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

CRA-D-396-DBA-2004 (O&M)

Date of decision : 01.08.2025

State of Punjab

... Appellant

Versus

Kharait

... Respondent

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

Present:- Mr. Ajitpal Singh Mander, Addl. A.G., Punjab and
Mr. H.S. Deol, Senior DAG, Punjab.

Mr. P.P.S. Duggal, Advocate for the respondent.

H.S. Grewal, J.

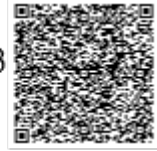
1. The present appeal has been preferred by the State against the judgment dated 30.10.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur in case F.I.R. No.92 dated 10.04.2003, under Section 376 IPC, registered at Police Station Sadar Ferozepur whereby the respondent had been acquitted of the charges by giving him the benefit of doubt.

2. The case of the prosecution is that on 10.04.2003, Inspector Sewa Singh along with police party were on patrol duty when the prosecutrix-Sxxxx (victim) met him alongwith her uncle Hadayat and brother Sukhdev (PW3) and got her statement recorded. She reported in her statement that she was a

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resident of village Palla Megha and was a household lady. On 09.04.2003, she was suffering from diarrhea. At about 07:00 PM, when all the family members of the prosecutrix were watching the Television, she suddenly felt a pain in the stomach and she had an urge for motion. She asked her Mausi (mother's sister)-Kanta to accompany her outside to answer the nature's call but she showed her inability to accompany her saying that she was to milk the cow. She further advised the prosecutrix to go alone without any fear. When she reached the fields of Ram Singh son of Hakam Singh and stood up after answering the nature's call, accused/respondent-Kharait s/o Kala was holding some article like article in his hand and one piece of cloth in his other hand. He threatened her and gagged her mouth with a piece of cloth and took her to the fields where wheat was grown, away from the motor and started committing rape on her forcibly untying the string of her Salwar. The accused/respondent had raped her twice despite her resistance. In the struggle to save herself, her bangles were broken and her shirt was torn from neck and both the sides. Accused continued to commit rape upon her for an hour. In the meantime, her uncle Hadayat and brother Sukhdev came to the Motor of Ram Singh in her search and on seeing them; the accused ran away from the spot. When her uncle and her brother rushed towards to catch him, he succeeded to run away taking the benefit of darkness. On their return to her, she narrated the occurrence to them and thereafter, all of them reached home. Thereafter, the family members consulted with each other and decided to lodge a complaint against the respondent to the police. After recording the statement of prosecutrix, Inspector Sewa Singh

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(PW4) made his own endorsement thereupon and sent the same to the police station through Constable Naresh Kumar for registration of case against the accused/respondent under Section 376 IPC. Thereafter, Inspector Sewa Singh visited the spot, recorded the statement of the witnesses. After completion of all the formalities of investigation, challan was presented before the Illaqa Magistrate under Section 376 of Indian Penal Code.

3. Learned State counsel submits that the trial court had erred in acquitting the respondent while there was sufficient material to prove his guilt. It was emphasized that the act of forcible rape was corroborated by the victim's consistent statement and the supporting testimony of PW3 (victim's brother), as well as physical exhibits like MO1 to MO3. Learned State Counsel urged that the judgment of acquittal be set aside and the respondent be convicted for the offence punishable under Section 376 IPC.

4. Learned counsel for the respondent, on the other hand, has vehemently argued that the trial Court has rightly appreciated the evidence while acquitting the respondent. He further submits that the age of the prosecutrix was not established though the doctor had advised an ossification test (X-ray of bones) to determine her age. PW4 Inspector Sewa Singh had admitted that he did not get it done, which meant important evidence was withheld by the prosecution. He also submits that the victim herself refused to undergo the X-ray and no other proof was submitted to confirm her age. There were several changes and inconsistencies in the testimony of PW3 Sukhdev, who is the brother of the victim. Moreover, the respondent and the village

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Sarpanch, Harbans Singh(Bansa Palla) had an ongoing civil dispute over land and the victim's family worked for Harbans Singh which raised suspicion of a false allegation being made due to personal enmity. As per the MLR, there were no external or internal injuries on the victim's body. The hymen tear was old, not fresh which suggested that no forceful sexual activity had taken place. Although the victim and her brother claimed that the respondent had a pistol or weapon but no such weapon was recovered by the police during investigation. He, therefore, submits that the appeal filed by the State is liable to be dismissed.

5. We have heard learned counsel for the parties and have carefully perused the material available on record.

6. In order to prove the allegations against the accused/respondent for which he had been charge-sheeted, the prosecution had examined PW1 Dr. Renu Singla, PW2 Seema, PW3 Sukhdev Singh, PW4 Inspector Sewa Singh, PW5 MHC Jai Pal Singh, PW6 ASI Rachhpal Singh.

7. PW1 Dr. Renu Singla, Medical officer, PP Unit, Civil Hospital, Ferozepur, who had conducted the medical examination of the victim, had deposed that she was fully conscious and secondary sex characters were fully developed. X-Ray of long bone was advised for confirmation of age. There was no external mark of injury on any part of the body. P/V examination shows hymen torn which was an old one. Vagina admitted two finger tightly. Uterus was of normal size. Two vaginal swabs were taken and sealed in a glass



bottle and were sent to chemical examiner, Patiala for confirmation of spermatozoa. She also deposed that as per the Chemical Examiner, semen was detected and sexual intercourse cannot be ruled out. In her cross-examination, she deposed that no ossification test was received and if the victim had been forcibly raped, then there should be injuries on her person. The victim was a fully developed woman and the ossification test is the only test for determination of the age of the prosecutrix.

8. PW2 Sxxxx (victim) had stepped into the witness box and reiterated the version as stipulated in the FIR. In her cross-examination, she had deposed that the fields where the occurrence took place fall towards East from her house which is 01 killa away from the phirni of the village. She stated that the respondent/accused had dragged her upto 2-3 feet, due to which her bangles were broken and she had sustained injuries on her wrist. While being dragged, her abdomen was towards the ground and she had also received scratches thereon. She further deposed that she had purchased medicine from Dr. Puran of her village and she had duly shown the prescription slip to PW1 Dr. Renu Singla. She also deposed that she was suffering from loose motion and she had gone for easing for many times on that day. She also deposed that the respondent had a land dispute with Harbans Singh known as Bansa Palla, who is the Sarpanch of the village and his father and uncle worked in the fields of Bansa Palla.

9. PW3 Sukhdev Singh, who is brother of the victim, had deposed the version as reiterated in the FIR. He deposed that the respondent had a pistol

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in his hand during the occurrence. His sister(victim), who was suffering from loose motion, had not taken any medicine from any Doctor. He stated that her sister was semi-conscious and the blood had fallen in the diameter of 4-5 inches on the ground and her clothes, which were lying at a distance of 1- 1½ feet away from his sister, were also blood stained. His sister had sustained scratches on her back, legs, chest.

10. PW4 Inspector Sewa Singh, who had conducted the investigation in this case, had deposed that the victim came to him with her uncle and brother and had given her statement (Ex.P5) with regard to the physical assault. He, thereafter, lodged the aforesaid FIR against the respondent. He inspected the spot and collected the pieces of bangles and took the same into possession vide memo Ex.P7 which was attested by ASI Rachhpal Singh and HC Gurmail Singh. Rough site plan Ex.P9 was prepared. He, thereafter, reached Civil Hospital, Ferozepur at about 02:00 PM for medical examination of the victim and PW-1 Dr. Renu Singla had conducted medico-legal examination of the victim. One aunt of the victim, namely, Kanta, had produced before him the clothes of the prosecutrix which were taken into possession vide impression 'SS'. He also deposed that the case property was not tampered with.

11. PW5 MHC Jai Pal Singh and PW6 ASI Rachhpal Singh are the formal witnesses and had only apprised the link evidence.

12. After closing the prosecution evidence, the statement of the accused/respondent under Section 313 Cr.P.C. was recorded wherein he had

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denied all the allegations and also pleaded innocence. He deposed that he had been falsely implicated in this case but he did not lead any defence evidence.

14. After considering the statements of all the witnesses and taking into account the evidence led by both the sides, the trial Court had observed that the prosecution had failed to prove its case and the respondent was acquitted of the charges under Section 376 IPC by giving him the benefit of doubt.

15. PW1 Dr. Renu Singla, Medical Officer had deposed that the prosecutrix had no external injuries, the hymen tear was old and the vagina admitted two fingers tightly, indicating no fresh signs of forceful sexual assault. Although X-ray of long bones was advised to determine the age of the prosecutrix, no such ossification test was conducted or its report produced, which casts doubt on her claimed age (15–16 years). The absence of injuries contradicted the prosecutrix statement about being dragged and sustaining scratches.

16. The prosecutrix (PW2) reiterated her FIR version, alleging rape however, her testimony was not fully supported by medical or physical evidence including blood-stained clothes or visible injuries. Her consistent claim of being 15–16 years old was considered likely to be a tutored version, given the same wording being used in statements months apart.

17. The prosecution failed to produce the ossification test report despite medical advice, leading the court to draw an adverse inference. The

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prescription slip allegedly given to police regarding her illness (diarrhea) was never brought on record.

18. PW3 Sukhdev Singh, brother of the prosecutrix, claimed that the accused/respondent had a pistol, which was not mentioned in his earlier police statement (Ex.D1). No weapon was recovered from the respondent. There were certain contradictions between the positions of clothes, injury claims and medical observations.

19. There was a known land dispute between the respondent and Harbans Singh (Bansa Palla), the village Sarpanch and the family of the victim worked for Bansa Palla, suggesting a possible motive for false implication.

20. There was no independent witness to support the prosecutrix version. No blood was lifted from the scene despite the prosecutrix claiming bleeding. The prosecution relied primarily on interested witnesses victim and her relatives, which is not reliable.

21. While sexual intercourse was established through the presence of semen, the prosecution failed to prove that it was non-consensual. The court emphasized that mere production of broken bangles and torn clothes is insufficient to prove forcible rape.

22. Keeping in view the above inconsistencies and the absence of reliable corroborative evidence, we find that the trial court was justified in granting the benefit of doubt to the accused.



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23. In view of the above, we do not find any infirmity or illegality in the judgment of the trial Court acquitting the respondent by giving him the benefit of doubt and the appeal is, hereby, dismissed.

24. Pending application, if any, shall stand disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

01.08.2025
A.Kaundal

(H.S.GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No