2025:PHHC:094520

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

317

CRA-D-200-DBA-2005
Date of decision: July 28, 2025

STATE OF HARYANA

...Petitioner

Versus

BHUPINDER

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL

Present: Mr. Shiva Khurmi, DAG, Haryana.

Mr. Kapil Aggarwal, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

1. The State of Haryana has laid a challenge to the judgment dated 01.10.2004 passed by the learned Sessions Judge, Narnaul in FIR No.283 dated 07.11.2002 under Sections 457, 376, 506 of Indian Penal Code, 1860, registered at Police Station Sadar Narnaul, District Mahendragarh, whereby respondent (accused) was acquitted of the charges framed against him.

2. The present case arises from a complaint lodged by Raghbir Singh (father of the prosecutrix), who, at the time of the incident, was employed in Surat, Gujarat. On the occasion of Diwali in the year 2002, the complainant had returned home. He was residing in one portion of the house along with his family, while his elder brother-Mani Ram and his family occupied the adjoining portion. To the west of their house, were the residences of Deep Chand (father of the respondent-accused) and Umrao.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

3. On the intervening night of 6th and 7th November, 2002, the respondent-accused Bhupinder @ Golia, serving in the Indian Army (then posted at Jaipur), was present in the village. Allegedly, he unlawfully entered the house of the complainant with the intent to commit theft. While the complainant got up during the night to urinate, he noticed some movement and found respondent-accused hiding behind a door. Raising an alarm, by shouting "*chor chor*", the complainant woke up his wife-Pista Devi and his nephews, PW7-Mahender Kumar and Parmod Kumar, who rushed to the spot. Together, they apprehended the accused and began questioning him regarding his unauthorized entry. However, the respondent-accused managed to escape. During the scuffle, he left behind a cream-coloured Relaxo-brand slipper, which remained at the scene. That very night, the respondent-accused reportedly left the village and returned to his Army Unit in Jaipur.

4. The following morning, the complainant convened a Panchayat. However, the proceedings proved inconclusive as Deep Chand expressed his inability to produce his son, i.e. the accused, before the local body. Subsequently, complainant proceeded to Police Post with the pair of slippers left behind by the respondent-accused. On the way, he met PW14-ASI Mange Ram, to whom he handed over his written complaint. PW14-ASI Mange Ram endorsed the complaint and forwarded it to Police Station Sadar Narnaul, where MHC Ranbir Singh registered the formal FIR (Ex.PO) under Section 457 IPC. The slippers were sealed as a parcel with the seal

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

'*MR*', and were taken into custody vide recovery memo (Ex.PC). PW14-ASI Mange Ram then visited the residence of the complainant, conducted an inspection of the scene of crime, and prepared a rough site plan of the location (Ex.PR). Statements of witnesses were also recorded.

5. Following the incident, XXX (hereinafter referred to as the 'prosecutrix'), daughter of the complainant began exhibiting unusual behaviour. She became withdrawn, ceased attending school, and remained uncommunicative. Concerned, her mother questioned her persistently, and eventually, on 13.11.2002, the prosecutrix revealed, in the presence of family members, the events of the night of 06.11.2002.

6. The prosecutrix disclosed that after finishing her studies, she had stepped out into the courtyard to urinate. On returning to her room, she was overpowered by the respondent-accused, who gained access through the roof. He gagged her with a cloth and raped her. After committing the assault, he threatened to kill her and her brothers, if she revealed the incident. Her cries attracted the attention of her father, her mother and her brothers, who rushed to the scene. The accused then concealed himself behind the door. The accused was momentarily caught by the complainant but again managed to flee.

7. Due to the threats issued by the accused, the prosecutrix had initially remained silent despite repeated inquiries by her family.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

8. Upon disclosure, the complainant and PW7-Mahender Kumar escorted the prosecutrix to the police post, where her statement was recorded in the daily diary (Ex.PQ & Mark A). PW14-ASI Mange Ram took her to General Hospital, Narnaul for medico-legal examination by a Board of Doctors, who provided sealed parcels and the Medico Legal Report (Ex.PL) along with a sample seal. These were handed over to the MHC upon return to Police Station Sadar, Narnaul.

9. On 14.11.2002, PW14-ASI Mange Ram revisited the location of occurrence. On that day, the prosecutrix handed over an underwear, purportedly belonging to the accused, which was sealed and taken into custody through a recovery memo (Ex.P7). She also submitted her own underwear, salwar and shirt, which were similarly sealed and seized. A fresh site plan (Ex.PS) was prepared, and statements of some of the additional witnesses were recorded.

10. The prosecutrix was subsequently produced before the learned Judicial Magistrate Ist Class, Narnaul, where her statement (Ex.PV) under Section 164 Cr.P.C. was recorded. An arrest memo was obtained against respondent-accused. Official documents regarding the date of birth of the prosecutrix were procured on 18.11.2002, both from the Registrar of Births and Deaths, Narnaul and the school, where she was studying.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

11. On 28.11.2002, a scaled site plan (Ex.PN) of the place of occurrence was prepared by Constable Mahesh Kumar based on directions from the prosecutrix and complainant. The sealed parcels were sent to FSL Madhuban, and statements of all officials involved in handling the material evidence were recorded.

12. After respondent-accused was arrested, he was taken to General Hospital, Narnaul for his medico legal examination. Upon completion of the investigation, challan was presented on 07.04.2004 before the learned Additional Chief Judicial Magistrate, Narnaul; vide order dated 10.06.2003, the case was committed to the Court of Sessions.

13. After evaluating the material placed before the Court, the learned Additional Sessions Judge found a prima facie case against the accused for offences punishable under Sections 457, 376 and 506 of the IPC. Accordingly, the accused was formally charged for the above offences, to which he pleaded not guilty and claimed trial.

14. The prosecution, in support of its case, examined a total of 15 witnesses; PW1-prosecutrix, who provided a detailed account of the incident; PW2-Raghbir Singh, complainant, who discovered the intruder and took initiative in filing a complaint; PW3-Dr. Anuj Bishnoi, who conducted the medico legal examination of the accused on 26.03.2003, and provided a sealed sample of semen; PW4-Subhash Chand Saini, Principal, Saraswati Senior Secondary School, Narnaul, who certified the date of birth of the

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

prosecutrix as per school records; PW6-Dr. Samita Sharma, who examined the prosecutrix on 13.11.2002, collected medical samples and submitted sealed parcels; PW7-Mahender Kumar, cousin of the prosecutrix, who was present when the accused was caught; PW15-Pawan Verma, learned JMIC, who recorded the statement of the prosecutrix under Section 164 Cr.P.C. In addition, PW5-ASI Surinder Singh, PW8-SI Inderpal (Investigating Officer), PW9-Constable Ajit Singh, PW10-SI Basant Pal (conducted part of the investigation), PW11-Constable Mashesh Kumar, PW12-ASI Ranbir Singh, PW13-Constable Hari Krishan, PW14-ASI Mange Ram were also examined. The prosecution dropped the examination of Parmod, Pista Devi, Ram Ji Lal and Dr. Malti Gupta, as being unnecessary.

15. Upon closure of the prosecution evidence, the accused was examined under Section 313 of the Cr.P.C., during which the entire incriminating evidence appearing against him was put to him. The accused denied all allegations, claiming false implication. It was asserted by him that on 06.11.2002, he had left his village for his Army Unit at Jaipur around 10 a.m. and had reported for duty at 9 p.m. on the same date. He also claimed that the prosecutrix had handed him three letters on the morning on 06.11.2002, as he was leaving the village – implying an existing relationship and challenging the narrative as put forth by the prosecution.

16. In support of his version, the accused examined two defence witnesses, DW1-Paramvir Singh, Hawaldar Clerk from the Unit of the

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

accused, who testified regarding the movement of the accused on 06.11.2002; DW2-V.K. Rastogi, handwriting expert, who examined the letters marked A to C, purportedly written by the prosecutrix.

17. Additionally, two documents were submitted in defence to support the plea of the innocence of the accused and his prior relationship with the prosecutrix.

18. On the basis of the evidence led and other material on record, the learned trial Court acquitted the accused for offences under Sections 457, 375, 506 IPC by holding that the prosecutrix appeared to be a consenting party, and therefore, the alleged act of the accused did not amount to rape.

19. The appellant-State has primarily challenged the impugned judgment of acquittal on the ground that there was ample evidence on record to suggest and prove that the prosecutrix was aged less than 16 years at the time of the occurrence, which is alleged to have taken place on 06.11.2002. Learned State counsel argued that the prosecutrix had categorically testified that her date of birth was 10.01.1988, which stood corroborated from the school certificate of the prosecutrix (Ex.PG) duly corroborated in turn by PW4-Subhash Saini, Principal, Saraswati Senior Secondary School, Narnaul, where the prosecutrix was studying.

20. Learned State counsel, therefore, argued that the reliance placed by the learned trial Court on the birth certificate of a girl born to the complainant (Ex.DC) was unconnected with the prosecutrix as the

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

complainant, PW2-Raghbir Singh (father of the prosecutrix) had categorically deposed during his cross-examination that prior to the birth of the prosecutrix, one female child was born to him and his wife, however, she had died within three months of her birth. It was, therefore, argued that the learned trial Court had gravely erred in ignoring this crucial part of the deposition of the complainant.

21. Learned State counsel also argued that no doubt, there was some delay in reporting the occurrence to the police, however, in such like instances, when the reputation and the honour of the entire family is at stake, delays, if any, cannot adversely affect the case of the prosecution. Furthermore, it was asserted that the prosecution had successfully proved that the prosecutrix had been raped by the accused; the prosecutrix was put under threat of dire consequences including threats of she and her brother being killed in case the prosecutrix dared to disclose about the crime in question to anyone . Hence, this was also one of the reasons why there was a delay in lodging the FIR in question. Learned State counsel argued that after the occurrence in question, the prosecutrix had been mentally disturbed and had become a recluse; it was only on 13.11.2002, she revealed about the rape to her parents, and soon thereafter, without losing any further time, FIR in question (Ex.PQ) was lodged. It was also argued that although the father of the prosecutrix had earlier registered an FIR under Section 457 IPC against the accused on 07.11.2002 (Ex.PO) that the respondent-accused had

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

trespassed into the house of the prosecutrix for committing theft, which however was on account of a mistaken belief.

22. Learned State counsel further argued that after the respondent-accused was caught by the father and other family members of the prosecutrix, he managed to escape, however, while fleeing away, he left behind his chappals (Ex.P5 and P6), which were taken into possession vide memo (Ex.PC); on 14.11.2002, when the police again visited the place of occurrence i.e. the room of the prosecutrix, where she had been violated, following the registration of FIR (Ex.PQ), the underwear of the accused was handed over to the police vide memo Ex.P7.

23. Learned State counsel further vehemently argued that Dr. Samita Sharma (PW6), who conducted the medical examination of the prosecutrix on 13.11.2002 (Ex.PL), clearly opined that the possibility of rape could not be ruled out; the vaginal smears and swabs, which were sent to the FSL Madhuban for examination, tested positive as per the FSL report (Ex.PJ), which further nailed the respondent-accused in the commission of the crime in question.

24. Learned State counsel still further argued that although the accused had raised the plea of alibi by claiming that he had left the village at about 10 a.m. on 06.11.2002, and had reached his Army Unit at Jaipur at 9 p.m., however, since Jaipur was just 165 kms away from the place of occurrence, it was possible that after committing the crime, the accused had

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

fled straight away to his place of posting at Jaipur, and therefore, on this ground alone, his presence at the place of occurrence could not be ruled out, which yet again the learned trial Court had erroneously ignored.

25. Lastly, it was argued that the prosecutrix, while stepping into the witness box as PW1, had supported the case of the prosecution and reiterated her statement made under Section 164 of the Cr.P.C. *qua* her person being violated by the respondent-accused.

26. Learned counsel for the respondent, on the other hand, argued that the impugned order acquitting the accused did not warrant any interference as it was based on sound appreciation of evidence, which was led before the learned trial Court. It was also asserted that seen from any angle, it clearly stood proved across that the prosecutrix was a consenting party. Furthermore, three letters (Ex.DA to DC) were handed over to the respondent-accused by none other than the prosecutrix, which further nailed the lies of the prosecution that she had been raped by the accused against her consent. Learned counsel further argued that it stood proved through the evidence of DW2-V.K. Rastogi that the letters (Ex.DA to DC) were in the hand of none other than the prosecutrix. Still further, the case of the prosecution was riddled with glaring infirmities and gaping holes particularly with respect to the age of the prosecutrix. It was asserted that there was enough documentary evidence to support that the prosecutrix was not born on 10.01.1988 but on 31.03.1986, and therefore, it could be safely

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

concluded that the prosecutrix was an adult on the date of the alleged occurrence.

27. We have heard learned counsel for the parties and perused the relevant material placed on record.

28. The principal question that arises in the present case is whether the prosecution has succeeded in establishing its version beyond reasonable doubt, particularly in relation to the age of the prosecutrix, the authenticity of the allegation of sexual assault/rape, and the sequence of events as narrated in the FIR and during trial. Upon a comprehensive appraisal of the evidence, we find significant inconsistencies and glaring infirmities in the case of the prosecution, which render it wholly unreliable and improbable.

29. According to the prosecution, the prosecutrix was below 16 years of age at the time of the alleged incident, and therefore, her consent – if any – would be of no consequence. The prosecutrix, while appearing as PW1, deposed that she was approximately 15 years old at the time of the alleged occurrence and was studying in 10+2 stream. Her father, PW2-Raghbir Singh similarly stated that she was born on 10.01.1988, and that she was his eldest child, followed by a son aged about 11 years and another child aged about 9 years.

30. However, during the course of investigation as well as during trial, the accused placed on record Ex.DC, a birth certificate in the name of the prosecutrix, recording her date of birth as 31.03.1986. The Issuing

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

Authority appended a note stating that although there was a cutting in the register regarding the date of registration, there was no alteration whatsoever in the actual date of birth entered. Therefore, this crucial document retains its evidentiary sanctity.

31. Significantly, during cross-examination, PW2-Raghbir Singh candidly admitted that his first child, a female, was born in the year 1986. He claimed, however, that she died two months after birth. This explanation appears to be an afterthought. Had the child died shortly after birth, her death ought to have been duly recorded in the civil records, just as her birth was. No such entry was produced or pointed out by the learned State counsel. Furthermore, Ex.DT issued by the Office of Civil Surgeon, Narnaul, confirmed that there is no entry of birth of any daughter of PW2-Raghbir Singh in 1988. Conversely, Ex.DS records the birth of a male child to PW2-Raghbir Singh and his wife Pista Devi on 20.12.1989.

32. When considered cumulatively, the existence of two documented births – one in 1986 and another in 1989 – makes it highly improbable that a daughter was born in 1988 to PW2-Raghbir Singh and his wife Pista Devi without any record, particularly in light of the father's claim that the 1986-born female child had died. These contradictions not only undermine the credibility of the prosecution but also fatally injure its claim regarding the age of the prosecutrix.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

33. Even more importantly, Pista Devi, mother of the prosecutrix, whose testimony would have been most critical to examine the exact date of birth of her daughter, was not examined as a prosecution witness. Her statement to the investigating officer, however, was to the effect that the prosecutrix was born on 31.03.1986. This was corroborated by PW10-Sub Inspector Basant Pal, who stated that Pista Devi had made this statement to him during investigation. There is no cogent reason to disbelieve the statement of this officer or to assume that he fabricated the same.

34. Despite her crucial role as the mother and primary witness to the birth, the prosecution failed to produce Pista Devi in the witness box, and no explanation for this omission was offered. Her unexplained non-examination creates an adverse inference and further dilutes the case of the prosecution on the age of the prosecutrix.

35. Adding to this, PW6-Dr. Samita Sharma, Medical Officer, who conducted the medico legal examination of the prosecutrix, specifically recommended an ossification test to medically estimate the age of the prosecutrix. No such test was conducted, nor any reason provided for omitting it. The failure to carry out the ossification test, particularly when recommended by the examining doctor, deprives the prosecution of scientific corroboration regarding age – an omission which assumes critical significance in light of the contradictions highlighted above.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

36. In light of the above facts and omissions, we, therefore, find that the prosecution has failed to prove that the prosecutrix was below the age of 16 years at the time of the alleged occurrence. Consequently, the legal presumption under Section 375 IPC, that consent is immaterial in the case of a minor, does not come into operation. Furthermore, the alleged occurrence took place around 10.30 p.m. on 06.11.2002 inside the house of the complainant, while the FIR was lodged on 07.11.2002 at 12.35 p.m. under Section 457 IPC. While delay in reporting offences of sexual assault may not, in itself, be fatal to the case of the prosecution, it assumes significance where it is coupled with shifting narratives, contradictory statements, and lack of corroborative evidence.

37. As per the initial version of events narrated to the Panchayat and the police by the complainant, the accused had allegedly entered the house of the complainant with an intention to commit theft, and was discovered by the complainant hiding behind a door. The complainant raised an alarm attracting his wife and nephews to the scene, whereafter the accused managed to escape, leaving behind his slippers.

38. Strangely, this version underwent a complete transformation during trial. The prosecutrix, supported by the altered testimony of the complainant, PW2-Raghbir Singh, claimed that she had gone out to urinate at night, and upon returning, found accused in her room, where he allegedly sexually violated her. As per the prosecutrix, the accused, after entering her

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

room, and threatening her, forcibly lay her on bed, removed his trousers and underwear – violated her person. It is highly improbable that the prosecutrix would not have had an opportunity to flee from the clutches of the accused and shout for help. It was claimed that the prosecutrix raised an alarm, thereby attracting her family members to the spot. This materially inconsistent version, which surfaced only at a later stage, raises serious doubts about its credibility and spontaneity.

39. The initial complaint did not mention any allegation of sexual assault/rape. It is wholly inconceivable that had the prosecutrix indeed raised an alarm on sighting the accused in her room or immediately after being violated, her father would have approached the Panchayat alleging an attempted theft against the accused and remain silent about the far more serious allegation of rape. This significant deviation renders the story of the prosecution highly suspect.

40. Furthermore, as per the prosecution, the accused left behind his underwear at the scene of the alleged incident. However, the police, despite searching the premises the very next day, pursuant to the registration of the FIR under Section 457 IPC, did not recover the said underwear. It was later claimed that the prosecutrix herself handed over the underwear of the accused to the police – an assertion which lacks natural probability and procedural credibility. If indeed the accused had left behind such a crucial piece of evidence, the police, acting with due diligence, would certainly

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

have recovered it during their search on 07.11.2002, since it later was stated by the prosecutrix that the said underwear had been left behind by the accused beneath the bed.

41. The failure to collect such vital physical evidence at the relevant time, coupled with the belated introduction of this article through the prosecutrix, raises serious doubts about the manner in which the investigation was conducted and casts a shadow over the integrity of the case of the prosecution.

42. The alleged incident took place inside the room of the prosecutrix, which, as per the evidence, was adjacent to the rooms occupied by her other family members. Given the modest size of the house, it is highly unlikely that no one in the household would have heard any noise or commotion during the dead of the night, particularly when the incident allegedly involved a sexual assault.

43. Even if, for the sake of argument, the accused had threatened the prosecutrix, it is difficult to believe that she made no attempt to resist or escape, especially when the incident occurred within the secure confines of her own house. Her claim that she remained passive, while being made to lie on bed, and the accused removed his clothes and thereafter violated her, does not appeal to reason. She had both the opportunity and proximity to her family members to raise an alarm or seek help.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

44. The subsequent claim that her alarm brought her family to the spot stands in stark contradiction to the earlier version provided by the complainant while getting the FIR registered on 07.11.2002, where he had stated that he himself had discovered the accused and raised the alarm. This inconsistency, coming from the father of none other than the prosecutrix, fatally weakens the case of the prosecution.

45. In sum, the case of the prosecution is replete with inconsistencies, contradictions, unexplained omissions and procedural lapses. The uncertainty regarding the age of the prosecutrix, the delay and manipulation in the version of events, the lack of credible and timely recovery of evidence, and the overall implausibility of the occurrence, collectively give rise to grave and compelling doubts.

46. It is a well-settled principle of criminal law that the prosecution must prove its case beyond reasonable doubt. In the present case, not only has the prosecution failed to meet that standard, but the evidence on record strongly suggests the possibility that the prosecutrix was a consenting party, and the prosecution has sought to project a version of events that evolved with time and lacks foundational credibility.

47. In view of the above discussion, we find no merit in the instant appeal. The judgment of acquittal recorded by the learned trial Court does not suffer from any legal infirmity, perversity or mis-appreciation of evidence.

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh

48. Accordingly, the instant appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 28, 2025
Jaspreet Kaur

(H.S. GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Jaspreet Kaur
2025.08.02 10:24
I attest to the accuracy and
integrity of this document
Chandigarh