 9 witnesses cited by the prosecution,

8 witnesses were examined by the prosecution. The respondent also led evidence in his defence to rebut the prosecution evidence and the learned trial

court after hearing both the parties, acquitted the respondent of the charge for commission of offences under Section 363/376 RPC.

7. Before appreciating the rival contentions of the parties, this Court deems it appropriate to have a brief resume of the relevant portion of the prosecution evidence.

8. PW 1- Hussain-Complainant (Father of the victim/prosecutrix) stated that the accused remained with him for eight months as driver. On last 28 of

Badhro he had gone to bring grass for his cattle. The prosecutrix along with other minor children remained in the house. Age of the prosecutrix was

15 years. When he returned home, he did not find prosecutrix in the house. On inquiry from the children, he came to know that she had gone for

fetching drinking water but did not come back. He inquired from the relatives but no information could be received. Next day he went to the Police

Station and lodged a written complaint and thereafter, FIR was also registered. Thereafter, he enquired from Jeeta, who told him that Surinder Kumar

had left the auto. He also enquired from sons of Saraj Din and Shah Din. They told him that the accused was roaming there only. He became

suspicious about the accused. Then, he along with the Police went to the house of the accused, where the neighbours of the accused told that the

accused had come, but now had gone somewhere else. He along with the Police went to Dhanni where the accused along with his daughter was

standing on the road. He immediately asked the Police to stop the vehicle. Then, the Police took the accused and his daughter in the vehicle and they

reached the Police Station at around 10/11 oâ€™clock. Medical examination of his daughter was conducted and the prosecutrix was handed over to

him on his supurdnama. During cross-examination, he stated that the marriage of the prosecutrix was performed with Murad Din and Nikah was

performed by Moulvi Karim and he is ready to produce the Nikah Namma and after Nikah of her daughter she was residing with her husband. Even

before the occurrence, the accused used to do wrong act with his daughter but it was not in his knowledge as for how many times wrong acts were done. His daughter did not tell him about the wrong acts earlier and told him about the same only after the occurrence. He has not got registered the Date of Birth of his daughter with Chowkidar, Kanachak or in Police Station. He has no proof with regard to date of birth of his daughter. He had mentioned in his statement under Section 161 Cr. P.C. that he had enquired from Jeeta because children of Saraj Din and Shah Din, who were neighbours of the accused told him that the accused used to wander in the neighbourhood and that was why he became suspicious but this fact is not reflected in his statement recorded under Section 161 Cr. P. C. This is also not reflected in his statement that he along with the Police went to house of the accused and neighbours told him that the accused had come and thereafter went back. Except Police personnel no one had gone to the house of the accused along with him. He had not told witnesses Saraj Din and Shah Din that when he along with Police personnel went in search of prosecutrix, the prosecutrix along with accused had hidden in the corn crop field. He further stated that the Police had not caught the accused and the prosecutrix from the corn crop field but they were standing on the road. Medical examination of the prosecutrix was conducted on 01.09.2013 and not on 31.08.2013. He does not know whether his daughter and accused had love affair and his daughter wanted to perform Nikah with the accused and that was why she had gone from Shah Balore to Mahanpur. This is also not correct that his daughter told him that she wanted to marry the accused and he prevented the same because the accused was Hindu. It is not correct that his daughter had gone to the accused but the accused kidnapped her. His daughter told him on the way that the accused gave her tea and she became unconscious. Accused threatened her that if she screamed, she would be killed and that was why she did not shout but this fact of giving of tea in the field and her becoming unconscious is not mentioned in his statement recorded under Section 161 Cr. P. C. He has not mentioned in his statement under Section 161 Cr. P. C. that his daughter told him that prior to taking tea, the accused threatened her. Mahanpur road, from where the prosecutrix and the accused were taken into custody, vehicles were

plying and people were strolling.

9. PW 2-Prosecutrix stated that last year when she had gone for fetching water, the accused forcibly took her and on the way the accused caught her

from her hand and took her into bushes. The accused broke the string of her salwar and committed rape upon her and during that night they stayed in

the bushes and thereafter, she along with the accused went along the road side and started walking. Accused took her in a truck to another place and

on the way the accused offered tea to her and told that if she would not take tea, she would be killed. After drinking tea, they started travelling

continuously. She stopped on the road and the accused went to toilet. The accused threatened her that if she tried to call somebody, she would be

killed. The accused brought some food in the bushes and asked her to eat the same, otherwise she would be killed. Thereafter, the accused kept her in

kulla, where he forcibly raped her. The accused threw her clothes and gave her new clothes. The accused started wandering here and there. In the

evening, one vehicle came in which her father, mother, uncle and Police came and took her to the Police Station, Samba. Her medical examination

was conducted. During cross-examination, she stated that in her statement recorded under Section 164-A Cr. P.C. she had not stated that she did not

know about her age. She did not state her age in her statement under Section 164-A Cr. P.C. In her statement recorded under Section 164-A Cr.

P.C. she had mentioned that during that night she along with the accused remained in the bushes. Next morning they went on road, but this fact was

not reflected in her statement recorded under Section 164-A Cr. P.C. She expressed ignorance about the colour of the clothes she was wearing

previously and those which were given to her by the accused. In her statement recorded under Section 164-A Cr. P.C. it was not mentioned that the

accused had taken her earlier clothes and gave her new clothes. It was also not mentioned in her statement recorded under Section 164-A Cr. P.C.

that the accused threatened her and left her on the road and after bringing food, he came to her. When the accused threatened her and asked her to

stand on the road, people were moving here and there. She did not remember as to whether she had stated in her statement recorded under Section

164-A Cr. P.C. that due to fear she did not tell anybody that the accused asked her to stand on the road but it is not mentioned in her statement

recorded under Section 164-A Cr. P.C. It was also not found in her statement recorded under Section 164-A Cr. P.C. that her father along with

Mama (Maternal Uncle) came in the Police Vehicle. She has mentioned in her statement under Section 164-A Cr. P.C. that she and the accused had

walked for two and a half hours on road for getting the vehicle but this fact was not reflected in her statement recorded under Section 164-A Cr. P.C.

The accused took her at 2.00 P.M. when she was going to fetch water from the pump and the pump was 2/3 Kms. away. She did not raise any hue

and cry, as the accused gagged her mouth, but this too is not mentioned in her statement recorded under Section 164-A Cr. P.C. She did not know

where they spent the second night. She had stated in her statement recorded under Section 164-A Cr. P.C. that she had shown the place where she

remained on the second night but it is not reflected in her statement recorded under Section 164-A Cr. P.C. She had seen the vehicle at a distance of

2/3 metres in which her father along with the Police personnel was sitting. She along with the accused came out of the bushes when her father along

with the Police came on spot but the same is not reflected in her statement recorded under Section 164-A Cr. P.C. When the Police vehicle came

then the accused did not try to run away from the spot. The accused had bitten her with teeth and she had shown those bite marks to the Doctor. She

did not know who was driver and conductor of the truck. She did not tell the driver and conductor of the truck that the accused was taking her forcibly

in the truck.

10. PW 3 Jillo (Mother of the Prosecutrix) deposed about missing of the prosecutrix and after three days, the Police brought the prosecutrix. She met

her in the Police Station and the prosecutrix told her that the accused had used force with her and had taken her to Mahanpur and had done wrong act

with her. She further deposed that the prosecutrix told her that whenever she asked the accused to leave her, he used to beat her. Prosecutrix also

told her that the accused took her in a truck and on the way he also offered her tea. Prosecutrix further told her that earlier also, the accused used to

do wrong with her. She stated that the accused had taken her daughter forcibly and she had not gone on her own. During cross-examination, she stated that she had stated in her statement under Section 161 Cr. P. C. that the accused administered beating to her daughter but the same was not reflected in her statement. She was illiterate and because of this reason, she could not tell her age. It may be possible that in her statement under Section 161 Cr. P. C. she mentioned the age as 15 years but she had not given any birth certificate with regard to her age to Police Station. The prosecutrix is 15 years of age but she did not know her date of birth. She stated that her son who is elder to the prosecutrix is 20 years of age. She does not remember whether she has stated in her statement under Section 161 Cr. P. C. that the prosecutrix told her that the accused used force with her and also that the accused took her, but it was not reflected in her statement recorded under Section 161 Cr. P. C. She does not remember whether she has mentioned in her statement recorded under Section 164 Cr. P. C. that the accused forcibly kidnapped her daughter but in her statement under Section 164 Cr. P. C. forcibly kidnapping of her daughter is not mentioned. She denied that her daughter was having love affair with the accused.

11. PW 4-Shah Din stated that 3/4 months ago, the prosecutrix had gone away to some village and she had gone with the accused. The Police recovered the girl and brought her to the Police Station, Samba. He had also gone with the Police and the prosecutrix was recovered from the corn crop field. During cross-examination, he stated that age of mother of the prosecutrix is 42 years and her elder daughter is 18 years of age. The fact that the prosecutrix and the accused were recovered from the corn crop field is not mentioned in his statement recorded under Section 161 Cr. P. C.

The Police took him to the place of recovery but he did not show the place of recovery to the Police. There was maize crop and the accused and the prosecutrix had hidden themselves in the maize field. The fact that they were recovered from the corn crop field was stated to the Police but it has not been reflected in his statement recorded under Section 161 Cr. P. C.

12. PW 5 Saraj Din stated that he had gone with the Police at Mahanpur as the accused had kidnapped Hussain's daughter and Hussain had also

accompanied them. He remained in the Police Station, Mahanpur. Samba Police and Hussain went forward. There were corn fields and the house of the accused was also adjacent to the corn fields. The Police took the daughter of Hussain and accused out from the field and told him that the accused and prosecutrix had hidden themselves in the field. Thereafter, the Police took the prosecutrix and the accused to Mahanpur Police Station and then to Police Station, Samba. His signatures were obtained on some papers, but they were not read over to him. During cross-examination, he stated that it was not mentioned in his statement recorded under Section 161 Cr. P. C. that the prosecutrix and the accused had been hidden in the corn field and also this is not mentioned in the statement that the prosecutrix and the accused were recovered from the said field and were brought to Police Station, Samba. The field from where the accused and the prosecutrix were recovered was of the accused. This fact is also not mentioned in his statement recorded under Section 161 Cr. P. C. Hussain is his brother-in-law.

13. PW 6 Dr. Meenakshi Rana stated about medical examination of the prosecutrix. She proved the certificate (EXT-P2). In cross-examination, she stated that opinion was not given with regard to the sexual intercourse that whether the same was recent or old, but as per her opinion, the victim was habitual of sexual intercourse. She had also not received any certificate from Radiologist for confirmation of the age of the victim, from where it could be established that the age of the victim was 15 years at the time of examination. The witness was not under depression and she did not tell her that any force was used upon her and sexual intercourse was committed on her. She had not seen any signs of injury either internal or external on the body of the victim. She could not say from her report as to whether any sexual intercourse was committed with the alleged victim at the time of examination.

14. PW 7-Raj Kumar Bhagat: He proved the potency report of the accused.

15. PW 8 PSI Nadeem Hussain (Investigating Officer) stated about the lodging of missing report and registration of FIR. He further stated that during search Surinder Kumar was found standing on the road and Hussain told that Surinder Kumar was standing and then left the vehicle. On identification

of Hussain, Surinder Kumar was arrested and the prosecutrix was also standing with the accused. He deposed about conducting of medical examination of the prosecutrix and stated that he wrote a letter to Medical Superintendent, Samba with respect to age of prosecutrix as her pregnancy report was positive. No facility was available at Samba Hospital to determine the age of the prosecutrix but under guidelines of District Hospital, Samba and District Hospital, Jammu, the prosecutrix was taken to Gandhi Nagar Hospital for determination of her age and her pregnancy, but the Doctor did not give any certificate with regard to age of the prosecutrix as she was pregnant and Ultra Sound of the prosecutrix was taken. He proved the offence under Section 363/376 RPC against Surinder Kumar. In cross-examination he stated that he could not say what was the duration of pregnancy, whether it was of two months or four months. He could not say as to whether he had taken any certificate with respect to duration of pregnancy from the Govt. Hospital or not. He did not record the statement of Dr. Madhu, from where age of prosecutrix could have been ascertained. Dr. Madhu has not issued any certificate from where it could be ascertained that due to pregnancy, age of prosecutrix could not be determined. He has not taken any birth certificate of prosecutrix from Chowkidar/Police Station/School, which could determine the age of the prosecutrix. Hussain in his statement under Section 161 Cr. P. C. has stated his age as 55 years, and his wife Jillo recorded her age as 51 years. In the statement which Hussain had recorded before him, nowhere it is mentioned that Hussain was 40 years old and his wife was 35 years old. He stated that as per his investigation, age of Hussain and his wife was not 40 years and 35 years. Nowhere, the doctor in final report has stated that due to pregnancy, the age of the prosecutrix cannot be determined. Doctor has not mentioned in his report with regard to rape of the prosecutrix but has mentioned in final report, that the patient was habitual of sexual intercourse and also mentioned with regard to pregnancy of the prosecutrix as positive. In his investigation it is found that the hand pump is 200 metres away from the place of occurrence and not 2/3 Kms away. During investigation from the prosecutrix she had not mentioned that she stayed in Shah Balore in bushes in night, accused had not raped her and also it did not come in the

investigation that in the night she and accused remained in Shah Balore in bushes, and the next day both of them started walking 2/3 Kms on the road.

None of these facts are mentioned in the statements of any witness under Section 161/164 Cr. P. C. It has not come in the statement of the

prosecutrix under Section 164-A Cr. P.C. that accused threw her clothes and gave her new clothes and the same also did not emerge in his

investigation. Clothes of the prosecutrix were not sent to FSL. The prosecutrix did not show the place of occurrence of Shah Balore and Dhannivasta.

If prosecutrix had given any such statement in the court then she has given a wrong statement. He has not conducted any DNA test of prosecutrix

and accused from where it is to be ascertained that who is responsible for pregnancy of the prosecutrix. He did not know about the number of sons

and daughters of Hussain. The statement which was given by the prosecutrix in court during the trial that the hand pump from where she had gone to

take water was 2/3 Kms away from kulla is wrong statement as the hand pump is 400 metres away from kulla. The statement of the prosecutrix that

she raised no hue and cry as accused gagged her mouth, is a wrong statement, as no witness has mentioned in his statement with regard to this fact.

He has not recorded any statement of the prosecutrix, as she refused to record her statement before him. The statement which was given by the

prosecutrix in the court, that she had shown both the places to the Police is a wrong statement. The road where the prosecutrix and the accused were

standing, goes from Mahanpur to Basoli, and on that road, the people and vehicles use to move. When they saw the accused and the prosecutrix

together, the accused on seeing the Police and the father of the prosecutrix, did not make any attempt to run away but he was afraid. There was no

sign of any forceful sexual intercourse on body of the prosecutrix and the doctor has also mentioned this fact in her report. The prosecutrix has not

mentioned in her statement under Section 164-A Cr. P.C from where the accused brought the food or who gave them food. She has not mentioned in

her statement that the accused brought food in the bushes and by giving threats asked her to take the same. He has not made the site plan of kulla or

any place of kulla was shown to him. It has not come in the investigation that accused left the prosecutrix on road and then went to bring the food. It

is correct as per the statement of Jillo, that accused had relations with the prosecutrix but these facts were neither disclosed by the prosecutrix to her parents nor to him. When the prosecutrix and the accused were standing many people were coming, despite that, he had not associated any one of them as witness. He also enquired from the prosecutrix that with whom they stayed on 28.08.2013 and 29.08.2013 but the prosecutrix did not state anything. The prosecutrix has not mentioned her age in her statement under Section 164A Cr. PC. No witness has stated in their statement that at the time of recovery, both of them were hidden in the maize field. If Saraj Din and Shah Din have made statements that both the accused and the prosecutrix were found in the corn crop feild, then they have made wrong statements. He has not mentioned the age of the prosecutrix, as her parents have not given the documents in respect of age and he has not got report from Radiologist. Radiological test was not performed due to pregnancy and due to this very reason, her age was not determined. He could not say whether the prosecutrix was of 20 years, 21 years or 22 years. He has not recorded the statement of Chowkidar, Lambardar of village Mahanpur as well as village Dhannivasta. FIR was registered on 14.30 and it took 10-15 minutes for registration of FIR. He has gone for investigation at 14.40. He did not know when he reached Mahanpur. He reached Dhannivasta at 6.05 oâ€™clock and reached Mahanpur at 5.30 and took the prosecutrix at 6.05 in their custody and reached Police Station at 11 oâ€™clock and went to the Hospital. He had measured the distance of Hand pump to kulla which was 500 metres. He does not know the name of Lambardar of the village Dhannivasta and Mahanpur. He does not know whether the Lambardar of Mahanpur gave information to the Police Chowki Mahanpur which gave information to the Police Station, Samba, that is why he first of all went to the Mahanpur Chowki, then to the house of the accused, and thereafter, Dhannivasta, in house of his sister. He is having no knowledge whether the prosecutrix was having love affair with the accused and had herself gone away from Shah Balore to the house of the accused and the accused was coming back in order to leave her at Shah Balore and when they were waiting on the road for bus, the prosecutrix as well as the accused were taken into custody.

16. The respondent also examined witnesses in his support.

17. DW 1-Raj Kumar stated that on 20.08.2013 while he was in the village, a young girl reached in his village at about 3/4 PM and told that she had

come in the village to meet Surinder Kumar, whom she loved and wanted to marry. Villagers assembled there and raised objection about the marriage

between two of them, as both of them were of different religions. Thereafter, they told the girl to go back but she did not agree and she was kept in

that village and next day, the girl was counselled to go back to her home. He along with Ram Chand and Surinder Kumar and other people came to

leave the girl and when they were waiting for the vehicle, Police came there and took the girl and Surinder Kumar in the vehicle. The Police told them

that Surinder Kumar would be released after inquiry at Samba. In cross-examination, he stated that Sarpanch of the village is Rangeel Singh, who was

informed that a girl had come on her own in the village. At the time when the girl came, Krishan Chand, Rattan Chand and Kuldeep Kumar were also

present. The girl remained in the house of sister of the accused namely Champa Devi where the accused also remained during that night.

18. DW 2-Krishan Chand and DW 3- Kaka Ram also deposed in the similar manner like that of DW 1.

19. DW 4 Rangeel Singh (Sarpanch) stated that two years ago he came to know that a girl had come to his village in Mahanpur and was searching for

the accused-Surinder Kumar. Residents of the village told the girl that Surinder Kumar lived with his sister in village Dhanni. Thereafter, the said girl

went to village Dhanni. She told the villagers that she was having love affair with the accused Surinder Kumar and she had not seen him for the last

six months. Then, people of the village gave information to the girl that he stayed with his sister. Then, next day, accused-Surinder Kumar along with

some villagers came to village Shah Balore for handing over the girl and when they were standing on the road, Police team came from Samba and

caught hold of the accused and the girl.

20. DW 5 Champa Devi (Sister of the Accused) has also deposed in an identical manner.

21. The respondent has been charged for commission of offences under Section 363/376 RPC. It is to be seen whether the prosecution has been able

to prove the age of the prosecutrix as 15 years or not. Both the parents i.e. PW 1 and PW 2 father and mother of the prosecutrix have categorically stated that the prosecutrix was illiterate and her date of birth certificate was not available, that could demonstrate the age of the prosecutrix as 15 years. Admittedly, there is no documentary evidence on record to establish this fact. Even the Investigating officer has admitted that Dr. Madhu did not issue certificate with regard to age of the prosecutrix as she was found to be pregnant at the time of her examination. In the certificate issued by PW-Dr. Meenakshi Raina the age of the prosecutrix has been mentioned as 15 years but in her cross examination she has admitted that she has not received any certificate from Radiologist for confirming the age of the prosecutrix and also she did not receive any certificate from where it can be established that the age of the victim was 15 years at the time of examination. In view of this, it cannot be said that the prosecution has succeeded in proving the age of the victim as 15 years. Reliance is placed upon decision of Apex Court in case titled "Sunil Vs. State of Haryana" 2009(8) Supreme 20. Once the age of the victim has not been proved then the offence under Section 303 RPC is also not proved.

22. The other issue is with regard to kidnapping of prosecutrix, as also the commission of offence of rape by the accused. From the evidence on record, the only evidence that is required to be appreciated is that of prosecutrix as PW 1-father of the prosecutrix and PW 3-mother of the prosecutrix were not at home when the prosecutrix was allegedly kidnapped by the respondent at about 1 PM, when she had gone for fetching water.

Now we would examine as to whether the prosecution has been able to prove these facts or not. The prosecutrix in her statement has stated that she had gone for fetching water from a pump that was 2/3 Kms away from her house, whereas the Investigating Officer has specifically stated that it was only 300/400 metres away from the Dera. The prosecutrix has also stated that she was standing with the accused on the road when her father along with Police came in the vehicle and simultaneously she stated that she along with the accused came out of the bushes when her father came on spot.

PW 1 i.e. father of the prosecutrix stated that the accused along with his daughter was standing on the road and on seeing the accused and his

daughter, he asked the Police to stop the vehicle. PW 5 has stated that the Police took the accused as well as the daughter of Hussain from the corn

fields. Thus, there are different versions with regard to recovery of the prosecutrix -one set of evidence is that they were standing on the road and the

other set of evidence is that they were recovered from the corn fields. PW 2 (prosecutrix) in her statement has stated that she travelled along with the

accused in a truck and she also stated that she was asked to stand on road while the accused had gone for bringing food, people were moving here

and there. Why did not she disclose that she was forcibly kidnapped by the accused to the truck driver or the other persons moving here and there.

This demonstrates that she was not kidnapped by the accused. She has improved her statement at different stages of the investigation and trial. It was

not mentioned in her statement under Section 164-A Cr. P.C that her old clothes were taken and she was given new clothes by the accused. From

where those new clothes were brought by the accused remains a mystery. The testimony of the prosecutrix is not trust-worthy and it appears that she

had voluntarily gone with the accused.

23. It is well settled law that the evidence of the defence witnesses is to be considered at par with the prosecution witnesses (See Mahendra Singh v.

State of M.P., (2022) 7 SCC 157). It has come in the evidence of the defence witnesses that one girl came to their village in search of accused as she

was having love affair with the accused-Surinder Kumar. It appears that the prosecutrix was in love affair with the accused and she had herself gone

to the village of the accused and resided in the house of sister of the accused namely Champa Devi.

24. One glaring feature of the prosecution case is that the prosecutrix was pregnant and there is no evidence with regard to duration of pregnancy.

She was allegedly kidnapped on 28.08.2013 and her medical examination was conducted on 31.08.2013, which shows that when she was recovered

she was already pregnant. It has come in her evidence that earlier also the accused used to do wrong with the prosecutrix though there is no specific

evidence that the prosecutrix and the accused had sexual relationship between themselves but in view of the above, it was incumbent for the

Investigating Officer to have investigated with regard to pregnancy of the prosecutrix. Why the Investigating Officer did not proceed further when allegedly Dr. Madhu refused to issue certificate with regard to age of the prosecutrix. In view of the above, we are of the considered opinion that the prosecution has not only failed to prove the essential ingredients of offence of kidnapping but also with regard to commission of offence under Section 376 RPC as it appears that the accused and the prosecutrix were having love affair with each other and perhaps they were also involved in sexual relations as well with mutual consent. The consent would have been irrelevant, had the prosecution been able to prove the age of the prosecutrix below the relevant age for granting consent for sexual relationship, but as we have already observed that the prosecution has not been able to prove the age of the prosecutrix as 15 years, so in view of the evidence led by the parties, the accused cannot be convicted for commission of offence under Section 376 RPC.

25. We have examined the judgment passed by the learned trial court. Learned trial court has also come to the conclusion that the prosecution has failed to prove the age of the prosecutrix as 15 years and also has arrived to the conclusion that the prosecutrix was a consenting party to the act of sexual intercourse with the accused. These findings of the trial court cannot be termed as contrary to the evidence led by the parties.

26. Viewed thus, we find no infirmity and perversity in the judgment impugned. The present appeal is found to be misconceived and the same is, accordingly, dismissed.