

2025:PHHC:097130



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

319

CRA-D-205-DBA-2005

Date of decision: July 29, 2025

STATE OF HARYANA

...Appellant

Versus

ASHOK KUMAR

...Respondent

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

Present: Mr. Rajat Gautam, Addl. A.G., Haryana and
Mr. Rahul Mohan, Addl. A.G., Haryana.

MANJARI NEHRU KAUL, J.

1. The State of Haryana has challenged the judgment dated 07.09.2004 passed by the learned Additional Sessions Judge (Fast Track Court), Karnal in FIR No.17 dated 24.01.2004 under Sections 363, 366 and 376 of Indian Penal Code, 1860, registered at Police Station Indri, District Karnal, whereby respondent (accused) was acquitted of the charges framed against him.

2. The prosecution case in brief is as follows:-

A. On 24.01.2004 at about 4.40 p.m., when ASI Satya Prakash, along with other police officials, was out on patrol, the complainant-Bhagat Ram gave a written complaint to him. The complainant stated that he is a Labourer and has seven children – two daughters and five sons. His eldest daughter-XXX (hereinafter referred to as the 'prosecutrix'), is unmarried and aged about 16-17 years. On the intervening night of 17th and 18th January,



2004, at around 10 p.m., he returned home after completing his labour work. After dinner, he, along with his family members, went to sleep. The next morning, at about 5 a.m., he discovered that his daughter i.e. the prosecutrix was missing from the house.

B. The complainant and his wife-Premo made extensive efforts to locate their daughter but to no avail. Since their neighbour-Ashok Kumar @ Shoki (accused-respondent) was also missing from his house, the complainant, therefore, suspected that he had enticed and abducted his daughter during the night of 17th and 18th of January, 2004 with the intention to commit rape upon her. Despite extensive searches among relatives and within the neighbourhood, his daughter could not be traced.

C. Based on this complaint, an FIR (Ex.P19) was registered under sections 363 and 366 of the IPC at Polica Station Indri on 24.01.2004. During the course of investigation, on 03.02.2004, the accused-Ashok Kumar was apprehended along with the prosecutrix from village Khuri.

D. The statement of the prosecutrix under Section 164 Cr.P.C. (Ex.P7) was recorded before the Magistrate. On the basis of her statement, Section 376 IPC was also added to the charges. The prosecutrix was medico-legally examined at General Hospital, Karnal, and the accused was examined at the Community Health Centre, Indri.

E. Relevant physical evidence – including the clothes, two vaginal swabs of the prosecutrix etc. – was collected and sent to the FSL, Madhuban for chemical analysis, and FSL report (Ex.P25) was duly obtained. A rough



site plan of the place of occurrence was also prepared. Statement of material witnesses were recorded under Section 161 Cr.P.C. Upon completion of the investigation and other formalities, final report under Section 173 Cr.P.C. was presented before the competent Court.

F. On perusal of the record, a *prima facie* case under Sections 363, 366 and 376 IPC was found to be made out against the accused by the learned trial Court. Accordingly, charges were framed against the accused, to which he pleaded not guilty and claimed trial.

G. In support of its case, the prosecution examined the following witnesses :

- I. PW1 – Dr. Gajay Singh (Medical Officer, General Hospital, Karnal)
- II. PW2 – Dr. Iqbal Singh (Radiologist, General Hospital, Karnal)
- III. PW3 – the prosecutrix
- IV. PW4 – Bhagat Ram (father of the prosecutrix and complainant)
- V. PW5 – Baljinder Singh (Patwari)
- VI. PW6 – Constable Jai Pal Singh
- VII. PW7 – Head Constable Ram Phal
- VIII. PW8 – Head Constable Gursharan Singh
- IX. PW9 – Dr. Nisha Chaudhary (Medical Officer, Primary Health Centre, Kutail) (This witness medico legally examined the accused)
- X. PW10 –ASI Satya Prakash (Investigating Officer)



H. Additionally, the prosecution tendered into evidence the FSL Report, the statement of the prosecutrix recorded under Section 164 Cr.P.C., the recovery memo and certain other relevant documents were also tendered in evidence.

I. Thereafter, the accused was examined under Section 313 Cr.P.C., wherein all incriminating evidence appearing against him was put to him. The accused denied the allegations *in toto* and claimed innocence stating that he had been falsely implicated.

3. Assailing the judgment of acquittal, learned State counsel submitted that the learned trial Court had failed to appreciate the consistent, cogent and reliable evidence led by the prosecution and had instead erroneously placed under reliance on the defence version. Particular emphasis was laid on the testimony of the prosecutrix, who, both in her statement under Section 164 Cr.P.C. and during her deposition before the learned trial Court, had consistently deposed about the forcible abduction and repeated sexual assault committed upon her by the accused.

4. Learned counsel for the State further argued that the prosecutrix, during her medico-legal examination, was found to be 18 weeks pregnant, which corroborated her version of repeated sexual assault. It was submitted that the pregnancy, combined with the medical and ocular evidence, strongly supported the prosecution case.

5. The State also questioned the learned trial Court's rejection of the prosecutrix's testimony on the ground that she had not disclosed prior



instances of assault in her statement under Section 164 Cr.P.C. It was submitted that such omissions were minor and that the prosecutrix, as a victim of a grave and traumatic offence, could not be expected to give a chronologically perfect narrative at every stage.

6. It was also submitted by the learned State counsel that learned trial Court's reliance on the alleged delay in lodging the FIR was misplaced. The prosecution had adequately explained the delay by citing the social stigma and fear of reprisal faced by the victim and her family. In such offences, it was urged, delay in reporting should not *ipso facto* be treated as fatal to the case of the prosecution.

7. Learned State counsel contended that the learned trial Court erred in disbelieving the prosecutrix on the basis that she was more than 18 years of age at the time of the alleged incident. It was asserted that there was no conclusive or cogent evidence on record to prove the same, and that the Court had drawn a conjectural inference based on an assumption that the prosecutrix was also referred to by a nickname 'S', which was never conclusively linked to her.

8. Finally, the State contended that the learned trial Court had ignored the settled principle that the testimony of a prosecutrix, if found credible and trustworthy, does not require corroboration and is sufficient to base a conviction. It was submitted that the prosecutrix, in the present case, was an injured witness, whose consistent testimony should have been accorded due weight. The failure of the learned trial Court to do so, it was



argued, had resulted in a miscarriage of justice warranting interference by the learned Appellate Court.

9. We have heard learned State Counsel and perused the evidence on record as well as the impugned judgment.

10. The prosecutrix, when examined as PW3 identified the accused-Ashok Kumar as her neighbour. She deposed that the incident in question took place on the night of 17th January, 2004, when she stepped out of her house to relieve herself, the accused, allegedly waiting outside on his bicycle, forcibly gagged her and took her away; the accused threatened to kill her, and on that night, confined her in a nearby Kotha; he violated her person without her consent. At around 3 a.m., he then took her to Ganaur, kept her confined in a room behind a bus stand for nearly a fortnight, where she was subjected to continuous rape. During this period, the accused would leave for his daily labour work while she remained in confinement.

11. Subsequently, upon running out of money, the accused took the prosecutrix to a *dhaba* at G.T. Road, Ganaur and from there, they boarded a truck, which brought them to Indri on 3rd February, 2004. While they were walking back to their native village, they were intercepted by the police in the presence of the father of the prosecutrix.

12. The prosecutrix deposed that due to persistent threats extended by the accused, she neither disclosed to anyone nor attempted to raise any alarm regarding her confinement in the room at Ganaur or the sexual assault committed upon her during that period.



13. Her statement was recorded by the police on 3rd February, 2004, following which she was subjected to medico-legal examination by PW2-Dr. Iqbal Singh. During this examination, clinical findings revealed that she was approximately 18 weeks pregnant.

14. PW9-Dr. Nisha, who also examined the prosecutrix, acknowledged during cross-examination that if a person is forcibly subjected to sexual intercourse, it is expected that there would be internal and external injuries. However, she admitted that no such injuries were found on the person of the prosecutrix, and no such observations were recorded in the medico-legal report prepared by her.

15. The core and determinative issue that emerges in the present case pertains to the age of the prosecutrix at the time of the alleged incident. In this regard, the defence relied upon a birth certificate produced by DW1, Kesha Ram, which, at entry No. 11, records the birth of a girl named 'S', daughter of Bhagat Ram (PW5) and Premo, on 12.08.1983. It is relevant to note that during the course of investigation, the mother of the prosecutrix, Premo, in her supplementary statement, stated that the prosecutrix was also known by the name 'S'. In the absence of any evidence to the contrary, this documentary entry assumes considerable evidentiary significance.

16. Moreover, during her medico-legal examination by PW9, Dr. Nisha, the prosecutrix herself disclosed her age to be 17 years. This was further affirmed by the medical opinion recorded by Dr. Nisha, who



estimated the age of the prosecutrix to be approximately between 17 and 18 years based on clinical assessment.

17. In view of the above, the prosecution's assertion that the prosecutrix was a minor at the time of the alleged incident stands negated by both documentary and medical evidence. The contention that she was below 18 years of age when she was allegedly abducted and sexually assaulted by the accused is thus devoid of merit and stands effectively rebutted; the documentary and medical evidence leads to the inescapable conclusion that the prosecutrix was approximately 19 years of age at the time she went missing on the night of 17th of January 2004.

18. We have also given our anxious consideration to the pivotal issue concerning the presence or absence of consent in the facts and circumstances of the present case. Upon careful evaluation of the entire evidence on record, and the conduct of the parties, it becomes evident that the version projected by the prosecution – of forcible abduction and rape – suffers from significant infirmities, which render it unworthy of credence.

19. The prosecutrix alleged that she was forcibly taken away by the accused during the night intervening 17th and 18th January, 2004. She claimed that she was abducted under threat, and thereafter, confined by the accused at a location in Ganaur for a period of approximately 14-15 days, during which she was repeatedly violated. However, the surrounding circumstances paint a picture that is inconsistent with the claim of coercion.



20. To begin with, the conduct of the family of the prosecutrix, particularly that of her father PW4-Bhagat Ram, raises serious doubts. Despite the alleged abduction of their young daughter in the dead of night, no missing person report or FIR was lodged for over a week. The family, according to PW4, merely conducted a private search. This omission assumes even greater significance when considered in light of the fact that the accused – a neighbour known to the family – was also found to be missing during the same period. Yet, despite this conspicuous absence, the family took no immediate steps to report the matter to the police. Such passivity on the part of the family, in the face of what is a serious and traumatic offence, is not consistent with natural human conduct and, thus, severely undermines the prosecution narrative.

21. Unexplained delay in lodging the FIR in cases of alleged rape, coupled with the absence of protest or any effort to escape by the prosecutrix, does cast serious doubt on the truthfulness of the version of the prosecution. Although delay *per se* may not be fatal in all the cases, however, where it is unexplained or appears unnatural, it becomes a relevant factor for assessing the credibility of the prosecution case.

22. Equally telling is the behaviour of the prosecutrix during the period of her alleged illegal detention. She stated in her deposition that the accused had kept her in a room located behind the bus stand at Ganaur – a publicly accessible area – for nearly two weeks. It was further her own admission that during the day, the accused would leave the premises



unattended to earn a livelihood as a daily wage labourer. Despite being left unguarded, and despite being in a location which would presumably witness public movement, the prosecutrix strangely neither attempted to flee nor raised any alarm. Her complete inaction in these circumstances – where multiple opportunities to seek help or escape presented themselves on a daily basis – defies logic and does not reconcile with the conduct expected of someone allegedly held against her will.

23. The conduct of the prosecutrix must be consistent with the allegations made, however, in the instant case despite there being repeated opportunities to flee or alert others, which she failed to avail, it clearly contradicted the allegation of rape and such conduct was indicative of consent.

24. Even more inexplicable is her behaviour at the time of the initial alleged abduction. The prosecutrix admitted during cross-examination that while the accused took her on a bicycle, she did not resist, attempt to flee, or raise any alarm - despite there being no suggestion of her being physically restrained. This passivity, from the very outset of the alleged incident, further weakens the version of forcible abduction and lack of consent.

25. It needs to be reiterated that the circumstances and conduct of the prosecutrix must be closely scrutinized to determine whether the act was truly non-consensual. The absence of any protest, lack of resistance, and delayed complaint are relevant considerations, which can support a finding



of consent, especially in cases where the prosecutrix is of mature age and capable of understanding the implications of her actions.

26. When the totality of these facts is analyzed holistically, the inference becomes compelling that the prosecutrix was not acting under force or compulsion but was, in fact, a consenting participant. Her prolonged silence, absence of any protest or resistance, failure to alert any passersby during her alleged confinement, and the opportunity-laden circumstances she found herself in, all militate against the prosecution's allegation of sexual assault committed without her consent.

27. In the light of these circumstances, this Court finds the testimony of the prosecutrix to be wholly unreliable and insufficient to base a conviction. Her narrative is not only incongruous with her own conduct but is also uncorroborated by any independent or medical evidence. The chain of events from the time of her disappearance to her eventual recovery in the company of the accused, nearly 17 days later, clearly suggests voluntary companionship rather than an episode of abduction and rape.

28. In view of the foregoing discussion, it is manifest that the prosecution has failed to discharge the burden of proving, beyond reasonable doubt, that the acts in question were committed without the free and voluntary consent of the prosecutrix. Her testimony, lacking in spontaneity and veracity, and inconsistent with the behaviour of a person subjected to



CRA-D-205-DBA-2005

-12-

involuntary sexual assault, does not inspire the degree of confidence required in a case of this nature.

29. Accordingly, we have no hesitation to hold that the prosecution case clearly fell short of the legal threshold necessary to sustain the conviction of the accused. The benefit of doubt was, therefore, rightly extended to the accused by the trial court.

30. Dismissed.

**(MANJARI NEHRU KAUL)
JUDGE**

July 29, 2025

Jaspreet Kaur

**(H.S. GREWAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*