

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

Reserved on: 18.12.2025

Pronounced on: 26.12.2025

Uploaded on: 26.12.2025

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

CrIA(AS) No.35/2024

UT OF J&K

...PETITIONERS/APPELLANT(S)

Through: - Mr. Ilyas Laway, GA.

Vs.

BILAL AHMAD WANI & ORS.

...RESPONDENT(S)

Through: - Mr. Syed Sajad Geelani, Advocate.

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

JUDGMENT

1) The appellant Union Territory of J&K through the medium of present appeal has assailed the judgment of acquittal dated 12.10.2023 passed by the learned Additional Sessions Judge, Anantnag ("the trial court"), whereby the respondents/accused have been acquitted of the charges in a case arising out of FIR No.5/2020 for offences under Section 376-D, 509, 506, 120-B, 201 IPC and Section 67 of the I.T Act registered with Police Station, Larnoo.

2) Briefly stated, the facts leading to the filing of the present appeal are that on 29.04.2020, PW-1 (the prosecutrix) lodged a report with the police alleging therein

that a few days back at about 11.00 am, while she was sitting at her home along with two minor children, accused Asif Ahamd and Bilal Ahmad Wani trespassed into her home whereafter they enticed her two minor children and brought them out of the home. Thereafter the afore-named two accused persons made the prosecutrix to take some intoxicating medicine with juice and cigarette, as a result of which she lost her senses. The afore-named two accused thereafter committed rape upon her. They also videographed the act and circulated the said video through WhatsApp, as a result of which the prosecutrix and her family faced a lot of indignation. It was also alleged that the afore-named two accused extended life threats to the prosecutrix in case she lodged the report with the police. It was further alleged in the report that accused Ilyas is also involved in this crime.

3) After registration of the FIR, investigation of the case was set into motion during which statements of the witnesses under Section 161/164 of the Cr. P. C were recorded. It was found that besides above named accused, other accused/respondents are also involved in the crime. On 19.07.2020, accused Bilal Ahmad was taken into custody and on the basis of his disclosure statement, one memory card and mobile phone along with invoice in respect

of the said mobile phone were recovered and seized. The mobile phone and the memory card were sealed in presence of the Executive Magistrate and the same were sent to FSL, Srinagar, for analysis. After investigation of the case, offences under Section 376-D, 509, 506, 120-B, 201 of IPC and 67 IT Act were found established against the accused/respondents and the challan was laid before the trial court.

4) Vide order dated 25.02.2021, charges for offences under Section 376-D, 509, 506, 120-B IPC and 67 IT Act were framed against accused/respondent Bilal Ahmad whereas charges for offences under Section 376-D, 120-B, 509 IPC and 67 IT Act were framed against respondents/accused Sajad Ahmad Khatana, Nazakat Ali Khatana, Aamir Suhail Khatana, Mohammad Ilyas Khatan, Barkat Ali Khatana. The respondents/accused denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of the charges.

5) During trial of the case, the prosecution, besides examining PW-1, the prosecutrix, examined PW-2, Javaid Ahmad Khatana, PW-5 Nisar Ahmad ASI, PW-6 Head Constable Mohammad Akhter, PW-7 Reyaz Ahmad Shah

and PW-8 Head Constable Mushtaq Ahmad, as witnesses in support of its case.

6) At this stage, it seems that the accused made an application for truncating the proceedings before the learned trial court. After hearing the parties and after considering the evidence on record and keeping in view the fact that the prosecutrix had turned hostile, the learned trial court allowed the application and proceeded to pass the impugned judgment dated 12.10.2023 thereby acquitting the accused. It seems that vide the impugned judgment, the learned trial court acquitted the accused of the charges under Section 376 of IPC only. There is no mention of other charges in the judgment dated 12.10.2023. Thereafter, on an application filed by the accused, the learned trial court exercised its powers under Section 362 of the Cr. P. C and passed another order on 24.04.2024 in which it was observed that the accused shall be deemed to have been acquitted of the charges under Section 376-D, 509, 506, 120-B IPC and Section 67 IT Act as well.

7) The appellant has challenged the impugned judgment of acquittal on the grounds that the learned trial court has committed a grave error in law and facts while acquitting the accused/respondents. It has been contended that the

judgment passed by the learned trial court is based on conjectures and surmises and that the trial court has proceeded in a mechanical manner. It has also been contended that the proceedings in the case could not have been truncated and the trial court has remained silent on the other charges, particularly the charge for offence under Section 67 of IT Act. It has been contended that the prosecution has not been afforded full opportunity to examine all the witnesses so as to prove the guilt of the accused.

8) I have heard learned counsel for the parties and I have also gone through the impugned judgment, the grounds of appeal and the record of the trial court including the evidence on record.

9) The corner stone of the case of the prosecution in relation to charges for offences pertaining to sexual assault is the statement of the prosecutrix. Therefore, in order to test the merits of the contentions raised by the appellant, particularly its contention as regards the legality of truncation of proceedings resorted to by the learned trial court, it would be necessary to have a look at the statement of the prosecutrix. In her statement recorded before the court during trial of the case, the prosecutrix has deposed

that about nine months back, while she was sitting at her home, one of her relatives called her on phone and informed her that some photographs and videos relating to her are uploaded on Facebook. She further stated that when she saw these photographs and videos, she got annoyed and lodged a report with the police. She further stated that during the investigation of the case, her statement was recorded before the Court in presence of three persons. The witness was declared hostile and was cross-examined by the learned PP.

10) In her cross-examination by learned PP, the prosecutrix stated that the photographs which she saw on Facebook were fake. Initially, she was not knowing that these photographs and videos were fake, but later on she came to know about it. She categorically stated that she was not sexually assaulted by anyone. She further stated that after watching the videos, she became depressed and remained in depression for about 4/5 months. She also stated that when she made statement before the Magistrate, she was under depression. Thereafter, she underwent treatment and now she is alright. She claimed that the facts narrated in her statement recorded under Section 164 of the Cr. P.C are not correct. In her cross-examination by the defence counsel, she stated that if the videos had not been

uploaded, she would not have lodged any report. She further stated that when she made statement before the Magistrate, the police officials were present in the Court. She also stated that the contents of the report lodged with the police were not read over and explained to her. She clarified that nobody committed rape upon her. She further stated that she does not know as to who had made the videos viral.

11) The husband of the prosecutor, PW Javed Ahmad Khatana, has stated that he has no personal knowledge about the occurrence, but he was narrated about the same by his wife. He further stated that accused Ilyas is his elder brother, accused Amir and Asif are his nephews, whereas accused Altaf Hussain Khatana is his brother.

12) PW Nisar Ahmad, ASI, in his cross-examination, has admitted that there was a love affair between accused Bilal Ahmad and the prosecutrix.

13) PW Head Constable Mohammad Akhtar has also stated that accused Bilal Ahmad, while making disclosure statement, had stated that he had love affair with the prosecutrix.

14) In the face of aforesaid nature of evidence or record, it becomes clear that there was no material before the learned trial court to even remotely connect the respondents/

accused with the alleged crime. The prosecutrix has herself denied the occurrence and has claimed that she has not been sexually assaulted by any of the accused. She has further claimed that the video which she has seen is fake and the said video does not pertain to her. According to her, she lodged the report only because she was under the impression that the said video was real and not fake, and afterward she came to know that the said video is fake.

15) Learned counsel for the appellant has submitted that even if there was no justification for proceeding to hold trial respect of charge of rape against the accused once the prosecutrix denied the occurrence, still then, since the videos and photographs were seized by the police during investigation of the case, the learned trial court should have allowed the prosecution to lead further evidence to enable it to prove the charge for offence under Section 67 of the IT Act.

16) In the above context, it is to be noted that for proving the offence under Section 67 of the IT Act, it was incumbent upon the prosecution to collect evidence during investigation of the case to show that there has been publication or transmission in electronic form material which is lascivious or appeals to the prurient interest or it has the tendency to deprave and corrupt persons who are likely to read, see or

hear the matter contained in it. The only evidence that has been collected by the investigating agency during investigation of the case to prove this charge is the mobile cell phone of the accused/respondent Bilal Ahmed and the memory card. The record shows that the seized mobile cell phone and the memory card have been sent to FSL Srinagar, and the expert has rendered his opinion vide report dated 27th February 2021. The FSL expert has not been cited as a witness in the challan.

17) Even otherwise, a perusal of the report of the expert would reveal that it has been stated therein that the video/audio/photo authentication tools were not available in the laboratory. Without authentication of videos/audios/photos, which were sent to the FSL expert for his opinion, the report rendered by the said expert cannot form basis for conviction of the accused for an offence under the IT Act. Apart from this, a perusal of the record of the challan would reveal that the investigating agency has not collected evidence to show that the photographs and videos which were seized during the investigation of the case were published or transmitted, nor the investigating agency has collected the material to show that these photographs and videos were transmitted or published through electronic

form by way of WhatsApp or Facebook, as has been claimed by the prosecution in the charge sheet. Without any such evidence, the charge for offence under Section 67 IT Act could not have been proved by the prosecution even if the remaining witnesses were allowed to be examined by the trial court.

18) In the face of aforesaid situation, it appears to be a case where either the allegations against the respondents/accused have been fabricated or even if sexual intercourse has taken place between the prosecutrix and respondent/accused Bilal Ahmad, the same is an outcome of consensual relationship, as has been brought out by the defence during the cross-examination of the witnesses. In both the eventualities, the charges against the respondents/accused were bound to fail. Therefore, the learned trial court was right in truncating the proceedings and acquitting the accused. Protracting the trial in the face of the facts and circumstances of the present case would have been an empty formality as it was it is impossible to record conviction of the accused/respondents even after examination of the remaining witnesses of the prosecution. It is for this reason that the learned trial court closed the prosecution evidence

and pronounced the judgment of acquittal against the accused/respondents.

19) For what has been discussed hereinbefore, I do not find any ground to interfere with the judgment passed by the learned trial court. The appeal is found to be without any merit and is accordingly dismissed.

20) Trial court record along with a copy of this judgment be sent back.

**(Sanjay Dhar)
Judge**

SRINAGAR

26.12.2025

“Bhat Altaf-Szegy”

Whether the **Judgement** is speaking:

YES

Whether the **Judgement** is reportable:

YES/NO

