



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-1087-2024 (O&M)

Date of Decision: 14th February 2025

DHARAMPAL CHAUHAN

.....APPELLANT

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sanyam Khetarpal, Advocate,
for the appellant.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The present appeal has been filed by the appellant-convict assailing the judgment of conviction dated 23.05.2024 and order of sentence dated 27.05.2024 passed by the learned Additional Sessions Judge, Faridabad (for short '*the trial Court*'), whereby the appellant-convict was held guilty and convicted and sentenced under Sections 376 and 506 of the Indian Penal Code (for short '*the IPC*') in case FIR No. 128, dated 26.09.2021, under Sections 376 and 506 IPC, registered at Police Station Women Central, District Faridabad. The appellant has been sentenced as under:-

Sr. No.	Offence Punishable under Section	Term of Punishment	Fine	In default of payment of fine (R.I.)
1.	376 IPC	Rigorous imprisonment for 15 years	Rs.1,00,000/-	One year
2.	506 IPC	Rigorous imprisonment for seven years	Rs.50,000/-	Six months



Both the above sentences are ordered by the trial Court to run concurrently.

2. As per the prosecution version, the prosecutrix aged 35 years, used to run a 'Smosa' stall in Faridabad. The appellant-Dharam Pal Chauhan came there as a customer to purchase the 'Smosas' from the stall of the prosecutrix. At that time, the son of the prosecutrix was playing on her mobile phone. While talking to her son who was playing with the mobile phone, the appellant managed to take the mobile phone number of the prosecutrix from the said mobile phone instrument. Later on, the prosecutrix received a telephonic call from the appellant, however, she stopped him from calling her again. The appellant started stalking the prosecutrix. On 25.09.2021 at about 02:30 a.m. when the prosecutrix came out of her room to answer the call of nature, the appellant was found present there, who forcibly caught hold the prosecutrix and took her inside the room. The appellant committed rape upon the prosecutrix under threat to kill her and her son. The prosecutrix informed the occurrence to her landlord namely, Sushil Mehato who brought her to the police station.

2.1 On 26.09.2021, the FIR bearing No. 128, dated 26.09.2021, was registered under Sections 376 and 506 IPC in Police Station Women Central, District Faridabad, on the basis of a written complaint made by the prosecutrix. On 27.09.2021, the Medico-Legal Examination of the prosecutrix was got conducted from the B.K. Hospital, Faridabad. On 30.09.2021, the statement of the prosecutrix under Section 164 Cr.P.C was got recorded by the Area Magistrate. The appellant was arrested. On completion of the investigation, the final report ('*challan*') under Section



173 Cr.P.C. was presented before the Area Magistrate.

2.2 The Area Magistrate supplied the copies of the '*challan*' and other connected documents to the appellant-accused and thereafter committed the case to the Court of Sessions.

2.3 The trial Court issued charge-sheet to the appellants finding a *prima facie* case under Sections 376 and 506 IPC. The appellant pleaded not guilty and claimed trial.

2.4 The prosecution in order to substantiate its case, examined as many as 18 prosecution witnesses, i.e. PW-1 the prosecutrix/complainant, PW-2 Dr. Ravi Lamba, Medical Officer, PW-3 Sushil Mehato, PW-4 ASI Sarwan Kumar, Draftsman, PW-5 Ms. Usha Rani, Legal Aid Counsel, PW-6 Inspector Geeta, PW-7 Lady Constable Kaushalya, PW-8 Lady Constable Manju Devi, PW-9 Head Lady Constable Reena, PW-10 Lady Constable Ruby, PW-11 EHC Sharmila, PW-12 Dr. Anil Kumar, PW-13 ASI Neetu, PW-14 Lady Head Constable No. 637, PW-15 Ms. Anuradha, the then JMIC, PW-16 Dr. Meetu Sharma, PW-17 Head Constable Satish Kumar and PW-18 ASI Suman.

2.5 On completion of evidence of the prosecution, statement of the accused, as required under the provisions of Sections 313 Cr.P.C., was recorded, wherein, he denied all the allegations against him and pleaded his false implication.

2.6 In his defence, no one has been examined by the appellant-convict.

2.7 Learned trial Court found the evidence produced by the



prosecution 'as reliable' while convicting and sentencing the appellant as noticed above.

2.8 The findings recorded by the trial Court have been challenged by the appellant by way of filing the instant appeal.

3. Learned counsel for the appellant submitted that the prosecutrix has not supported the prosecution case during the trial. She was declared hostile. However, the trial Court has convicted the appellant without appreciating the fact that there is no incriminating evidence against the appellant on record.

4. The State counsel has opposed the appeal. While referring to the reasons recorded by the trial Court, the State counsel submitted that the case was registered on the basis of a written complaint of the prosecutrix. Even the statement of the prosecutrix recorded under Section 164 Cr.P.C by the Area Magistrate supports the prosecution case. Referring to the Medico-legal Examination Report, it was contended that as per the opinion of the doctor, possibility of sexual intercourse could not be ruled out and even as per the FSL report, human semen was detected on the clothes (*Petikot*) of the prosecutrix.

5. We have considered the aforesaid submissions and perused the paper-book.

6. It is the basic principle of criminal jurisprudence that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence. The prosecutrix is major and having a child. She has herself disclosed her age as 35 years in the statement recorded under Section 164 Cr.P.C. While appearing as Witness No. 1 during the



trial, in her examination-in-chief, she has stated that she is married and illiterate. She has a son. She had seen the accused Dharampal Chauhan through video conferencing. Accused-Dharampal Chauhan never committed rape upon her. After declaring her as a hostile witness, the Public Prosecutor was permitted to put leading questions to her. Though she has admitted her signatures on the complaint given to the police (Ex. P-1/PW-1), however, she has denied having made any incriminating statement to the police. She was confronted with the contents of the said complaint (Ex. P-1/PW-1), though she has admitted that whatever was disclosed by her to the police official the same was recorded in the said complaint but she voluntarily stated that accused-Dharampal Chauhan had given her beatings, as such, she had made the complaint against him in anger and levelled false allegations of rape. With regard to the statement recorded under Section 164 Cr.P.C. the prosecutrix has though admitted that the said statement bears her thumb impression but she has stated that at that time she was nervous and under the impression of her family members. In the cross-examination conducted on behalf of the accused, the prosecutrix has stated that she had physical relations with the accused-Dharampal Chauhan and she was a consenting party. She has further stated that the accused had made physical relations with her with her own consent.

7. As per the FSL examination report (Ex.PX), human semen was detected on the clothes of the prosecutrix. After declaring the prosecutrix (PW-1) as hostile witness, the Public Prosecutor was permitted to put leading questions to the witness. However, the prosecutrix has categorically



stated that she had not handed over any pink-coloured 'petticoat' to the Medical Officer at the time of her medico-legal examination. She has further testified that Medical Officer did not take her vaginal swabs at that time. She has also admitted that she has denied to the Police to get her USG (Ultrasound Examination) and UPT (Urinary Pregnancy Test) conducted.

8. The trial Court while holding the appellant guilty had observed in paragraph No. 68 of its judgment that the prosecutrix has been raped and the case falls in clause 'First' and 'Secondly' of Section 375 IPC. We have considered the provisions of Section 375 IPC, which are reproduced as under:-

"375. Rape.—A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.



Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.”

9. The clause ‘First’ of Section 375 IPC would be attracted only if the sexual act is against the will of a woman and clause ‘Secondly’ would be attracted only if the said act is without her consent. The prosecutrix has categorically stated that she was having a consensual relationship with the appellant. In such circumstance, the observations made by the trial Court that the case is covered under clause firstly and secondly of Section 375 IPC is factually incorrect.

10. The presumption raised by the trial Court under Section 114-A of the Indian Evidence Act, 1872, (for short ‘*the Act of 1872*’) is not sustainable. In view of the facts and circumstance of this case, the said reliance has been misplaced as in the present case, the prosecutrix did not say that the alleged act was without her consent. The provisions of Section 114-A of the Act of 1872 are reproduced as under:-

“114A. Presumption as to absence of consent in certain prosecution for rape. —In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e),



clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

(Emphasis supplied)

11. As per the evidence on record, the following material facts are noticed:-

- i. The prosecutrix has stated in her examination-in-chief that accused-Dharampal never committed rape upon her;
- ii. The prosecutrix has herself stated during trial that she was having a consensual relationship with the appellant and she had explained that the appellant had beaten her up, therefore, she lodged the present FIR out of anger;
- iii. At the time of recording of the testimony of the prosecutrix, the trial Court did not observe in the demeanour of the witness that she was threatened or that she was under any influence or that her testimony is made under any fear.
- iv. The prosecutrix is major, her age is 35 years and she is also having a son;
- v. As per the Medico-Legal Examination report (Ex. P-2/PW-1), no external injury was found on the person of the prosecutrix at the time of her examination;



12. In view of the aforesaid facts and circumstances of this case, the presumption under Section 114-A of the Act of 1872 cannot be raised.

13. The trial Court has also relied upon the testimony of Sushil Mehato (PW-3) who is a neighbourer of the prosecutrix. As per his testimony, the prosecutrix used to run a 'Samosa' stall. The prosecutrix told him that accused-Dharampal Chauhan used to follow her. As such he confronted the accused but he replied that he was not following the prosecutrix and was roaming there in routine. As per the said witness, the prosecutrix has told her that on the intervening night of 25/26.09.2021, the accused-Dharampal Chauhan had committed rape upon her. In cross-examination, he has stated that the accused has not committed raped upon the prosecutrix in his presence.

14. Sushil Mehato (PW-3) is not an eye witness of the occurrence. His testimony is only a hearsay evidence. He has only deposed whatever was told to him by the prosecutrix. As per the version of the prosecutrix during the trial, there was a consensual relationship *inter se* the prosecutrix and the appellant and the FIR was got registered on account of the fact that the appellant had slapped her.

15. In such circumstance, the testimony of Sushil Mehato (PW-3) cannot be relied upon to hold the accused-appellant guilty of the offence of rape as defined under Section 375 IPC. Whether the sexual act was committed by the appellant with the consent or without the consent of the prosecutrix, to prove this fact the prosecutrix is the best witness. In view of the categorical statement of the prosecutrix that the said act was done with her consent, the testimony of Sushil Mehato (PW-3) which is merely a



hearsay evidence cannot be made as a conclusive proof to hold the appellant guilty.

16. The trial Court has also relied upon the incriminating statement made by the prosecutrix during her statement recorded under Section 164 Cr.P.C. (Ex. P-5/PW-1). No doubt, the prosecutrix has supported the allegations, levelled by her in the FIR, before the Judicial Magistrate in her statement recorded under Section 164 Cr.P.C, however, the said statement can never be used as a substantive evidence of truth of the facts and the same may be used only for corroboration of the witness who makes it. In this regard, the observations made by the Hon'ble Apex Court in the case of "*Ram Kishan Singh vs. Harmit Kaur*"; *AIR 1972 SC 468*, are relevant and important, which reads as under:-

“XXXXXXX

8. A statement under Section 164 of the Cr.P.C. is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness. XXXXXXX”

17. The Hon'ble Apex Court, in "*R. Shaji vs. State of Kerala*"; *(2013) 14 Supreme Court Cases 266*, held that evidence given in a Court under oath, has great sanctity, which is why the same is called substantive evidence. However, a proposition to the effect that if the statement of a witness is recorded under Section 164 Cr.P.C., his evidence in Court should be discarded, is not at all warranted. It was also observed that the object of recording the statement of the prosecutrix under Section 164 Cr.P.C. is 2-fold i.e. to deter the witness from changing his stand by denying the contents of his previously-recorded statement and secondly, to



to tide over impunity from prosecution by the witness under Section 164

Cr.P.C. The observations by the Hon'ble Apex Court are as under:-

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26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold, in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted. (Vide *Jogendra Nahak v. State of Orissa*² and *CCE v. Duncan Agro Industries Ltd.*³)

28. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 CrPC can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence.

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18. In the case of *“State of Uttar Pradesh vs. Mahendra and Another”*; *2025 SCC (Online) SC 151*, the respondents were convicted by the trial Court under Sections 366 and 376-G of the Indian Penal Code,



1860. The High Court found material discrepancies in the evidence adduced by the prosecutrix under Section 164 of the Criminal Procedure Code, 1973, vis-a-vis her examination before the trial Court. The evidence of the prosecutrix was disbelieved by the High Court. The Hon'ble Apex Court held that conviction cannot be recorded solely relying upon such evidence. The observations by the Hon'ble Apex Court are as under:-

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5. No doubt, it is true that the evidence of a prosecutrix has to be placed at a very high pedestal, much higher than that of an injured witness, but when there are material contradictions making the Court disbelieve the evidence of a prosecutrix, one cannot render a conviction solely relying on the same.

XXXXXX”

19. In the present case there is no corroboration to the testimony of the prosecutrix recorded under Section 164 Cr.P.C. The prosecutrix has stated that at the time of making the said statement (Ex.P-5/PW-1), she was nervous and under the pressure of her family members. She has categorically stated that she was a consenting party. The prosecutrix is major and as per the medical evidence, no external injury marks were found on the person of the prosecutrix, so it becomes highly doubtful that the act alleged to have been committed by the appellant was without the consent of the prosecutrix.

20. Hence, it is concluded that the statement of the prosecutrix recorded under Section 164 Cr.P.C. holds evidentiary value but its weight and credibility depends on the specific circumstances of each case. In view of the peculiar facts and circumstances of this case and in view of the ratio



of the aforesaid decisions by the Hon'ble Apex Court, the conviction of the appellant cannot be based on the statement recorded under Section 164 of the Code of Criminal Procedure.

21. In view of the above discussion, it is concluded that the prosecution has failed to prove that the appellant is guilty of the offence under Section 375 IPC punishable under Section 376 IPC. Similarly, there is no evidence that there was any intimidation to the prosecutrix, as such, the offence under Section 506 IPC is also not proved. On the basis of evidence and facts on record, the findings of the trial Court are not sustainable. Consequently the said findings are liable to be set aside.

22. Keeping in view the reasons recorded hereinabove, the present appeal stands allowed. The judgment of conviction dated 23.05.2024 and order of sentence dated 27.05.2024 passed by the trial Court are set aside. The appellant is acquitted against the charges framed against him by the trial Court. The appellant who is in custody, be released forthwith.

23. A copy of this order be sent to the learned Chief Judicial Magistrate concerned for necessary compliance.

24. Pending miscellaneous application (s), if any, shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

14th February 2025
nitin/simran

Whether Speaking

Yes/No

Whether Reportable

Yes/No