

State Vs. Youssuf Dar and ors.

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Court : Jammu and Kashmir

Decided On : Sep-11-1972

Reported in : 1973CriLJ955

Judge : Jaswant Singh and; Mufti Baha-Ud-Din Farooqi, JJ.

Appellant : State

Respondent : Youssuf Dar and ors.

Judgement :

Jaswant Singh, J.

1. This is an appeal from the judgment and order dated September 19. 1970 of the learned Additional Sessions Judge. Srinagar, acquitting the respondents of the charges under Sections 302, 380 of the Ranbir Penal Code read with Section 149 of the Code and Sections 366/376 read with Section 34 of the Code.

2. The prosecution case was that equipped with arms and ammunition and posing themselves as Mujahids (liberators) and officers belonging to the Pakistan army, the respondents, roamed about in Ghak Paharu. Tehsil Chadura. in the summer of 1967 raising subscriptions and enlisting support. During the course of their activities they established contact with Rehman Butt deceased. the resident son-in-law (Khanina Damad) of Ramzan Sheikh, the father of Habib Sheikh informant. Their familiarity with the deceased grew in course of time and developed to such

an extent that they started frequenting the house of the_ latter, deposited their arms and ammunition in his house, and one of them namely Yousuf Dar alias Chilki who belonged to Inder-kot, Tehsil Sonawari. actually started residing in his house. On the night intervening 29th and 30th October. 1967, when the first informant had gone to his In-laws house in village Khudpura, illaqa Badgam and his mother Mst. Tali a, P. W. 16. was asleeD in her room on the first floor, Youssuf Dar and other respondents entered the room (on the ground floor of the house) occupied by Rehman Butt and his wife, Mst. Raia, P. W. 6. and overwhelmed and over-powered Rehman. Butt who was asleep stark naked in his bed along with his wife. Mst. Raja, and his minor child, Bashir, The movements of the respondents awakened Mst. Raja who in the light of 'Batti' which was burning in the Takcha (niche) saw her husband Rehman Butt, in the grips of the respondents on the floor of the room. She was-immediately gagged with a muffler and removed to 'Pacharbandi' (i. e wooden partition) of the room by Mohamad Dar respondent who held her there with her hands tied backwards. Hussain Dar and Nund Mir respondents sat on the legs of Rehman Butt and Quasim- Wani respondent punctured his throat with knife Ex. PB. Thereafter Yussuf whipped out 'Churri' Ex. PA and cut the throat of Rehman Butt who died instantaneously. Hussain, Mohamad, and Nunda Mir put the dead body of Rehman Butt in a gunny bag and Qasim and Yusuf went to the first floor of the house and collected all the valuables including some ornaments and clothes and handed them over to Mohamad Dar who wrapped them in his 'Chaddar Patti.' Hussain then picked up the child. Yusuf Dar lifted the dead body, and Nund Mir carried the valuables and forcibly taking away Mst. Raja all the respondents proceeded towards Batangana where Hussain and Nund Mir buried the dead body of Rehman Butt in the field belonging to Mahda Dar and after covering a small distance had themselves ferried across the river Jhelum by Rehman Karnai. P. W. 10, whom they told that the woman accompanying them' was their daughter-in-alw who had run: away. After crossing the river the respon dents went to Batwara where they hired a taxi telling the same story to the Taxi Walla and had themselves driven to a place which was three or four miles beyond Ganderbal. Crossing some fields Nullahas-and Khuds. the respondents reached the house of Qasim respondent in village Dab. where Mst. Raja was detained for a month during the course of which all the respondents

excepting Qasim used to have illicit intercourse with her. After a month Mst. Raja was removed by Yusuf and Qasim respondents to Inderkot where they stayed for seven days in the house of Yusuf Dar respondent. From Inderkot Mst. Raja was taken by Qasim. Yussuf, and Ibrahim Chilki, the father of Yussuf, in a bus to Lolab. From there she was taken to the ho-use of AH Bhat, father-in-law of Assad War, P. W. 5. in Dharam Wari where Ibrahim Chilki also stayed for 7/8 days. At Ali Butt's house at Dharam Wari Yussuf Chilki respondent stayed for two months during the course of which he kept on having illicit intercourse with Mst. Raja. During all this time Mst. Raja was threatened not to make any disclosure to any one. One day while Yussuf was out. two beggars came to the house of Ali Butt to whom Mst. Raja narrated¹ her woeful tale and implored them to liberate her. When the beggars were to depart. Yussuf Chilki returned to the house in the evening. The sight of the beggars roused suspicion in the mind of Yussuf Chilki and again threatening to kill Mst. Raja, he removed her in a bus to Inderkot where all the five respondents held consultations. They offered to give Mst Raja in marriage to Haider Chilki P. W. 19 in lieu of Rs. 1000/-and on his declining the offer for want of money, Yussuf Chilki gave Rs. 200/- to each one of the respondents telling them that he would himself marry Mst. Raja.. On the 4th or 5th of February, 1968. Yussuf Chilki and Haider Chilki took Mst Raja to Sopore where they got an agreement and an affidavit evidencing the marriage of Mst. Raja with Yussuf Chilki written by Balbadar Pandit Petition Writer P. W. 11. on which they got Mst. Raja's thumb impression. After getting the documents completed they brought back Mst, Raja to Inderkot, On the 1st of March 1968. Shri Zahoor Hussain S. I. S. H. O. Police Station Sumbal, Sonawari. P. W. 17 raided the house of Yussuf respondent at the instance of the S. H. O. Police Station Saddar. Srinagar and recovered Mst. Raja who narrated the entire story to the Sub-Inspector. On hearing her tale Shri Zahoor Hussain apprehended Yussuf Chilki under Section 54 of the Code of Criminal Procedure and whisked him off as well as Mst. Raja to the police station. He also arrested Nund Mir and Hussain respondents on the 2nd and 3rd of March, 1968. respectively.

3. Meanwhile on getting up from her bed on the morning of 30th October, 1967. Mst. Tajja P. W. went to the room occupied by her daughter. Mst. Raja, and the deceased and finding the room vacant, she thought that Mst. Raja must have been

taken to the hospital for treatment by her husband as she had been bleeding profusely on account of misear-raige. Her hunch was strengthened on account of the presence of bloodstains on the mattress, quilt, and a bag which she isled her daughter Fata to wash and put in the sun to dry. She also told her brothers that Mst. Raja had left with her husband and child for some place on account of her ailment. Her brothers namely Abdullah Khan. Mahada Khan and Assad Khan, started a search for Mst. Raja, her husband and child and deputed Mahda Sheikh to go and fetch his cousin, Habib Sheikh, the son of Mst. Tajja. from his in-Laws' house at Khudpura. On his return on 2nd of November, 1967 from Khudpura, Habib Sheikh was informed by his mother that the deceased and Mst. Raja had gone to the hospital on the morning of the 30th October, 1967 and had not returned since then. Accompanied by Abdul Samad Khan, Ghulam Mohammad Ward and Sultan Sheikh Habib Sheikh went in quest of the deceased and Mst. Raja to the hospitals at Srinagar and Pampore and not finding them there, he lodged report Ex. P 13 about their and their son, Bashir's 'Gumshudgi' at the police station Saddar, Srinagar, on 4th of November, 1967, at about 10 A. M. He had hardly finished lodging the report when Jaffar Mir Ghowkidlar P. W. 2 turned up at the police station and lodged report Ex. P 1 to the effect that he had seen a dead body in the field of Mahda Dar. On receipt of Ex. P 1 Habib Ullah S. H. O. Police Station Saddar. Srinagar repaired to Rakhshalliana, and saw that the field of Mahda Dar son of Hassan Dar. had been freshly cultivated. He recovered the dead body from there vide Ex. PE which was identified to be of Rehman Butt, son-in-law of Ramzan Sheikh, about whose 'Maphqud-ul-Kha-bari' report Ex. P 13 had been received. He prepared the inquest report Ex. P 8 and injury statement Ex. P 1 of the deceased, seized blood stained knife Ex. PA. which was lying near the head of the deceased as also a gunny bag which bore some stains of blood from the field of Qasim Mir son of Jaffar Mir vide Ex. P. 3 and Ex. P. 14 respectively and sent the dead body for post-mortem examination to the hospital at Srinagar. where, Dr. Ghulam Mohammad Dar. P. W. 13 District Medical Officer, Srinagar performed the autopsy on the 5th of November 1967. On post-mortem examination the doctor found the following injuries on the dead body:

(1) An incised wound with gaping edges about 2i' wide tapering at both the edges transverse in direction ' in depth on right anteriolateral surface of the throat at its

middle. The edges were covered with coagulated blood on dissection. The right sternomastiod muscle was cut at the middle and coagulated blood found in the subcutaneous tissue.

(2) A circular punctured wound 1' in diameter on the left side of neck at its lower third artero laterally about 1' deep; edges stained with coagulated blood: on deep dissection the underlined tissues were also cut and covered with coagulated blood; left carotid artery punctured at its lower third auteroly with coagulated blood present at the site of the wound.

(3) Both the hands semi open and covered with coagulated blood.

(4) Multiple superficial abrasions present on the thorax and the abdomen.

4. In the opinion of the doctor the death of the deceased was due to the infliction of Injury No. 2 by a sharp pointed weapon puncturing the right carotid artery at its lower third leading to massive haemorrhage, syncope and death, homicidal nature. On the basis of hypostatic levidity and rigor mortis the Doctor further opined that the death had taken place between 36 to 72 hours before the post-mortem. The Doctor also opined that Ex. PA which was a sharp pointed weapon could cause the punctured and circular wound.

5. On 5th of November. 1967, Shri Ghulam Mohammad Shahmiri. Sub-Inspector of Police (P. W. 22). who accompanied Shri Habib Ullah (P.W. 23) to Paharu seized vide Ex. P. 9 the mattress and the gunny bag which had been left in the open by Fatta to dry. On the following day Shri Habib Ullah (P. W. 23) conducted the search of the second storey of the house of the deceased and seized a quilt bearing slight stains of blood vide Ex. P 23. On the same day P. W. 22 prepared site plan Ex. P. 22 and also seized some arms and ammunition vide Ex. P 5 and arrested Qasim Wani respondent.

6. Mst. Raja led the police a couple of days after her recovery to the place wherefrom the respondents had crossed River Jhelum along with her and Yu-suf Dar respondent gave the Nishandahi of Rehman Karnai PW 10 who had ferried the respondents, Mst. Raja. P. W. and her minor son Bashir across the river. On

6th March, 1968 Shri Habib Ullah PW 23 seized vide Ex. P 16 a Phiran and a cotton pullover alleged to belong to the deceased which bore some blood stains from the 'Brari Rani' of the house of Yusuf Dar respondent. The witness also seized some ornaments and clothes belonging to Mst. Raja P. W, from the house of Yusuf Dar respondent vide Ex. P 15.

7. On 11th of March 1968 Yusuf Dar respondent gave information embodied in Fard Inkashaf (Ex. P 25) and led the Police to the field of Mehdi Dar son of Hassan Dar in Batangna wherefrom 'Chhuri' (dagger) Ex. PA was recovered vide Ex. P 4. On 13th March, 1968 Shri Habib Ullah PW 23 recovered some ornaments alleged to belong to Mst. Raja P. W. from the house of Mohamad Dar respondent vide Ex. P 16A.

8. The Chemical Examiner to whom the articles seized by the police were sent for examination opined that the quilt, the mattress, one of the gunny bags, the knife, the Phiran and the pullover were stained with human blood. The Chemical Examiner further opined that the blood stains on the dagger being disintegrated their origin could not be determined. The blood group of the stains on the aforesaid articles could not be determined by the Assistant Sexologist and Chemical Examiner Government of India who examined the articles.

9. On completion of the investigation the respondents were proceeded against in the court of the 2nd Additional Muinsiff Magistrate First Class, Srinagar. who committed them to the Court of Session to stand their trial for the aforesaid offences.

10. To bring home the guilt to the respondents the prosecution examined Qadir Wani, Jaffar Mir. Khialil Dar, Abdul Samad, Assad W.ar, Mst. Raja. Habib Sheikh. Abdul Salam Shah. Alhad Khan,. Rehman Karnai, Balbadar Pandit. Qasim Mir, Dr. Ghulam Mohamad Dar. Mukhta Bhat. Haji Ghulam Mohamad Dar. Mst. Taj a, Haider Ghilki. Shri Zahur Hussain S. I. Shri P. L. Dassi City Munsiff Magistrate, Srinagar. Gul Dar. Shri Ghulam Mohammad Shahmiri S. I. Radha Krishen Patwari and Shri Habib Ullah Sub Inspector of Police, who had investigated the case.

11. At the conclusion of the prosecution evidence the learned Additional Sessions Judge Srinagar. to whose file the case was transferred for trial by the Sessions Judge, Srinagar. recorded the statements of the respondents who denied the commission of the offences with which they were charged and stated that a false case had been set up against them. Mohamad Dar respondent claimed the silver ornaments recovered from his house as belonging to him.

12. In their defence the respondents examined Ali Mohammad Dar Lumberdar, Syedi Yusuf Sarpanch Inder-kot. Haider Wani and Rehman Dar.

13. On a consideration of the evidence led in the case the learned Additional Sessions Judge acquitted the respondents of the aforesaid offences holding that the statement of Mst. Raja who was the solitary eye witness in the case could not be relied upon without corroboration, that the nature of her conduct was analogous to that of an accomplice, that she had a liaison with Yusuf Chilki because of which she had tried to shield, him. that neither the recovery of Mst. Raja from the house of Yussuf respondent nor the other recoveries connected the respondents with the commission of the offences of murder, theft etc. that Mst. Raja accompanied Yussuf Chilki of her own free will, that sexual intercourse if at all committed with her by the respondents was with her consent, and that the evidence adduced in the -case by the prosecution was discrepant and did not establish the charges against the respondents beyond doubt.

14. Appearing on behalf of the State the Additional Advocate General has submitted that the findings arrived at by the learned Additional Sessions Judge, are erroneous, that the material on the record has not been properly appreciated by him, that the facts and circumstances proved in the case are incompatible with the innocence of the accused and are incapable of explanation on any other hypothesis than that of the guilt of the respondents.

15. Shri Latif has on the other hand strenuously urged that the inferences drawn by the trial Judge are justified by the evidence adduced in the case.

16. We have gone through the entire record with care and have given our thoughtful consideration to the submissions of the learned Counsel for the parties.

17. It is now well settled that in an appeal against acquittal while the powers of the High Court are not different from the powers of the Court while hearing an ordinary appeal against conviction the High Court is to consider all the matters which prevailed with the trial Court and the reasons given by it for disbelieving the witnesses whose demeanour it had an opportunity of observing.

18. It has also been laid down time and again, by the Supreme Court that initial presumption of innocence of the accused which is strengthened by his acquittal should not be lightly interfered with. Reference in this connection may usefully be made to the decisions given by the Supreme Court in the under-mentioned cases:

Balbir Singh v. State of Punjab : 1957 CriLJ481 where in it was observed:

It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration and the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate court to come to a conclusion different from that of the trial Judge. Khedu Mohton v. State of Bihar. : 1971 CriLJ20 where it was laid down:

Though the powers of the High Court in considering the evidence on record in appeals under Section 417 are as extensive as its powers in appeals against convictions the court should bear in mind the presumption of innocence of accused. Where the lower court has found the accused not guilty, unless the conclusions reached by it are palpably wrong or based on erroneous view of the law or that its decision is likely to result in grave injustice, the High Court should be reluctant to interfere with its conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused¹ should be preferred, The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal. Laxman Kalu v. State of Maharashtra : 1968

CriLJ1647 wherein it was held:

We may say here that it is now the settled law that the powers of the High Court in an appeal against the acquittal are not different from the powers of the same court in hearing an appeal against a conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on evidence provided it pays due regard to the fact that the matter had been before the court of Session and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. Further the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for dis-believ-ing a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put for trial and his acquittal in no sense weakens that presumption must also receive adequate consideration from the High Court. Keshav Ganga Ram Navge v. State of Maharashtra. : 1971 CriLJ798 , where Reddy J. speaking for the Bench said:

In appeals against acquittal while the powers of the High Court are different from its powers in ordinary appeal against conviction, the High Court has to consider all the matters which weighed with the trial Court and the reasons given by it for disbelieving the witnesses whose demeanour it had an opportunity of observing. Kami Ambu Vish v. The State of Maharashtra : 1971 CriLJ1547 where it was held: Though the High Court has power on a review of the evidence to reverse the order of acquittal yet in doing so it should not only consider all matters on record including the reasons given by the trial Court in respect of the order of acquittal but should particularly consider those aspects which are in favour of the accused and ought not also to act on conjectures or surmises nor on inferences which do not arise on the evidence in the case.

Keeping the above principles in view let me now examine the material on the record to judge Whether the findings arrived at by the learned Addl. Sessions Judge are justified.

19. Before considering the various charges against the respondents I consider it necessary to advert to the central theme around which the prosecution has tried to weave its story. Although, it has been sought to be proved that Yusuf and other respondent styling themselves as Mujahids and officers belonging to the Pakistan army went about in Chak Paharu raising subscriptions and collecting rations and established contact with the deceased and that Yussuf had been residing at the house of the deceased for nearly three months before the occurrence during the summer of 1967, there is no reliable evidence to substantiate these facts. Ex, P 13 which was lodged at the police station Saddar, Srinagar. on November 4. 1967. i.e. on the 6th day of the alleged occurrence by Habib Sheikh does not make any mention of these facts. Even Habib Sheikh and Mst. Raja P. Ws. did not in the first instance during the course of the inquest disclose to the police that Yussuf had been residing at their house for three months. Again if it had been a fact as stated by Habib Sheikh and Mst. Raja that Yussuf and his associates had been threatening to set fire to their house and bomb the place if they did not condescend to lend their support to them, they would not have hesitated to inform the lumberdar or the Chowkider of the village or the police about the matter. Even Qadir Wani P. W. 1 had to admit that upto March 11, 1968. he did not disclose to the police that Yussuf had been residing with Rehman Butt at the house of Ramzan Sheikh although the police admittedly came to his village after recovering and seizing the dead body. Abdul Samad P. W. 4 also admits that he did not tell the police for a period of eight days that Yussuf had been residing with the deceased. Khalil Dar Lumberdar P. W. 3 has deposed that he did not see any of the respondents within his jurisdiction during the summer of 1967. Haider Chilki P. W. 19 has also admitted that the respondents did not leave their places of residence during the summer of 1967.

20. I am. therefore, of the opinion that the story of the respondents' going about in Chak Paharau representing themselves as Mujahids and officers belonging to the Pakistan Army is an afterthought.

21. Let me now advert to the main charges of murder, theft, abduction and rape, levelled against the respondents by the prosecution.

22. Charge of Murder. The only direct evidence regarding the alleged murder of Rehman Butt by the respondents is that of Mst. Raja. The evidence of Mst. Raja, as rightly observed by the learned Additional Sessions Judge, is like that of an accomplice. It cannot be relied upon without corroboration. She did not disclose the commission of the offence to any one for a long period of nearly five months although she had several opportunities to do so. It is also apparent from the evidence of Shri Habib Uuah S. I. who conducted the investigation in the case, that Mst. Raja did not disclose all the facts relating to the occurrence in the first instance. She did not even tell the police in the first instance that Yussuf had inflicted any injury on the throat of the deceased with Churri Ex. PB. There are other inherent infirmities in the statement of Mst. Raja which have been adverted to by the learned Trial Judge. Neither the alleged recovery of (Churri) Ex. P B at the instance of Yussuf nor the recovery of blood stainedi Phiran and pullover from the house of Yussuf, which are alleged to belong to the deceased, can be said to connect the respondents with the commission of the crime of murder. The 'Churri' was recovered from an open place and it cannot be said on the basis of this recovery that it was Yussuf and his associates who had committed the alleged murder. As rightly observed by the learned Additional Sessions Judge it is possible that some one else might have committed the murder and might have hidden the 'Churri' Ex. PB, in the field of Mahada Dar of Batangna to the knowledge of the respondent. In this connection it is well to bear in mind the following observations made by the Supreme Court in Prabhoo v. State of Uttar Pradesh : [1963]2SCR881 .

From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if some body else had committed the murder and1 the blood stained articles had been kept in the house, the appellant might produce the blood stained articles, when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence.

Moreover, the origin of the blood on the 'Churri' has not been traced.

23. Regarding the recovery of blood stained Phiran and the cotton Pullover alleged to belong to the deceased, from the house of Yussuf respondent, it may be noted that according to Gulla Dar P. W. 21, no one identified these clothes at the time of their recovery. Even if it be held to be proved that the clothes belonged to the deceased, it has not been explained as to how they got blood stains when according to Mst. Raia the deceased went to sleep stark naked.

24. The Medical Evidence produced in the case also does not harmonise with the commission of the murder on the date alleged by the prosecution. Dr. Ghulam Mohammad Dar P. W. 13 who performed the autopsy has categorically stated that the death of the deceased had been caused 'between 48 to 72 hours before the postmortem examination which was made by him on the 5th Nov. 1967. This takes us 'to the 2nd or 3rd of November and discredits and demolishes the prosecution case.

25. The fact that the dead body of Rehman Butt was recovered from the field of Mahada Dar not in a gunny bag but in a naked condition also casts a doubt on the veracity of the statement of Mst Raja. It is also significant that the field from where the dead body of the deceased was recovered was found to be freshly ploughed. If the dead body had been burned by the respondents in the manner stated by Mst. Raja, it cannot be believed that the person who ploughed the field would not have noticed it. The other important factors which cast a grave doubt on the prosecution story and tilt the balance favour of the respondents are:

(i) The attempt by or at the instance of Mst. Taiia P. W. to remove the stains from the mattresses and gunny bag which were found by her to be soiled with blood when she entered the room of the deceased on the morning of 30th October, 1967.

(ii) The scrapping away of the blood stains from the Vattu and other places by 'Mst. Taiia.

(iii) The recovery of blood stains lahaf from the second storey of the house occupied by Mst. Tajja P- W.

(iv) The omission of the mention of the blood stains on the aforesaid articles or on the walls or the floor of the room occupied by the deceased on the night of the occurrence in the first information report lodged by Habib Sheikh P. W. although he was fully cognizant of these matters.

(v) The categoric averment in the first information report as also the statement made by Mst. Taia P. W. to her son Habib Sheikh P. W. and her other relations and friends that the deceased had gone to the hospital for the treatment of Mst. Raja P. W.

(vi) Omission of the mention in the first information report that Yussuf respondent who had been residing with the deceased for nearly three months had disappeared after the occurrence though Habib Sheikh admits that he was told by Abdul Samad P. W. 4 that Yussuf respondent was in the house with the deceased on the night of the occurrence.

(vii) Absence of the mention by any witness about the trail of blood which according to Mst. Raja P. W. trickled from the gunny bag containing the dead body of the deceased from the place of occurrence to the field of Qasim Mir. P. W. 12 from where the dead body was subsequently recovered.

(viii) The inordinate delay of five days in lodging the First Information Report.

(ix) The severe beating administered for 8 to 10 days by the police to Mst. Tajja P. W., Habib P. W., Ahad P. W. (brother of Mst. Tajja) and Ahad P. W., the cousin of Habib, as proved by the statement of Qadir Wani P. W. 1.

(x) The omission to produce the nurse who is alleged to have treated Mst. Raja P. W. for the prolonged bleeding caused by the alleged miscarriage.

26. I am, therefore, clearly of the opinion that the story of murder as put forth by the prosecution is highly doubtful.

27. Abduction and Rape. Adverting now to the charges relating to abduction and rape. I agree with the learned Sessions Judge that they have not been satisfactorily brought home to the respondents. In spite of the fact that Mst. Raja

had several opportunities to disclose facts relating to these charges, she did not choose to do so. In the first instance she did not whisper a word to Rehman Karnai who ferried her. her minor child and the respondents across the river Jhelum on the morning of the 30th October, 1967. She did not make any complaint to the Taxi walla who drove the party to a place beyond four miles of Ganderb'al, a distance of more than twenty miles. She did not make any disclosure to her co-travellers in the bus while she was being taken from Inderkot to Lolab and back. Again for two long months she kept mum at Dharanwari where according to Assad War P. W. 5 she used to be left alone by Yussuf Dar respondent who used to go out for begging in the morning and return in the evening. She also kept her lips sealed at Inderkot where according to Haji Ghulam Mohamad Dar P. W. 15 she freely used to mix up with women folk and go about with them to fetch water. She also did not make any complaint at Sopore either to the petition writer who drafted and scribed the agreement and affidavit_ on her behalf showing that she had willingly married Yussuf respondent or to the Magistrate who attested her affidavit. Even Zahoor Hussain S. I. P. W. 17 who rescued her has stated that she appeared to be in a happy mood at the time he recovered her. It further appears from her statement that she had developed a liaison with Yussuf respondent before the occurrence. In view of these facts, I am not inclined to believe that Mst. Raja was abducted or was subjected to sexual intercourse by any one of the respondents against her will.

28. Theft. Coming now to the charge of theft against the respondents, I find that the same has also not been substantiated by the prosecution. Although Mst. Tajja P. W. states that she found a wooden box broken open and the ornaments and other valuables lying therein missing on the morning of the 30th of October. 1967. and communicated this fact to her son Habib Sheikh P. W.. which the latter also admits, no mention curiously enough regarding this important fact finds place in Ex. P. 13 which was lodged after six days of the alleged occurrence. This important fact was also not disclosed to the police on the 6th of November, 1967, when Shri Habib Ullah. Sub-Inspector of Police, visited the place of occurrence. Moreover, as rightly held by the learned trial Judge Mst. Raja willingly accompanied the respondents as she was infatuated with Yussuf respondent. In such a situation it is not improbable that she would have taken her ornaments and

clothes along with herself. The recovery of the ornaments belonging to Mst. Raja from the possession of Yussuf respondent and Mohamad Dar respondent, is therefore, of no consequence. That apart. Ahad Khan P. W. the brother of Mst. Taja. has stated that he did not find any box broken open on the morning following the night when the alleged occurrence took place.

29. On a review of the totality of the proved facts and circumstances of the case, it is difficult to disagree with the reasons given and the findings arrived at by the learned trial court and to reverse the order of acquittal passed by it. I would, therefore, dismiss the appeal and maintain the impugned judgment and order,

Farooqui, J.

30. I agree.

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