

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

Reserved on: 21.12.2024
Pronounced on: 03.01.2025

**CRA No. 10/2003
CrIM No. 385/2024
c/w CRA No. 11/2003**

**(i) Abdul Gani Akhoon
S/O Gh. Mohd. Akhoon
R/O Breen Nishat, Srinagar.**

.....Appellant(s)

Through: Mr. S. R. Hussain, Advocate.

V/s

State of J&K through Public Prosecutor

.....Respondent(s)

Through: Mr. Jahingeer Ahmad Dar, GA.

**(ii) Noor Mohammad Bhat
S/O Abdul Ahad Bhat
R/O Pahloo Brain, Nishat, Sgr.**

.....Appellant(s)

Through: Mr. Z. A. Qureshi, Senior Advocate with
Ms. Moneesa, Advocate.

V/s

State of J&K & Ors.

.....Respondent(s)

Through: Mr. Jahingeer Ahmad Dar, GA.

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. Both these appeals arise out of the judgment of conviction and sentence dated 26.08.2003 passed by the court of learned 4th Additional Sessions Judge, Srinagar, (for short 'the Trial Court'), whereby appellant in

CRA No. 10/2003 has been convicted and sentenced to rigorous imprisonment for seven years for commission of offence under Sections 376, two years for offence under 366 of RPC and one year for commission of offence under section 344 RPC, whereas the appellant in Appeal No. 11/2003 has been convicted and sentenced to two years of imprisonment for commission of offence under Section 366 of RPC and one year for commission of offence under Section 344 of RPC. Besides, both the appellants have been directed to pay fine of Rs. 2,000/- each.

2. The appellant-Abdul Gani Akhoon has impugned the judgment and order of conviction dated 26.08.2003 on the ground that the learned Trial Court has passed the impugned judgment on the sole testimony of the prosecutrix, and her statement was to be necessarily corroborated by other witnesses, in respect of the place where the prosecutrix was allegedly confined, who was the driver of auto rickshaw etc. Precisely it is urged by the appellant that other material witnesses were not associated with the investigation to corroborate the statement of the prosecutrix.

3. The appellant-Noor Mohammad has impugned the judgment on the ground that judgment is contrary to weight of evidence and the learned trial court has not appreciated the evidence in its right perspective.

4. In nutshell, both the appellants have assailed the judgment on the ground that the learned Trial Court has not appreciated the evidence.

5. Mr. Z. A. Qureshi, learned senior counsel for the appellant in CRA No. 11/2003 has vehemently argued that there are different stories with regard to the prosecutrix going missing and the prosecution has not proved the

abduction by the appellant by leading cogent evidence. He has further submitted that the prosecutrix has made contradictory statements and in view of the infirmities in her statement, the appellant could not have been convicted.

6. Mr. S. R. Hussain, learned counsel for the appellant in CRA No. 10/2003 has argued that the learned Trial Court has convicted the appellant on the sole testimony of the prosecutrix and her evidence was not of such a nature that the appellant could have been convicted, particularly in view of the fact that the house wherein the prosecutrix was allegedly confined and raped, was neither identified by the prosecutrix nor any attempt was made by the Investigating Officer to identify the said place. He has further argued that as per the prosecution evidence, both the appellants were already arrested when the clothes of the prosecutrix were seized by the police on 02.03.1997, whereas the arrest of the appellants has been shown as 05.03.1997.

7. Mr. Jehangir Dar, GA has argued that the prosecutrix had clearly deposed about the commission of offence of abduction, wrongful confinement and rape by the appellants and her sole testimony was sufficient enough for conviction of the appellants.

8. **Heard and perused the record.**

Prosecution Case:

9. Briefly stated, the prosecution story is that on 01.03.1997, the prosecutrix appeared in the police station-Nishat and stated that on 13.02.1997, she had gone to the house of her neighbour-Mohammad Shaban for getting a frying pan. After few minutes, Aziz Jan came on spot, shouting

that she was having illicit relationship with the son of the owner of house. No one listened to her. Her husband was out of the home. She in order to get shelter in the house of her maternal aunt at Dalgate, reached near Lam, where Noor Mohammad met her and insisted her to go back to her home. Thereafter, she boarded the auto along with him and found Gani Akhoon already sitting in the said auto. She sat in between the two. She was blindfolded with her dupatta and taken to an unknown place and kept in a dark room, that was having ventilation at height but without window. Thereafter, they locked her from outside. At around 11:00 PM in the night, both the accused opened the door and Abdul Gani Akhoon entered the room and forcibly removed her clothes, causing injuries to her. Injuries were still present on her body and thereafter, he made her lie on the ground and committed rape upon her. At that time, Noor Mohammad was guarding at the door. She was forcibly made to consume Kashmiri bun and one cup of tea. She remained there till 01.03.1997, when in the morning on 01.03.1997, she was blindfolded and was taken out of room and left at unknown location. After removing scarf from her eyes, she was threatened that if she disclosed the incident to anyone, her family members would be killed. After walking for a while, she reached shrine of Syed Yaqoob Sahib at Sonwar, where one lady gave her dupatta. On receipt of this information, FIR No. 22/1997 was registered on 01.03.1997 at 16:10 hrs for commission of offences under Sections 366, 376, 344 and 354 of RPC. The prosecutrix was examined by the doctor. The statement of the prosecutrix was recorded under Section 164 of CrPC and after recording the statement of other witnesses, charge sheet was filed against the three accused before the court of learned Judicial Magistrate (Judge Small Causes),

Srinagar, and the same was committed to the court of learned Sessions Judge, vide order dated 26.05.1997, which was later assigned to the learned Trial Court vide order 24.06.1997.

10. Vide order dated 18.02.1998, the appellant No.1 was charged for commission of offences under sections 376,366,354,344 R.P.C, appellant No.2 was charged for commission of offences under section 366,344 R.P.C and the third accused namely- Aziz Jan was discharged.

11. The prosecution had cited as many as seven witnesses, out of which, six witnesses were examined by the prosecution. Defence examined two witnesses. After hearing the parties, the learned trial court convicted the appellants as mentioned above.

12. For appreciating the contentions raised by the appellants, it is necessary to have a brief resume of the relevant part of the evidence led by the parties.

Prosecution Evidence:

13. **Prosecutrix:** She has stated that she knows the accused. She had gone to the house of her neighbour for getting a frying pan. The accused Abdul Aziz came after her with shovel and asked her to marry him. She told him that she was already married, having two children. He used to threaten her that he would defame her in such a manner that she won't be able to come outside. Then accused Abdul Aziz called the residents of the Mohalla, and she proceeded to the house of her maternal aunt and when reached at Lam Nishat, in the evening, the accused No. 2-Noor Mohammad called her and

enquired as to where she was going. She replied that she was going to her maternal aunt. He further asked as to why she was running, as she was having children and further told her that he would take her back to her house. He further told her that he would go *via* Brein and made her to sit in the Auto. The accused No. 1-Abdul Gani Akhoon sat on her right side and the accused No. 2-Noor Mohammad sat on her left side. When auto travelled some distance, both the accused persons covered her mouth and eyes with scarf. She could not say as to where she was taken by the accused, but was locked in a small room. For three days, her hands and legs were tied. The accused No. 1-Abdul Aziz did wrong with her and the accused No. 2-Noor Mohammad guarded at the door. She was kept in the room for sixteen days and after sixteen days, she was taken out of the room and was threatened not to disclose the incident to anyone about the occurrence, otherwise, she would be killed. She was again blindfolded and at early dawn, she was left at one lane. When she proceeded towards the lane, she reached the shrine of Syed Sahib at Sonawar. The accused took away her pheran and scarf. Thereafter, she went to the police and made oral report with the Kothibagh Police Station. The police arrested the accused and thereafter police of Nishat Police Station took the accused with them. She had put thumb impression on paper before the police. During cross-examination, she stated that she does not remember the date of occurrence, but it was fourth day of Eid. The accused-Azeem Jan is the son of cousin of her father. Azeem Jan is having three kids. Her marriage has been solemnized in her Mohalla and the accused Azeem Jan resides near her house. It is true that Noor Mohammad resides in Pahloo, Brien. Pahloo, Brein, is at a distance of 2 to 4 kilometres away from her house.

The accused-Gani also resides in Brein. The accused-Gani never came to her, but Noor Mohammad used to come to her. On the day of occurrence, she had left her home at 5:00 PM in the evening. The accused met her for the first time at a distance of 8 to 9 kilometres away from her home. The accused met her at 7:00 PM in the evening. There was strike on that day and the vehicles were not on the road. She had to go to Dalgate. Autos and scooters were on the road. She did not know as to who was driving the auto, but some other person was driving the auto. She is illiterate, as such, could not see the number of the auto. She also cannot say about the residence of the auto driver. The windows of the auto were open. She was blindfolded, as such, she did not know about the place of occurrence, where she was taken. The accused did wrong to her on the very first day. The accused had tied her hands and legs. The accused continuously did wrong with her for seven days. When the accused did wrong with her, both the accused had tied her legs. Her feet were tied during all those seventeen days. The accused used to remain outside in the morning as well as in the night. When the accused-Abdul Gani used to come to commit wrong to her, the accused-Noor Mohammad used to stand at the door. Thereafter, both the accused used to go back. The accused never brought the accused Azeem Jan along with them. The accused only had got Azeem Jan in the lock up of police station. She cannot say whether she was kept in a room or shed. No voice from outside was audible to her. After alighting from the auto, she travelled only 2 to 3 steps to enter the room. When she was taken out, she was dragged from three stairs. Thereafter, she was boarded in auto. At that time, she was alright and was not tied by anything. Thereafter, she was left at the lane. She walked and reached the shrine at

Sonawar. When she was travelling in a vehicle and reached at lane, she could see everything. On the way, till Shrine of Syed Sahab, no one met her and at the Shrine, one Molvi and one girl met her. When she went to the police station, she did not ask the SHO to see the place, where she was kept.

14. **Mother of Prosecutrix:** she has stated that she knows the accused-Aziz Jan. The accused-Aziz Jan is her neighbour and used to remain in home. The prosecutrix is her daughter, who is 20 years of age. The accused-Aziz Jan often used to tease her daughter and used to force her to come along with him. In the year 1997, on the third day after Eid, the prosecutrix had gone to her neighbour to get the frying pan. The accused-Aziz went to the house of Mohammad Shaban, where he abused her daughter. Her daughter ran away from there. Accused-Aziz Jan ran after her with shovel and went towards the road. Both the other accused were present on the road. There both the accused blindfolded and covered her daughter and took her in the auto. Thereafter, she searched for her ten days in Kashmir and then they went to Jammu also, but she could not be found. Thereafter, the accused-Aziz Jan handed over her daughter and surrendered himself before the police. After sixteen days, father of Aziz Jan informed her that her daughter was with police. She cannot say as to how her daughter was kidnapped. After sixteen days, she and members of her family went to the police post and saw her daughter there. The accused were also there. Perhaps the prosecutrix was taken to the doctor for examination. The accused might have committed wrong with her daughter. During cross-examination, she stated that accused-Aziz Jan is son of cousin of her husband. Accused-Aziz Jan had three children. The accused-Gani Akhoun resides in Brein at a distance of 2 to 3 kilometres from her residence.

The accused Noor Mohammad is the son of paternal aunt of her husband. The accused-Noor Mohammad resides at Pahloo, Brein, at a distance of half mile from her residence. The Accused-Noor Mohammad often comes to their residence. She was in orchard, when there was feud between the accused-Aziz Jan and her daughter. When she returned from the orchard, her daughter had already run away. She was told about feud between accused-Aziz Jan and her daughter, by the neighbours. For sixteen days, she was not aware about the whereabouts of her daughter. The accused-Aziz Jan remained in jail during these days. He had handed over the girl to the accused. She and other members of her family were searching for her daughter, but they did not go the police station.

15. **Statement of Husband of the prosecutrix:** He has stated that he knows the accused. Prosecutrix is his wife. She had gone to the residence of Mohammad Shaban for getting the frying pan. The accused-Aziz Jan took the shovel and ran after his wife. His wife jumped out from the window of the house. She came running on the road. The accused persons present in the court took his wife in the auto towards Buchwara. When he came in the evening, he came to know about the incident from his family members as well as the neighbours. Then he went to the residence of aunt of his wife. He did not find his wife over there. He inquired from his relatives and lodged a report with the Police Station Nishat. Police asked him to search for his wife and they would also search. He had got the report written from his brother-in-law Abdul Majeed, who (Abdul Majeed) submitted the same with the police himself. The report forms part of the record. She could not be found for 15 to 16 days and thereafter she herself approached Kothi Bagh, Police Station. She

was taken to Nishat police station. Thereafter, accused-Abdul Aziz Jan came and told them that she had come to Police Station Nishat. Thereafter they went to Nishat Police Station. The torn clothes of the prosecutrix were seized by the police. The seizure memo is already marked as EXP-A. He identified his thumb impression over the same. During cross-examination, he stated that the accused-Abdul Gani resides at the distance of 2 kilometres from his home. Both the accused are married and are having children as well. The accused-Abdul Gani had solemnized the marriage of his daughter. Accused-Noor Mohammad is his relative also. He is not aware about the incident that took place that day. He had heard about the incident in the evening from the members of his family. He does not remember the day when the incident took place. He is not an eyewitness to the occurrence but was told about the same by his wife. He is SPO in the police. He had lodged report with the police and perhaps it was submitted on 18.02.1997. The report dated 18.02.1997 does not bear his signatures. This report was prepared by his brother- in-law-Abdul Majeed. This report was drafted by him at his instance. The contents of report dated 18.02.1997 were read over to him and he stated that the contents were not true.

16. **Father of Prosecutrix:** He has stated that the prosecutrix is his daughter. It was third day after Eid, when the accused- Aziz Jan assaulted his daughter and took her out of home. Thereafter, he went to search for his daughter as he was not at home and came back after one hour. He had heard that the accused-Aziz Jan after assaulting the prosecutrix, took her with him. He started searching for his daughter on the second day and went to his relatives also, to know about her whereabouts. After three days, he informed

the police. He went to Jammu also, in search of prosecutrix and provided her photographs in the police station. He kept on searching for his daughter for 15 to 16 days. Thereafter, he heard in the evening that his daughter had come to the police station. He went to the police station Nishat. The accused-Noor Mohammad was in the police station. Aziz Jan was also brought, and Abdul Gani was brought thereafter. He cannot say as to why the accused took the prosecutrix along with them. Thereafter his daughter told him that the accused had forcibly taken her in the auto. Accused-Noor Mohammad is the son of his sister. The prosecutrix remained with the accused for seventeen days. When he saw his daughter, her condition was very bad. The prosecutrix told her father she was raped by the accused. The police had seized the clothes of the prosecutrix vide seizure memo EXP-A which bears his signature. During cross-examination, he stated that accused-Azim Khan is his paternal cousin. Accused-Noor Mohammad is his aunt's son. He had told the police at Nishat Police Station that he had lodged report with three police stations at Jammu. His daughter had told him that two-three accused had done wrong to her. Thereafter, again stated that only accused-Abdul Gani did wrong with her. He had not seen the clothes seized by the Police in the court.

17. **PW Abdul Rashid Thakur:** He has stated that he knows and identifies the accused in the court. In the year 1998, he was posted at Police Station, Nishat. He is aware about the seizure memo, which was prepared in his presence, by the Munshi. The contents of EXP-A are true. During cross-examination, he stated that the accused were arrested when the seizure memo was prepared.

18. **Statement of Jameel Ahmad Khan (IO):** He has stated that on 01.03.1997, the prosecutrix lodged a verbal report with police station Nishat. She had stated that on 18.02.1997, the prosecutrix had gone to the house of Mohammad Shaban for getting the frying pan and was sitting in his home, suddenly her husband Gulzar Jan came there shouting that she had maintained illicit relationship with the owner of the house- Mohammad Shaban and she makes excuses for going to their house. The prosecutrix tried her best to convince him but to no effect. She proceeded to the house of her aunt at Dalgate and reached at the main road Nishat in the evening on foot. When she reached at Lam, accused-Noor Mohammad insisted her to sit in the auto, to take her to her house and she boarded the auto at his instance. Accused-Abdul Gani Akhoon was already sitting in the auto. She got frightened. Accused-Abdul Gani Akhoon and Noor Mohammad tied her mouth with the scarf and took her to an unknown place. The accused-Abdul Gani Akhoon out of lust committed wrong with her. The accused No. 2 and 3 guarded them. On receipt of this report, FIR was registered and investigation was started. During investigation, the prosecutrix was examined by the doctor at hospital. Statements were also recorded. The torn clothes of the prosecutrix were also seized as evidence. During investigation, offences under section 366, 376, 342 and 109 were proved against the accused persons. He proved the site plan which was marked as EXP-2. The seizure memo was marked as EXPA. During cross-examination, he stated that the prosecutrix had come for lodging FIR in the evening of 01.03.1997. Perhaps, she was accompanied by her brother and on neighbour, namely, Master Ghulam Mohammad. The name of Master Ghulam Mohammad has not been mentioned anywhere in the case.

The accused were arrested on 05.03.1997. The accused were arrested in Brein, Bazar. He had not received any information earlier regarding this case and also no report was registered with regard to that effect. He had not gone to the place of occurrence. He had gone to the place from where the accused was abducted. There were houses around the place wherefrom prosecutrix was abducted. The prosecutrix was abducted from the main road, where there were no houses. The residential houses were situated at least 400 yards away from the place of occurrence. The people used to move during the day, however, there used to be no movement in the evening as the situation was not good. He has no knowledge about the place where the prosecutrix was kept because she was taken to that place blindfolded.

Defence Evidence:

19. DW1 has stated that the second accused is not having a bad character, and he deals in sale and purchase of land.

20. DW2 has stated that he had heard that the girl was kidnapped, but the accused were present in their home.

Appreciation of Evidence:

21. Except the Investigating Officer and the witness to the seizure memo of the clothes of the prosecutrix i.e. PW Abdul Rashid Thakur, all the other witnesses examined by the prosecution are the relatives of the prosecutrix. None of the witnesses except the prosecutrix, has witnessed the abduction of the prosecutrix and all these witnesses i.e. the mother, father and the husband of the prosecutrix have made statements on the basis of

information provided to them by the prosecutrix. In such view of the matter, this court is left with the statement of the prosecutrix only, with regard to the alleged abduction and wrongful confinement by the appellants and commission of rape by the appellant Abdul Gani Akhoon. It is settled law that the accused can be convicted on the basis of solitary statement made by the prosecutrix/victim but for that purpose, the statement of the prosecutrix must be clear, unambiguous and not improbable in nature. If the statement of the prosecutrix is not of sterling quality, then the accused cannot be convicted on the solitary statement of the prosecutrix, and the attending circumstances are also required to be looked into. In **Nirmal Premkumar v. State, 2024 SCC OnLine SC 260**, the Hon'ble Supreme Court of India, after taking note of its various earlier pronouncements, has held/observed as under:

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz. : (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). **However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.**

12. In *Ganesan v. State*, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in *Rai Sandeep v. State (NCT of Delhi)*. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a ‘sterling witness’, the Court opined as under:

“22. In our considered opinion, **the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable.** The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement

made by such a witness. **What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court.** It should be natural and consistent with the case of the prosecution qua the accused. **There should not be any prevarication in the version of such a witness.** The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. **It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished.** To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

14. In *Krishan Kumar Malik v. State of Haryana*, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. **Thus, it was necessary**

to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. **The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt *qua* the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.**

(emphasis added)

22. Now it is to be examined as to whether the statement of the prosecutrix is of ‘sterling quality’, which can be relied upon for convicting the appellants. The prosecutrix has stated that she had gone to the house of her neighbour for getting the frying pan, where she was harassed by accused Abdul Aziz (subsequently discharged by the learned trial court). She has also stated that Abdul Aziz gathered residents of Mohalla on spot. She has stated that she was blindfolded and was taken to one house at unknown location by the appellants, where she was confined for 16 days and raped by the appellant- Abdul Gani Akhoun, whereas the other appellant guarded at the door. In her examination-in-chief, she stated that in the morning of 01.03.1997, she was again blindfolded, boarded in Auto and left at one Lane. However, during cross-examination, she stated that she was taken out, she was dragged from three stairs. Thereafter, she was boarded in auto. At that time, she was alright and was not tied by anything. Thereafter, she was left at the lane. She walked

and reached the shrine at Sonawar. When she was travelling in auto/vehicle and reached at lane, she could see everything. This material contradiction, assumes significance because the place where she was confined was never identified by her during investigation. In the chief-examination, the prosecutrix had given an impression that she was blindfolded both at the time, she was abducted and when she was left near lane on 01.03.1997, but during cross-examination, she has demolished that impression. It becomes evident that she was aware about the place where she was allegedly confined, but did not disclose the same to the Investigating Officer. Had she disclosed the place, of which she was definitely aware of, IO would have confirmed from the owner of the house or the residents of the locality in respect of her confinement in the said house. IO has stated that he has no knowledge about the place where the prosecutrix was kept because she was taken to that place blindfolded. Even if it is assumed that she was taken blindfolded, but she was not taken out of the house blindfolded and she was seeing everything, while travelling in the Auto. This is one circumstance which makes the evidence of the prosecutrix doubtful.

23. In The FIR, she had stated that she had suffered injuries on her body, which were still visible. Though the Doctor has not been examined in the court but the perusal of the medical certificate reveals that no marks of violence were found. This also makes her evidence doubtful.

24. The prosecutrix has stated that the appellants took away her Pheran and scarf and left her near lane. But the seizure memo EXP-A reveals that besides one frock, one Pheran was also seized. The husband of the

prosecutrix has stated that torn clothes of the prosecutrix were seized. Likewise IO has also stated that the torn clothes of the prosecutrix were seized as evidence. There is no reference of torn clothes in the seizure memo Exp-A, as there is reference of seizure of frock and Pheran in the same. but not torn.

25. Further, the neighbour, where the prosecutrix had gone, has been identified as Mohd. Shaban by other witnesses, though none of the other witnesses has watched the feud between the prosecutrix and Abdul Aziz. It becomes evident that due to harassment meted out to the prosecutrix, she proceeded towards the house of her maternal aunt. The said Mohd. Shaban has not been examined by the prosecution to corroborate the statement of the prosecutrix, which led her to flee from there to her maternal aunt. Even no resident of Mohalla has been examined to prove this fact. There is another material aspect of the case that the missing report was lodged on 18.02.1997 i.e. after the prosecutrix went missing, by the husband of the prosecutrix that she was missing since 13.02.1997, as she was not in good health. It was also stated that she goes to a Doctor for consulting and from above date, she was missing. Though the husband of the prosecutrix admitted that he had lodged the missing report through his brother-in-law but has denied the contents of the same. The whole story of abduction of the prosecutrix became doubtful and it is difficult to believe that she was taken blindfolded from road and travelled a considerable distance in the auto on the road.

26. From the material contradictions in the statement of the prosecutrix noted as above by this court, it cannot be said that her evidence is

of sterling quality, which can be relied upon for convicting the appellants. The evidence led by the prosecution is not convincing, cogent that may result in conviction of the appellants.

27. This Court has examined the judgment passed by the learned trial court and finds that the learned trial court has not rightly appreciated the evidence and in view the loopholes and gaps in the evidence of the prosecution, the benefit of doubt was required to be given to the appellants.

Conclusion:

28. In view of the above discussion, this Court is of the considered view that the judgment dated 26.08.2003 passed by the court of learned 4th Additional Sessions Judge, Srinagar in challan titled “State vs. Abdul Gani Akhoun & Ors” arising out of FIR No. 22/1997 registered under Sections 366, 376, 344 and 354 of RPC of P/S Nishat, is not sustainable in the eyes of law and is accordingly set aside. The appellants are acquitted of the charges. The challan shall stand *dismissed*. The appellants are on bail. Their bail and personal bonds are discharged. The record of the trial court be sent back forthwith.

29. **Appeals are allowed.**

**(Rajnish Oswal)
Judge**

SRINAGAR:

03.01.2025

“Hamid”

- ❖ Whether the Judgment is Speaking? Yes
- ❖ Whether the Judgment is Reportable? Yes