PETITIONER:
MADAN LAL

Vs.

RESPONDENT:
STATE OF JAMMU AND KASHMIR

DATE OF JUDGMENT: 06/08/1997

BENCH:
G. N. RAY, G. B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK. J.

This appeal is directed against the judgment of the High Court of Jammu and Kashmir dated 2.3.1993. convicting the appellant under Section 376 read with 511 I.P.C. and sentencing him to undergo rigorous imprisonment for a period of 5 years and pay a fine of Rs. 2,000/- in default a further simple imprisonment for 6 months, after setting aside the order of acquittal passed by the Sessions Judge, Udhampur, in Sessions case No. 12 of 1986.

The appellant who was the Head Master of Middle School, Khun, in Tehsil Ram Nagar at the relevant point of time stood charged for the offence of "attempt to commit rape" under Section 376/511 I.P.C. of the prosecutrix Mst. Rajni, a student of the same school. It was alleged by the prosecution that on 21.5.1986 at about 9 a.m. the appellant sent the prosecutrix Mst. Rajni, PW-18 and two other girl students Mst. Sunita, PW-1 and Mst. Krishna, PW-2 to his residence for cooking his meal as the Head Master was living without his family. The appellant then came home between 10 a.m. and 11 a.m. and on reaching the home directed PWs 1 and 2 to leave the house but detained the prosecutrix, PW-18 with the understanding that she can leave the house only after cleaning the utensils. Thereafter the appellant forced the prosecutrix for illicit intercourse and ultimately allowed her to go home at 3 p.m. The prosecutrix reacher her house but did not find her mother who returned only in the evening. She immediately narrated the incident to her mother, PW-19, who in turn also informed a friend of her PW-17. The father of the prosecutrix was not there at home. Next day, early morning, PW-19, mother of the prosecutrix accompanied by PW-17 and PW-23 gave a written report at the Police Post Mahalta which was treated as F.I.R. in the Police Station, Ramnagar and a case was registered under Section 376/342 I.P.C. The police then started investigation and a charge-sheet was filed in the Court of Sub Judge, Judicial Magistrate, 1st Class, Ramnagar for the Commission of offence under Section 376/511 I.P.C. read with 342. The accused denied the allegations. The prosecution examined as many as 24 witnesses of whom PWs 1

and 2 were supposed to have gone with prosecutrix to the house of the Head Master for cooking food but they did not, however, during trail support the prosecution case. PW-3, PW-4 and PW-5, teachers of the school, also did not support the prosecution during trail inasmuch as they stated that on the relevant date the accused had not left the school during the recess period and they were also declared hostile and were cross-examined by the prosecution. PWs 8,9,10 and 11 are the students of the school where the prosecutrix was studying and they also did not support the prosecution and on the other hand stated in their evidence that the prosecutrix was present in the school through out the day on the date of occurrence, accordingly they were also declared hostile and were cross-examined by the prosecution. PW-13 and PW-14, however, two other students of the same school who were studying in the same class where the prosecutrix was studying, supported the prosecution case to the extent that on the relevant date PW-1, PW-2 and PW-18 were absent from the school after 9 a.m. PW-15, another classmate of the prosecutrix did support the prosecution case to the effect that PW-1, PW-2 and PW-18 had left the school after the recess period and PW-1 and PW-2 had told her that the Head Master had sent them earlier to his house for cooking food for him. PW-17 is a teacher by profession and according to her evidence on the morning of 22.5.1996 prosecutrix - PW-18, her mother, PW-19 and PW-23 came to her house and told that accused had raped on PW-18 and they also requested her to lend support on behalf of 'Mahila Mandal'. Thereafter, she went with them to the Police Station to lodge the F.I.R. The prosecutrix, PW-18 gave a detailed account of what had happened to her on the fateful day of 21.5.1986. PW-19, the mother of the prosecutrix stated to the effect that she came home late on 21.5.1986 when she found her daughter Mst. Rajni in a depressed mood. Seeing her, Mst. Ranji Started weeping. On being enquired, Mst. Rajni narrated the incident. She also stated during her evidence that Mst. Rajni was examined by the lady doctor, the said doctor while examining her expressed the opinion that this is a false case and on this score PW-19 requested the police to get Mst. Rajni medically examined from another doctor but that request was not acceded to. PW-21 was a Gynecologist in the District Hospital Udhampur. On 23.5.86 at 10.30 a.m. on police requisition, she examined Mst. Ranji, PW-18, and found that secondary sex characters were not well developed on her body. She had also taken the vaginal smear and sent for chemical examination and opined that no definite opinion could be given regarding the attempt of sexual intercourse. She had also stated in her evidence that the hymen of the prosecutrix was intact and a small penetration in case of a girl of 13 years old could rupture as well as injure the hymen. PW-22 was the investigating officer and PW-23 was the other lady who had accompanied the prosecutrix and her mother to the Police Station on 22.5.1986.

The learned Sessions Judge on scrutiny of the prosecution evidence came to the conclusion that the case hinges on the sole testimony of prosecutrix, PW-18. He also came to the conclusion that the prosecutrix and PWs 1 and 2 were absent from the school on the relevant day after 9 a.m. which could have been a corroborating circumstance has not been established. The learned Sessions Judge also found that even assuming that PW 18 and PWs 1 and 2 had absented themselves from the school on the relevant day after 9 a.m., the said circumstance cannot be an incriminating circumstance against the accused with the commission of the

crime. The learned Sessions Judge relying upon the evidence of the 3 school teachers, PWs 3, 4 and 20 came to hold that accused was absent from the school after 9 a.m. has also not been established. On consideration of the medical evidence of the Doctor PW-21, the learned Sessions Judge came to hold that the medical evidence instead of lending support to the prosecution story has shaken the credibility of the prosecution version. So far as the presence of semen on the salwar of the prosecutrix, the learned Sessions Judge did not attach any importance since the same was seized only on 24.5.86 and there is no explanation for the delayed seizure of the salwar in question. The evidence of the mother of the prosecutrix, PW-19 as well s those of PWs 17 and 23 who had accompanied the prosecutrix to the Police Station on the morning hours of 22.5.86 have been brushed aside on the ground of animosity and partisan character of the two members of the Mahila Samiti Mandal namely PW-17 and PW-23. So far as the evidence of the prosecutrix herself is concerned the learned Sessions Judge was of the opinion that she had been contradicted in material particulars by the medical evidence of Dr. Vijay Sharma, PW-21 and further she has attempted to improve her version in the court regarding the commission of rape which she had not stated under Section 161 Cr. P.C. The learned Sessions Judge found out some contradictions between her statement to the police under Section 161 Cr. P. C. and ultimately came to the conclusion that the statement of the prosecutrix does not inspire any confidence and the said statement is unworthy of acceptance. With these findings the learned Sessions Judge acquitted the accused of the charge leveled against him.

On an appeal being carried by the State against the said order of acquittal, the Division Bench of the High Court by the impugned judgment reversed the order of acquittal and came to hold that the charge against the accused under Section 376 read with 511 I.P.C. has been proved beyond reasonable doubt and accordingly the accused has been convicted thereunder and has been sentenced to undergo rigorous imprisonment for a period of 5 years with a fine of Rs. 2,000/-, in default, a further period of 6 months imprisonment as already stated. In setting aside the order of acquittal the High Court came to the conclusion that the entire approach of the trail court in the matter of appreciation of evidence lacked of objectivity. The High Court on scrutiny of evidence apart from relying on the testimony of the prosecutrix, PW-18 came to hold that the fact that the prosecutrix narrated the story of the incident to her mother immediately when the mother was available in the evening; and that the Salwar of the prosecutrix which she was wearing at the time of occurrence was seized and on chemical analysis as found to be carrying stains of semen; and further that the prosecutrix as well as the accused were not seen in the school after the recess, corroborate the prosecutrix's statement and makes her statement acceptable and believable. So far as the conclusion of the learned Sessions Judge on the medical evidence of Doctor PW-19 is concerned the High Court observed that the Sessions Judge committed a serious error in not focusing his attention to the fact that the accused was facing a trial for the offence of "attempt to commit rape" and not for the offence of "rape", and therefore, the medical evidence has not been appreciated in the context of the plain statement and language of the prosecutrix herself. The learned Judges of the High "Court also took into account the fact that there was absolutely no animus between the prosecutrix and accused-respondent. So far as the evidence of prosecutrix

herself is concerned the High Court after scrutinizing the same came to hold that the statement of the prosecutrix was so convincing that it did not require any corroboration though as a fact there are sufficient circumstances proved in the case which fully corroborate the version of the prosecutrix. The High Court also commented on the fact that the Sessions Judge took refuse on minor discrepancies here and there in the evidence of the prosecutrix and thereby landed into an error by misappreciating the evidence. Ultimately the High Court convicted the appellant as already stated, and thus the present appeal has been preferred.

Mr. Jain, the learned senior counsel appearing for the appellant contended that the High Court was fully unjustified in interfering with an order of acquittal passed by the learned Sessions Judge by reappreciating the entire evidence not bearing in mind the principle that the view taken by the Sessions Judge is a reasonable view on the materials on record and as such should not be interfered with. Mr. Jain further contended that the evidence of the prosecutrix which apparently is the sole evidence on which the conviction has been based bristles with such inconsistencies and inherent improbabilities that the prosecutrix can be held to be a wholly unreliable witness and as such no credence can be given to her statement and no conviction can be based on her testimony. With reference to the medical evidence, Mr. Jain, contended that the findings of the doctor that hymen was intact and there has been no rupture or any injury to the hymen, wholly improbabilises the version of the prosecutrix that the accused had committed rape on her on two occasions and there has been a penetration of the private part of the accused to an extent of quarter of an inch on one occasion and one inch on the other occasion. Mr. Jain, the learned senior counsel also urged that the presence of semen on the salwar of the prosecutrix cannot be said to be an incriminating piece of evidence until and unless it is established that the semen is that of the accused. That apart the seizure of the said salwar two days after the occurrence and absence of any explanation for such delayed seizure creates ample doubt in the prosecution case. Mr. Jain also vehemently contended that the evidence of the prosecutrix as well as her mother should be weighed from the admitted animosity between the accused and PWs 17 and 23, the two Mahila Samiti Mandal members who were bent upon teaching a lesson to the accused for some of their grievances. According to Mr. Jain conviction of the appellant, on account of such infirmities in the prosecution case and on account of unreliable evidence of the prosecutrix, is wholly unsustainable, though on a question of law there cannot be any dispute with the proposition that conviction can be based on the uncorroborated testimony of the prosecutrix provided the prosecutrix can be held to be reliable.

The learned counsel appearing for the respondent - State on the other hand contended that the evidence of the prosecutrix has to be appreciated bearing in mind that a young girl has been molested and subjected to sexual assault by her own Head Master. Her evidence narrating the incident has to be appreciated from the stand-point that an inexperienced young girl is making her statement of commission of rape not being aware of the ingredients of the offence of rape. According to the learned counsel the evidence of the said prosecutrix has been properly appreciated by the High Court and the High Court has pointed out the basic erroneous approach committed by the learned Sessions Judge and the conviction based on her evidence goes

not call for any interference by this Court. According to the learned counsel in the absence of any animosity between the prosecutrix and the accused it is unimaginable that a young girl would subject herself to the ignoring and embarrassment in the society by making an allegation to the fact that her own Head Master attempted to commit rape on her. According to the learned counsel a plain reading of her evidence would unequivocally indicate that the girl has narrated the incident truthfully and the so called minor discrepancies here and there cannot be held to be any material contradiction in her statement so as not to rely on the same. The counsel further contended that the circumstances as found by the High Court have fully corroborate the evidence of the prosecutrix and establishes the truthfulness of the prosecutrix's version.

In view of the rival submissions at the Bar, the questions arise for our consideration are;

1) Whether in the facts and circumstances of the case the High Court was justified in interfering with an order of acquittal passed by the learned Sessions Judge?:

2) Whether the evidence of the prosecutrix can be safely relied upon?: and

3) Whether any other circumstances found in the case corroborate the version of the prosecutrix?

Coming to the first question it may be stated that the power of the appellate court in an appeal against acquittal has been discussed in a catena of cases by this Court and it has been indicated that there is no limitation on the part of the appellate court to review the evidence upon which an order of acquittal is founded. The different expressions used in different judgments of this Court to the effect that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction, by no manner curtail the power of an appellate court in an appeal against acquittal to review the entire evidence and come to its conclusion. But in doing so that appellate court should consider every matter on record and the reasons given by the trial court in support of the order of acquittal. The essence of several decisions of this Court is the rule that in deciding appeals against acquittal the court of appeal must examine the evidence in a particular case: must also examine the reasons on which the order of acquittal was based: and should interfere on being satisfied that the view taken by the acquiring judge is unreasonable. If two views are possible on a set of evidence then the appellate court need not substitute its own view in preference to the view of the trial court who has recorded an order of acquittal. In other words, if an order of acquittal is based on proper appreciation of evidence then the same cannot be reversed. But when the acquittal by the Sessions Judge is found to be against the evidence or in disregard of the evidence or in violation of the principle f criminal justice then the appellate court will be fully justified in interfering with an order of acquittal since it is the duty of the court to convict a person when the guilt is established beyond reasonable doubt. If the Sessions Judge acquits an accused by giving undue importance to minor discrepancies and making a suspicion on evidence based on conjectures then the High Court will be fully justified in interfering with the order of acquittal. But all the same while reversing an order of acquittal the High Court must give sufficient grounds for holding that the appreciation of evidence by the trial court is unsupportable. The High Court must consider the reasons advanced by the trial Judge

in recording the order of acquittal and indicate while reversing the same the grounds of reversal. If, however, the appellate court finds the conclusions established at by the lower court are based on evidence and are plausible then it will not substitute its views on the evidence and interfere with an order of acquittal. It is in this sense the expressions "substantial and compelling reasons" or "good and sufficiently cogent reasons" used by this Court while dealing with the power of an appellate court to interfere with an order of acquittal has to be understood. This Court in the case of State of U.P. Vs. Krishna Gopal and Anr. 1988 (4) SCC 302 observed that the principles relating to limitations of the appellate court in an appeal against acquittal do not detract from the plenitude of the power of the appellate court to review and reappreciate the evidence if the order of acquittal on a review of the evidence is found to be grossly erroneous. There is, thus no immunity to an erroneous order from a strict appellate scrutiny but it must record reasons in support. To the same effect also is the observations of this Court in Hari Chand Vs. State of Delhi (1996) 9 SCC 112. Betal Singh Vs. State of M.P. (1996) 8 SCC 205 and Tallurri Venkaiah Naidu Vs. Public Prosecutor, High Court of A.P. (1996) 11 SCC 355. It is not necessary to multiply authorities and the question no longer remains res integra. Bearing in mind the aforesaid principal it would be necessary to examine the reasons which weighted with the learned Sessions Judge to order an acquittal and the reasons which weighted with the High Court in reversing the said order of acquittal. The learned Sessions Judge came to the conclusion that there is no cogent evidence to establish that the accused had sent the prosecutrix. PW-18 and two other classmates PW-1 and PW-2 to his house for cooking the meal and the two material witnesses namely PW-1 and PW-2 not having supported the prosecution case in this regard the evidence of the prosecutrix in that respect is not believable. The learned Sessions Judge also came to the conclusion that though the fact that prosecutrix and PWs 1 and 2 had absented themselves from the school from 9 am. on the relevant day is established but the same cannot be an incriminating evidence against the accused. So far as the absence of the accused from the school after the recess is concerned, relying upon the evidence of PWs 3. 4 and 20 who were the school teachers, the learned Sessions Judge came to hold that the accused was present in the school till 1 p.m. So far as the contemporaneous evidence of the mother to whom the prosecutrix narrated the incident immediately after the mother reached home, the learned Sessions Judge has not given any weight as according to him she was fully influenced by PWs 17 and 23 who had an axe to grind against the accused. On the evidence of Doctor, PW-21 the learned Sessions Judge came to the conclusion that the medical evidence has shaken the credibility of the prosecutrix version. On the question of seizure of salvar of the prosecutrix and the presence of semen on the same the learned Sessions Judge is of the opinion that since semen found thereon has not been established to be that of the accused the same cannot be held to be an incriminating evidence and finally the evidence of the prosecutrix has been held to be unworthy of acceptance because the same is found to be replete with infirmities, improvements and contradictions and found to be contradicted by the medical evidence itself. It is son these reasoning the learned Sessions Judge recorded the order of acquittal of the accused. The High Court, however, on re-appreciating the

evidence came to hold that the basic approach of the Sessions Judge was erroneous inasmuch as the charge was not for "commission of offence of rape" but for the "commission of offence of attempt to commit rape". The High Court also considered the circumstances proved by the prosecution evidence and came to hold that those circumstances proved sufficiently and corroborates the story of the prosecutrix and makes the statement of the prosecutrix believable. The said circumstances enumerated by the High Court in its judgment are: the absence of the prosecutrix and PWs 1 and 2 as well as the accused from the school after the recess; the presence of semen on the salwar of the prosecutrix as reported by the Chemical Examiner o analysis; the statement of the prosecutrix to her mother when her mother reached home in the evening; and the total misappreciation of the medical evidence by the Sessions Judge. One of the main reasons that had influenced the Sessions Judge is the finding of the doctor on examining the prosecutrix that there has been no rupture of hymen and as such the offence of rape could not be said to have been established. The High Court on reading the evidence of the prosecutrix has come to the finding that the prosecutrix's evidence was cogent clear to the effect that there has been no penetration of the organ of the accused into the vagina of the prosecutrix and on the other hand the accused merely rubbed his digital organ as a result of which there was discharge of hot white liquid substance which fell on the things of the prosecutrix. We would examine in greater detail the evidence of the prosecutrix and the medical evidence later but on going through the reasoning advanced by the High Court for interfering with an order of acquittal passed by the learned Sessions Judge we are of the considered opinion that the High Court cannot be said to have exceeded the parameters indicated in several judgments of this Court for interference with an order of acquittal.

It will be appropriate at this stage to bear in mind that in assessing the testimonial potency of the victim's version, the human psychology and behavioural probability must be looked into. The inherent bashfulness and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication (See (1980) 3 SCC 159). In the case in hand a young girl was subjected to sexual harassment by her own Head Master inside a close room of that Head Master and One can well imagine her trauma after being subjected to such sexual harassment. It is in this context it would be appropriate to extract a sentence from the judgment of this court in Krishan Lal Vs. State of Haryana (1980) 3 SCC 159 "a socially sensitized judge is a better statutory armour against gender outrage than long clauses of a complex section with all the protections writ into it". It must be remembered that no woman of honour will accuse another of committing rape since she sacrifices thereby what is dearest to her. It has to be borne in mind that the learned Sessions Judge discarded the evidence of the mother of the prosecutrix on the ground that she was influenced by PWs 17 and 23 who had an axe to grind against the accused. It is indeed unthinkable that the mother just to oblige her friends 'like PWs 17 and 23 would make serous allegations of sexual assault by the accused against her daughter. In our considered opinion, therefore, the High Court on review of the evidence on record and on examining the reasons given by the learned Sessions Judge for according an order of acquittal was fully justified in interfering with the said order of acquittal.

The next question that would crop up for consideration is whether the evidence of the prosecutrix can be relied upon? The entire argument or Mr. Jain, the learned senior counsel appearing for the appellant is that the prosecutrix's evidence is wholly belied by the evidence of the Doctor, and therefore, she must be held to be a wholly unbelievable witness and consequently no part of her statement can be acted upon. Learned counsel for the State on the other hand submitted that reading of the prosecutrix evidence would indicate that she has narrated the entire incident truthfully and cogently to her mother and if any part of her statement in the course of narration is belied by the medical evidence the said part can be ignored from consideration. The entire argument centres around her statement in the cross-examination to the effect "first time when the accused entered his penis into her vagina, it went inside about one inch. So much, the witness exhibited her finger which comes to some quarter of inch. The accused continued thrusting his penis some time into her vagina and some time pulled it out. When the accused after having stood up his penis again started rubbing it against her vagina, which he conducted about two minutes, even then the penis might have gone in about quarter to inch," The Doctor who examined the prosecutrix on 23.5.86 at 10.30 am. stated that there was no mark of violence n any part of the body and on local examination there is no mark of violence on her private parts like vagina, the hymen was intact and on examination of vaginal smear no living or dead spurm was found on the slide and accordingly she opined tat no definite opinion could be given regarding the attempt to sexual intercourse. Mr. Jain's contention is that if the prosecutrix's statement is that there has been a penetration into the vagina to a depth of quarter of one inch or one inch and the prosecutrix being a young girl of 13 years the hymen could not have been intact and thus the entire story given by the prosecution is unbelievable. We do not think that the prosecutrix evidence can be examined by picking one sentence in the cross-examination to find out whether she is a truthful witness or not. Since the order of acquittal passed by the Sessions Judge has been set aside by the High Court and the accused has been convicted, we have ourselves carefully gone through the entire evidence of the prosecutrix. The prosecutrix in no uncertain terms while narrating the act of sexual assault on her by the accused, has stated "the accused forcibly laid her on the blanket and the accused forcibly opened the cord of her salvar and kept it apart and asked her to keep quite, he has permission from her mother Bholi. The accused forcibly ride upon her. The accused had caught hold her head with one hand and closed her mouth with other hand. The accused had kept his penis qua her uterus and was doing some thing, The accused was trying to penetrate his penis into her uterus, but it did not penetrate. The accused had gripped his penis with his hand and was rubbing it against her uterus. He was doing so by jumping." Even in the cross-examination just before her statement on which Mr. Jain had relied it was stated "the accused thereafter stood up. He gripped his penis and then rubbed qua her uterus. On this second turn he conducted the said art in well-night two minutes, and then some thing like hot water oozed out from his penis". It is thus apparent from the entire reading of the prosecutrix evidence that the accused had rubbed his penis with vagina of the prosecutrix and tried to penetrate but could not succeed in penetrating and ultimately got himself discharged and the hot semen fell on the thighs of the prosecutrix. The statement made by the

prosecutrix on which Mr. Jain relied upon might have been made on account of the inexperience of the young girl who was being subjected to sexual harassment for the first time and the same cannot be read in isolation bereft of what she stated just previous to the aforesaid statement. Having given our anxious consideration and having scrutinized the evidence of the prosecutrix we are in agreement with the High Court that her evidence is that of truthful witness, which gives an account of the incident that happened to a rustic girl who was traumatized on account of sexual harassment meted out to her by none other her own school Head Master. Her evidence can be unhesitatingly accepted by court and has rightly been accepted by the High Court for sustaining a conviction for the charge under attempt to commit rape.

In this context it s appropriate to notice an argument advanced by Mr. Jain, learned senior counsel appearing for the appellant to the effect that in the absence of any penetration into the vagina the offence of rape cannot be said to have been established and it will not be possible to hold that the accused had attempted to commit rape on the prosecutrix, and therefore, it would at the most amount to an offence of indecent assault under Section 354 I.P.C. We are unable to accept this contention. Since, if the evidence of the prosecutriy is to be believed, and we do believe the same, the offence committed cannot but be held to be one of attempt to commit rape. The prosecutrix's evidence clearly establishes the fact that the accused spread the blanket on the floor and forcibly laid her on the blanket and thereupon the said accused forcibly opened the cord of the salvar of the prosecutrix and kept it apart and then forcibly ride upon her and on that point of time caught hold of her head with one hand and closed her mouth with the other and had kept his penis qua her uterus and was doing some thing and then the accused was trying to penetrate his penis but it did not penetrate and had gripped his penis with his hand and was rubbing it against her uterus which he was doing by jumping.

The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her flat on the ground undresses himself and then forcibly rubs his erected penis on the private part of the girl but fails to penetrate the same into Vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 I.P.C. and not an attempt to commit rape under Section 376 read with 511 I.P.C. In the facts and circumstances of the present case the offence of an attempt to commit rape by accused has been clearly established and the High Court rightly convicted him under Section 376 read with 511 I.P.C.

Apart from the trustworthy evidence of the prosecutrix herself we also find several circumstances as found by the High Court which corroborates the prosecutrix evidence and makes her statement wholly reliable. Though PWs 1 and 2 did not support the prosecution and therefore were cross-examined by the prosecution but Ms. Shobha Rani, another classmate of the prosecutrix clearly deposed that Krishan, PW-2 came and called Sunita. PW-1 on behalf of the accused for cooking meal at the residence of Head Master and even thereafter a teacher namely, Sagar Singh informed Sunita that she was wanted by the accused. She further stated that

the accused as well as the prosecutrix were absent from the school even till when she left at 1 p.m. The so-called teacher of the school on whose testimony the learned Sessions Judge heavily relied upon only have stated that the accused was present in the school till 1 p.m. but according to the prosecutrix she was confined to the house of the accuse till 3 p.m. and was subjected to sexual harassment and thus the evidence of the prosecutrix does not run counter to the evidence of the so-called teachers of the school who had narrated that the accused was in the school till 1 p.m. That apart the High Court has rightly relied upon the evidence of several other classmates of the prosecutrix like Mst. Rajni D/o Om Prakash, Pooran Chand S/o Nanak Chand, Manzoor Ahmad S/o Hafiz Ahmad and Somavani D/o Kaku who unequivocally stated that on the relevant date after 9 am. the prosecutrix as well as the accused were absent from the school. This lends credence to the story of the prosecutrix that she was sent to the house of the accused for cooking and thereafter the accused came to the house and committed the sexual assault. This would undoubtedly be a corroborating piece of evidence which the High Court has rightly relied upon. Then again the salwar of the prosecutrix was seized and had been sent to the Chemical Examiner for chemical analysis and the Scientific Officer of the Jammu and Kashmir, Forensic Science Laboratory after examining the said salwar reported that chemical and microscopical tests revealed the presence of semen/Human Spermatozoa on the said salwar. This is also a strong corroborative piece of evidence to the prosecutrix version even if it has not been established that the Human Spermatozoa is that of the accused. the statement of the mother of the prosecutrix to the effect that the prosecutrix narrated the entire episode immediately when she arrived at home can also be held to be a corroborative piece of evidence which the learned Sessions Judge excluded from consideration and in our view erroneously.

In this view of the matter it must be held that apart from the reliable testimony of the prosecutrix herself there has been sufficient corroborative pieces of evidence on which he High Court has relied upon in setting side the order of acquittal passed by the learned Sessions Judge. In our view on the evidence on record the conclusion is irresistible that the prosecution has been able to establish the charge of attempt to commit rape beyond all reasonable doubts and consequently the conviction and sentence passed by the High Court does not require any interference by this Court.

This appeal is accordingly dismissed. The bail bond stands cancelled and the accused is directed to surrender for serving the balance period of sentence failing which appropriate steps be taken for arresting the accused and put him into custody for serving the sentence.