



CRA-AD-101-2023 (O&M)

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

(212)

CRA-AD-101-2023 (O&M)

Date of decision : 08.09.2025

S.

... Appellant

Versus

State of UT Chandigarh and others

... Respondents

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

Present:- Mr. Sapan Dhir, Advocate for the appellant.

Mr. Rajiv Vij, Addl.P.P., UT, Chandigarh.

H.S. Grewal, J.**CRM-13193-2023**

1. This application has been filed seeking condonation of delay of 62 days in re-filing the appeal.
2. Heard.
3. For the reasons stated in the application, the same is allowed and delay of 62 days in re-filing the appeal is hereby condoned.

Main appeal

1. The present appeal has been preferred by the appellant/complainant against the judgment dated 10.12.2021 passed by the learned Judge, Fast Track Special Court, Chandigarh in case FIR No. 428 dated 09.10.2017, under Sections 363, 376, 506, 120-B IPC & Section 4 of POCSO Act, registered at Police Station Sector 39, Chandigarh whereby respondents



No.2 & 3 had been acquitted of the charges by giving them the benefit of doubt.

2. The case of the prosecution is based upon the statement of father of the prosecutrix, who alleged that on 09.10.2017 at about 12:45 A.M., his daughter had left the house without informing anyone. She was aged about 17 years as her date of birth was 01.12.2000. She was a student of Sharda Sarvhitkari Model Senior Secondary School in Class 10+1. Her father lodged a complaint suspecting abduction and the present FIR under Section 363 IPC was registered. On 13.10.2017, she was recovered from Hoshiarpur. She alleged that on the intervening night of 08.10.2017/09.10.2017 at about 12 midnight, Irfan Akhtar(respondent No.3) had made a telephonic call asking her to come out of the house to give money. On her refusal, he had threatened her by saying that in case, she does not come out, he will raise alarm by ringing the doorbell of her house and will defame her in the entire neighbourhood. She, thereafter, came out of her house, at that time, respondent No.3 had kidnapped her in a car and took her to Gurugram where he repeatedly committed rape upon her against her wishes. Rashid(respondent No.2), cousin of Irfan, was alleged to have provided shelter and supported Irfan in this act. She was also threatened that if she disclosed the matter, her family would be eliminated. The police had recorded her statement under Section 164 Cr.P.C. and the aforesaid FIR had been registered against respondents No.2 & 3. The prosecutrix was also medico-legally examined at GMSH, Sector 16, Chandigarh. On 02.06.2018, during investigation, an application under Section 319 Cr.P.C. for summoning of Sadiq as co-accused was moved by the prosecution which was allowed. Respondents No.2 & 3 were apprehended on



01.01.2018 & 08.01.2018 respectively. Co-accused Sadiq had preferred CRR No.2846 of 2018 before this Court challenging the summoning order and proceedings were stayed against him. Thereafter, trial against respondents No.2 & 3 was separated.

3. Upon completion of investigation, challan against all the accused was presented for the offence under Sections 363, 366, 376(2)(n), 506 & 120-B IPC and Section 6 POCSO Act and charges were framed them to which they pleaded not guilty and claimed trial.

4. In order to substantiate the charge against the accused/respondents, the prosecution had examined total 14 witnesses i.e. PW1 father of the prosecutrix (complainant), PW2 Prosecutrix, PW2 (wrongly numbered) Ashok Kumar Tripathi, Math Teacher, PW3 Archana, Principal, PW4 Head Constable Yash Pal, Draftsman, PW5 Phulu Ram, PW6 SI Ranjit Singh, PW7 MMHC Harbans Singh, PW8 SI Krishan Kumar (Investigating Officer), PW9 SI Chandermukhi, PW10 Dr. Jyotsana, PW11 Dr. Parijat, PW12 Constable Rakesh and PW13 SI Sarabjeet.

5. PW1 (father of the prosecutrix) had deposed that his daughter (prosecutrix) was 17 years of age. On intervening night of 08.10.2017/09.10.2017, she had left the house without informing anyone. At that time she was studying in 10+1 in Sharda Sarvhitkari Model Senior Secondary School, Sector 40-C, Chandigarh. He had moved a complaint (Ex.P1) to the police alleging that her daughter had been enticed away. On 13.10.2017, his daughter was recovered from Hoshiarpur. Accused Irfan had sent his daughter to Hoshiarpur by bus from Ludhiana. The aforesaid fact was disclosed to him by his daughter. His brother brought his daughter from



Hoshiarpur to Chandigarh. Police got conducted medical examination of his daughter at GMSH, Sector 16, Chandigarh. Her statement u/s 164 Cr.P.C. was recorded by the police and after recording thereof, she was handed over to him vide memo Ex.P3. He further deposed that his daughter had disclosed that on 08.10.2017, while she was sleeping, accused Irfan called her to come downstairs for giving some money otherwise he will come upstairs and will raise alarm. His daughter came down and accused Irfan along with his friend Sadiq Mohd. had forcibly taken her in a car towards the Lake, Sector 42, Chandigarh. Thereafter, they took her to Hoshiarpur. On 09.10.2017, Irfan took away his daughter to Gurugram to the house of accused-Rashid. His daughter had further disclosed that accused Irfan had repeatedly committed rape upon her against her wishes in the house of Rashid. The accused/respondents had also threatened her that the complaint against Irfan, be withdrawn otherwise he will eliminate her family members. During cross-examination, he (PW1) had deposed that Irfan had repeatedly committed rape upon her daughter. His daughter never told that accused Rashid had kidnapped her on intervening night of 08/09.10.2017. He had not witnessed his daughter leaving his house on that night. He had also deposed that he had seen his daughter sleeping wearing black top, jean and sandals on intervening night of 08/09.10.2017.

6. PW2 Prosecutrix had deposed that on 08.10.2017, she had went to her sister's house to apply Heena/mahendi on her hands and she along with her brother had returned home at 10:30 P.M. At about 12 midnight, she received a call from Irfan(respondent No.3), who stated that she should come downstairs and give him money. On her refusal to do so, he threatened her that in case, she did not climb downstairs, he will defame her in the entire neighbourhood by



telling everyone that she talks to him on phone. Irfan further told that he had taken her pictures from the facebook and in case she did not come, he will upload the pictures on the Social Media and defame her in the society. Then she went downstairs along with money. Irfan pulled her forcibly in a car which was parked nearby. She raised an alarm for help but he locked the car from inside and threatened her that in case she will raise alarm for help, he will kill her. The car was being driven by his friend Sadiq, who dropped them at the lake in Sector 42 and went away with the car. Thereafter, accused Irfan told her that he will soon drop her back home. In the meanwhile, she received a call from her home but Irfan did not allow her to take the call. Accused/respondent Irfan snatched the phone from her and broke the phone and also destroyed the SIM. She requested him time and again to drop her home but he stated that he will not drop her and in case he goes to drop her, he will be implicated. Thereafter, Irfan called up his friend Sadiq who asked Irfan that he should take the girl to Hoshiarpur. Irfan had taken her to Phase VI, Mohali in an auto and threatened her that in case she tried to raise noise, he will kill her. Thereafter, Irfan had taken her to Hoshiarpur in a bus where she was taken to his friend's house who had refused to keep him. Then Irfan had taken her to Railway Station Hoshiarpur. He did not allow her to raise noise as he threatened her that in case she raised noise, he will upload her photographs on the social media. His Cousin brother-Rashid (respondent No.2) told him to come to Gurugram along with her. Then they went to Delhi by train and from Delhi to Gurugram by bus. When they reached the house of Rashid, he was not present there. But one aunty whose name she did not know was present. Both Irfan and aunty had some talk whereby she handed over the key of house of Rashid to Irfan. She



had taken some food and became semi-conscious as something was mixed in the food. She did not know that what had happened to her during the night, when she woke up the next morning, she noticed that her clothes were torn, stomach was aching and she also felt dizzy. Irfan told her that he had raped her during the night. When Rashid returned from duty, he scolded Irfan for his misconduct. Rashid then asked Irfan to drop her back to her home. Irfan felt sorry before Rashid that he had committed a bad act with her. Irfan further stated that even if he goes to jail even then he will not spare her. The mother and sister of Irfan conveyed through whatsapp text in the phone of Irfan that in case she stated anything against Irfan, they will sell her in Meerut. Rashid told Irfan that he should call her parents and had informed them that she is returning back. Then Irfan brought her to Ludhiana and there he purchased two tickets for Hoshiarpur. However, he did not accompany with her and sent her alone to Hoshiarpur. He threatened her that in case she disclosed the incident to anybody, he will get her family members killed. At Hoshiarpur, her paternal uncle brought her to Chandigarh. She further deposed that during the period, she remained with Irfan, he had recorded her voice by threatening to kill her and to upload her pictures. In the voice recording, she was forced to say that she had gone with Irfan with her free consent. The police got conducted her medical examination from GMSH-16. She suffered her statement Ex.P1 before the Magistrate. She had stated her date of birth as 01.12.2000. During cross-examination, she had deposed that she is Muslim by religion. She is also known by name of Aayat. She did not know about the place where Irfan was residing. There is no distant relationship with Irfan. She neither knew Irfan nor had she seen Irfan prior thereto. She identified herself with Irfan in photo



Ex.PW2/D2 to Ex.PW2/D8. She had admitted her facebook profile on name of Aayat Khari and Aayat Sood. She admitted her facebook profile Ex.PW2/D9 and she used to chat with Irfan on facebook site from profile Aayat Khari. Irfan was just her friend. She admitted that on 08.10.2017, it was the day of Karvachauth but she had not kept Karva Chauth fast. She admitted in her statements u/s 161 Cr.P.C., 164 Cr.P.C. and before doctor that she had never stated that she was raped or any sexual assault was committed upon her by Irfan. "Galat Kam" mentioned in statement u/s 161 Cr.P.C., 164 Cr.P.C. means, she had spicy food and her stomach got upset. She admitted in her statement u/s 161 Cr.P.C. (Ex.P2), Ex.PW2/D14 that she had never stated that Irfan told her that he had raped her. She had admitted that she had not given description of car in which she was allegedly kidnapped in her statement to police or before the Court. She admitted that she never received any message from Rashid to come to Gurugram. Rashid never sexually assaulted her. Moreover, she did not know Rashid.

7. PW2 Ashok Kumar Tripathi, Maths Teacher Sharda Sarvhitkari Model Senior Secondary School, Sector 40-D, Chandigarh (wrongly numbered) and PW3 Archana, Principal of the School had deposed that prosecutrix was admitted in 11th Class in their School on 17.5.2017, vide admission No. 8637. On police request Ex.P4, the date of birth of prosecutrix was verified vide report Ex. P4/A. As per School record, the date of birth of prosecutrix was 01.12.2000, which was recorded in School record on the basis of birth certificate issued by Govt. of Himachal Pradesh.

8. PW5 Phulu Ram, deposed that accused/respondent-Rashid was residing as a tenant on second floor in the year 2016 and he vacated the house



in October, 2017. No girl used to come to meet Rashid in the said house. He was residing with a male partner, who works with him in the same company. He came to know from his wife that cousin brother and sister of Rashid had come to stay with him for a day/night and left the house on the next day. After that within 5-6 days, Rashid vacated the said house.

9. PW6 SI Ranjit Singh had deposed that on 09.10.2017, on complaint Ex.P18, he had made endorsement Ex.P19 and recorded FIR Ex.P20. He inspected the spot at the instance of complainant and prepared rough site plan Ex.P21. On 16.10.2017, he joined the prosecutrix and her father in investigation. He moved an application Ex. P22 before the then Magistrate for recording the statement of prosecution (Ex.P1) under Section 164 Cr.P.C.

10. PW8 SI Krishan Kumar, had deposed that on 23.10.2017, he was handed over the investigation of present case. On 01.01.2018, he arrested and personally searched, accused Rashid from IFFCO Chowk, Gurugram on the identification of prosecutrix and her father vide memos Ex.PW8/1 and Ex.P3. He also prepared the rough site plan Ex.PW8/2 at the instance of prosecutrix and searched for accused Irfan, who surrendered before the court on 08.01.2018. He had moved an application Ex.PW8/4 for medical examination of accused/respondent Irfan and his MLR Ex.PW8/5 was issued by Dr. Parijat and filled the blood authentication form Ex.PW8/6. The doctor handed over documents to him vide report Ex.PW8/7 made by the Doctor. He also got the spot inspected from HC Yash Pal who prepared scaled site plan Ex.P17. Thereafter, he sent the sealed parcels along with sample seals on 15.05.2018 through Constable Rakesh for depositing the same with FSL, Shimla Hills and after deposit of parcels, Constable Rakesh had handed over the receipt and RC



to Malkhana Munshi. During the course of investigation, he had recorded the supplementary statement of complainant as well as of prosecutrix, Constable Rakesh and other witnesses took into possession the medical record of prosecutrix. During cross-examination, he had deposed that he was not aware about the love affair of Irfan and prosecutrix. He recorded statement of victim u/s 161 Cr.P.C. at time of arrest of Irfan and Rashid. He had not taken into possession the clothes of victim. He had not checked Facebook, social media accounts of Prosecutrix and accused Irfan. In entire investigation, there is no mention as to description of car used for kidnapping of victim. He never visited Hoshiarpur for investigation. The victim returned to her home on her own.

11. PW10 Dr. Jyotsana, Consultant Obstetrics and Gynecology, Birla Institute of Medical Research and Science, Gwalior had deposed that on 13.10.2017, the prosecutrix was brought for medical examination by the police. On an application Ex.PW10/1 moved by police, she medically examined prosecutrix and recorded the description of history as disclosed by prosecutrix on OPD card Ex.PW10/2. After conducting medical examination, she prepared MLR Ex.PW10/3. She further deposed that as per history and examination done, possibility of sexual assault cannot be ruled out. She also handed over the vaginal swabs, blood samples, urine samples of prosecutrix for her DNA examination. During cross-examination, she deposed that the victim did not recall of any sexual assault incident and there was no mark of injury on body.

12. PW11 Dr. Parijat, AMO, GMSH, Sector 16, Chandigarh, had deposed that on 09.01.2018, on police request, she had medically examined Irfan Akhtar (respondent No.3) and issued MLR Ex.PW8/5 and blood



authentication form Ex.PW8/6. On examination, she opined that there was nothing to suggest that accused was unable to perform sexual intercourse.

13. Other prosecution witnesses are formal in nature and had apprised about the link evidence.

14. After closing the prosecution evidence, the statements of respondents No.2 & 3 were recorded under Section 313 Cr.P.C. wherein they had stated that they had been falsely implicated in this case. Irfan Akhtar (respondent No.3) had pleaded that he and the prosecutrix liked each other. On the occasion of Karva Chauth, she insisted and pressured him to come to Chandigarh from Una because she wanted to see his face. Due to her repeated requests, he travelled by bus to Chandigarh and went to Sector 42 Lake as she had told him. She was already waiting there. After they met, she started receiving phone calls from her parents, but she did not answer. Rather, she had said that she would not go back home because she was afraid of her parents. He had tried to counsel her and advised her to return home. After much persuasion, she finally promised him that she would go back. After that, he left for his home in Una. Later on, he came to know that an FIR had been lodged against him for committing kidnapping, rape and threatening the prosecutrix, whereas he had never kidnapped, raped or threatened the prosecutrix as alleged by her and the complainant. Moreover, from the video which was made viral by the prosecutrix on social media, it is quite evident that the prosecutrix was never kidnapped by him or anyone. Neither he kidnapped the prosecutrix nor he took her to Mohali on an auto rickshaw. He also pleaded that he had neither taken her to Hoshiarpur on bus nor to Delhi or Gurgaon on train. He had also refused that he had done sexual intercourse with her.



15. Similarly, Rashid Mohd. (respondent No.2) had pleaded that he was falsely implicated in the present case and had no role in the alleged kidnapping and rape of victim. The victim was never threatened by him or by his family members at any point of time. Moreover, the victim or Irfan had not visited him at Gurugram as alleged in the case.

16. In their defence, they had examined various documents including supplementary statement of Liyakat Ali as Ex.D1, Photographs (Ex.PW2/D1 to Ex.PW2/D8), Chat History and photograph as Ex.PW2/D9 to Ex.PW2/D13, Copy of Chat (Mark A1 to A22), Pen Drive as Ex.DW1/1, Certificate u/s 65 of Indian Evidence Act as Ex.DW1/2 and Translation and Transcription of Video as Ex.DW1/3 and Ex.DW1/4.

17. The defence had examined DW1 Rafi Hussain, who had deposed that he is elder brother of Irfan Akhtar. On 13.10.2017, he received a video of prosecutrix on whatsapp, which was viral on social media. He had downloaded the said video on his mobile and transferred the same on his Pen Drive and kept it safe with him. The said pendrive is Ex.DW1/1. In the said video, she had stated that she was not kidnapped by anyone and she had further stated that her parents had falsely implicated Irfan, Sadik etc. and she did not want to return back to her home willfully. The certificate u/s 65-B of Indian Evidence Act, duly signed by him is Ex.DW1/2. He got done the true transcription and translation of the said video from Mr. Sumesh Mahajan, Advocate and the original transcription and translation are Ex.DW1/3 and Ex.DW1/4 and identified the signatures of Sh. Sumesh Mahajan.



18. The trial Court, after examining the evidence led by the prosecution, had acquitted respondents No.2 & 3 by giving them the benefit of doubt.

19. Learned counsel for the appellant/complainant submits that the learned trial Court has erred in acquitting respondents No.2 & 3 by ignoring the clear, consistent and specific allegations made by the prosecutrix against respondent No.3 (Irfan Akhtar) for kidnapping, rape/penetrative sexual assault, and criminal intimidation, as well as against respondent No.2 (Rashid) for conspiracy and abetment. He further submits that it is well settled in law that the testimony of the prosecutrix, if found trustworthy, requires no corroboration. In the present case, the prosecutrix categorically deposed that she was forcibly taken away by Irfan at midnight on 09.10.2017 under threats of defamation and harm. She was continuously threatened, her phone was snatched and destroyed and she was subjected to rape at Gurugram. Her version has remained substantially consistent in her statement under Section 164 Cr.P.C. and before the Court. The prosecutrix's age was duly proved through school records (Ex.P9–P12) and birth certificate, establishing that she was a minor (17 years) at the time of the incident. The medical evidence (MLR Ex.PW10/3) does not rule out sexual assault. The settled law is that absence of injuries is not fatal to the prosecution in rape cases, especially when threats and intimidation are involved. He also deposed that the prosecutrix specifically deposed that Irfan took her to the house of Rashid, who facilitated the shelter. Even if Rashid was not a direct participant in the sexual assault, his act of allowing his premises to be used, his scolding of Irfan only after the fact, and his initial silence, clearly points towards abetment and conspiracy. The alleged



“video” produced by DW1 (brother of accused) is a concoction and not proved in accordance with law. The prosecutrix was admittedly threatened to record such a statement. He, therefore, prays for setting aside the judgment of the trial Court and allowing the appeal.

20. Having heard the rival submissions of learned counsel(s), reappraising the ocular as well as documentary evidence on record and evaluating the overall circumstances of the case in their entirety, this Court finds no merit in the present application filed by the State.

21. The case of the prosecution is primarily based upon the statements of the prosecutrix (PW2) and her father (PW1). It is well settled law that if the prosecutrix statement is reliable, it can be enough to convict the accused. However, where her statement has major changes, contradictions, or seems unlikely, the Court must look for supporting evidence. If no such evidence is found, the accused must be given the benefit of doubt.

22. The prosecution had proved the date of birth of the prosecutrix as 01.12.2000, on the basis of school record and birth certificate (Ex.P9 to Ex.P12), which shows that she was below 18 years at the time of alleged occurrence. However, the sequence of events reiterated by the prosecutrix was not consistent for the reason that on 13.10.2017, before the Doctor (Ex.PW2/D14 & Ex.PW10/2), she had stated that she was not sexually assaulted. Later, in her statement under Section 164 Cr.P.C. (Ex.P2), she changed her version and alleged dizziness and suspicion of “something wrong” during the night. She, while appearing before the Court, had improved her version by stating that her clothes were torn, her stomach ached, and Irfan had

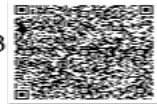


confessed to raping her. These repeated changes in her story seriously affect her reliability.

23. Moreover, in her cross-examination, the prosecutrix had admitted that Irfan (respondent No.3) was her Facebook friend and she used to chat with him which goes against her earlier claim that she did not know him. The photographs (Ex.PW2/D2–D5) also show the prosecutrix with Irfan in her own house. She never described the car allegedly used for kidnapping. She further admitted that Rashid had never sent her messages, never assaulted her, and was not known to her. In her earlier statement, when she used the words “galat kaam,” she later clarified that she meant “galat khana” (spicy food that upset her stomach). These admissions weaken the credibility of her version.

24. The conduct of the prosecutrix is also improbable. She claimed that she was forcibly taken through a car, auto, bus, and train over several days (09.10.2017 to 13.10.2017), but she never raised an alarm or asked for help, even when she had many chances to do so. Her explanation that she remained silent due to threats is not convincing, especially because the alleged blackmail was only about Facebook photos that were already public.

25. The medical evidence (PW10 Dr. Jyotsana, Ex.PW10/3) is also a weak piece of evidence. Dr. Jyotsana (PW10, Ex.PW10/3) stated that while the possibility of sexual assault cannot be ruled out, the prosecutrix herself said she did not remember any such assault, and no external injuries were found. Moreover, no conclusive forensic evidence was produced to connect the accused with the prosecutrix.



26. As regards Rashid (respondent No.2), there is no credible material showing that he conspired with or helped Irfan. The prosecutrix herself admitted that he never assaulted her and she did not know him earlier. PW5 (landlord) also did not support the claim that Rashid provided shelter for the crime. Thus, the charge against Rashid remains unproved.

27. The defence produced DW1 Rafi Hussain with a video (Ex.DW1/1) wherein the prosecutrix herself stated that she had not been kidnapped and her parents had falsely implicated the respondents. This video, in terms of Section 65B certificate (Ex.DW1/2), supports the defence case.

28. In view of the above, we do not find any infirmity or illegality in the well reasoned judgment of the trial Court acquitting respondents No.2 & 3 and the appeal is, hereby, dismissed.

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

(MANJARI NEHRU KAUL)
JUDGE

08.09.2025
A.Kaundal

(H.S.GREWAL)
JUDGE

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