

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:021591-DB



206

CRA-AD-64-2024 (O&M)
Date of decision: 13.02.2025.

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...Appellant.

Versus

State of Haryana and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Kapil Aggarwal, Advocate
for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 12.01.2024, passed by learned Additional Sessions Judge-cum-Special Court, Rohtak, vide which respondent No.2-accused Ram Narayan @ Raj Narayan @ Kalu has been acquitted of the offences punishable under Sections 376, 452 and 506 IPC.

2. The factual scenario, as per prosecution version is that on 10.01.2018, the complainant (particulars of prosecutrix are not disclosed to conceal her identity) came to police station and presented an application/complaint alleging therein that on the night of 9/ 10.01.2018, she was sleeping in a room of her house and her husband was sleeping in the

adjoining room. At about, 9:30 P.M., Raj Narayan @ Kalu son of Ram Chander entered into her house and forcibly committed rape upon her. On hearing her hue and cry, her husband woke up and called his brothers namely 'Ba' and 'Di' and nephew 'A'. Accused also threatened to kill her. It was prayed that legal action be taken against the accused.

3. On the basis of aforesaid complaint, case FIR No.17 dated 10.01.2018, under Sections 376, 452 and 506 IPC was registered at Police Station Kalanaur, District Rohtak. Investigation was carried out by L/ SI Sudesh. Site plan was prepared after visiting the spot. Statement of witnesses were recorded. Prosecutrix was got medico legally examined on 10.01.2018. Her statement under Section 164 Cr.P.C. was got recorded from learned Judicial Magistrate Ist Class, Rohtak. Counselling of prosecutrix was conducted on 12.1.2018 by Ms. Jyoti Solanli, Advocate, Legal Adviser. On 28.01.2018, scaled site plan was got prepared from draftsman. Accused was arrested on 20.02.2018 and was got medically examined. He got demarcated the place of occurrence where he had committed rape upon the prosecutrix. After completion of investigation, final report under Section 173 Cr.P.C. was submitted in the Court.

4. After having found a prima facie case, charge for offences punishable under Sections 452, 376 and 506 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

5. In order to prove its case against the accused prosecution examined as many as 12 witnesses.

6. A glance at the prosecution evidence reveals that in order to prove its case, prosecution examined PW1 Head Constable-Sanjay Kumar who deposed about arrest of accused, his disclosure statement Ex.PW1/1

and regarding getting demarcated the place of occurrence at instance of accused vide demarcation memo Ex.PW1/2. He also deposed regarding getting accused medically examined at General Hospital, Kalanaur.

PW2-ASI Samit Kumar, Draftsman prepared scaled site plan Ex.PW2/1 and proved the same on record.

PW3-prosecutrix deposed that on the night of 09.01.2018, she was sleeping in her house. At about 9:30 P.M. Raj Narayan son of Ram Chander entered into her house and he gagged her mouth and threatened to kill her and committed rape upon her. Her children were sleeping in the same room and her husband was sleeping in the front room. Her children woke up and raised hue and cry which attracted her husband. In the meantime brothers of her husband and neighbours also reached, on hearing the noise. Accused tried to run away but he was caught by her husband and his brothers and son of her brother-in-law (Jeth). The scuffle took place between accused and her husband and brothers of her husband. Police was called at the spot and Sarpanch was also called there. Accused was apprehended by police. Police asked them to come to police station on the next morning as lady police was not available at that time. Then on the next day, she filed a complaint by visiting the police station. She identified her signatures on complaint Ex.PW3/1. She further deposed that police brought her at Rohtak to Government Pleader, where she got recorded her statement Ex.PW3/2 and thereafter, police did not take her anywhere. She was declared hostile on some material points and was cross-examined by the prosecution.

PW4-Dr. Anil Kumar, Medical Officer, Civil Hospital, Ambala Cantt. proved on record his MLR Ex.PW4/1 pertaining to accused and

opined that nothing was suggestive that person was not able to perform sexual intercourse.

He also deposed that he had seen RFSL report Ex.PW4/3 and Ex.PW4/4. As per Ex.PW4/3, no semen was detected on the Exhibits and as per FSL report Ex.PW4/4, no ethyl alcohol was detected.

PW5-Mr. Vikash, Criminal Ahlman to the Court of learned Judicial Magistrate Ist Class, Rohtak identified the signature and handwriting of Sh. Sanjeev Kajla, the then Judicial Magistrate Ist Class, Rohtak on the statement under Section 164 Cr.P.C. Ex.PW3/3, on certificate Ex.PW5/1, on zimini order dated 10.01.2018 Ex.PW5/2 and his initials on envelope Ex.PW5/3 as he had worked with him for the said period and had seen him while signing and writing.

PW6-C. Manoj who was accompanying the Investigating Officer on 20.02.2018 deposed about the investigation proceedings conducted by Investigating Officer.

PW7-Dr. Natasha Attri, Medical Officer, Civil Hospital, Rohtak, who had medico legally examined the prosecutrix on 10.01.2018, proved on record her MLR Ex.PW7/1 and opined that possibility of sexual intercourse cannot be ruled out. After seeing the RFSL report Ex.PW4/3 she stated that semen could not be detected on any of the exhibits.

PW8 'G' sister-in-law (jethani) of the prosecutrix deposed that on 09.01.208 at about 9:30 P.M. accused Ram Narayan @ Raj Narayan @ Kalu son of Ram Chander entered into the house of her brother-in-law (devar) namely 'Bi' and committed wrong act with his wife i.e. prosecutrix and threatened to kill her. On hearing the noise they went there and then the prosecutrix disclosed the entire matter to them. They called Sarpanch and

Members Panchayat namely Ballu and Rubi and twice informed the family members of the accused regarding the incident but no one came there. Then they called the police. Police took the accused with him and instructed them to come to the police station on the next morning. On the next day i.e. 10.01.2018 they went to the police station but no action was taken by the police. They also called on women help line. Thereafter, FIR was registered on the application/ complaint Ex.PW3/1 of prosecutrix. She also put her signatures at point B and made her statement A to A1 on the application Ex.PW3/1 moved by prosecutrix. On 12.01.2018, the prosecutrix was called at police station and she suffered statement before one Advocate. She also put her signatures at point A on the statement Ex.PW3/2 of the prosecutrix.

PW9-ESI Jai Parkash is a formal witness, who tendered his duly sworn affidavit Ex.PW9/1 regarding handling/ depositing of the case property being Malkhana Mohrir.

PW10-Retired EHC Suresh Kumar, also tendered his duly sworn affidavit Ex.PW10/1 regarding handling/ depositing of the case property being Malkhana Mohrir.

PW11-Constable Virender Singh was accompanying the Investigating Officer on 10.01.2010 and deposed about the various investigating proceedings conducted by the Investigating Officer on the said date.

PW12-L/SI Sudesh, the Investigating Officer of this case carried out entire investigating proceedings since the registration of the FIR. She deposed about investigating proceedings conducted by her during the course of the investigation.

7. After closing of the prosecution evidence, statement of accused

under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication. He further stated that in fact in the year 2017 witnesses of this case namely 'Ba' 'Y' and 'Bi' destroyed crop of his fields and a Panchayat was convened in this regard. They apologized in the Panchayat and due to his reason they hold grudge against him and his family. On 09.01.2018, when he along with Basant was going to their fields, 'Ba', 'Y' and 'D' kidnapped him near plot of Pandit Madan with intention to kill him and they inflicted injuries upon his person and beat him brutally. He became unconscious. Later on, he came to know that police had come at that place and lifted him from the house of 'Bi'. After that with the help of police they concocted false story of committing of rape by him upon the prosecutrix. His wife and brother approached senior officers to re-investigate the case registered against him, but police did not investigate the case properly. He got registered FIR No.23 dated 11.01.2018, under Sections 323, 342, 363, 34 IPC at Police Station Kalanaur regarding his kidnapping and inflicting of injuries upon his person to kill him. He stated that both these cases are connected and SI/ SHO Rajinder Singh forwarded the challan in both cases i.e. in the present FIR and the aforesaid FIR No.23 dated 11.01.2018. Police also deleted Section 364 IPC and aggrieved of the same he approached this Court in CRR-3203-2019, which was decided on 30.01.2020 by this Court in his favour. He approached Hon'ble Supreme Court against rejection of his bail application by this Court and that order was set aside by Hon'ble Supreme Court vide order dated 28.11.2018. He further stated that witnesses cited in present case namely 'Ba', 'Y' and 'Bi' are habitual offenders and many cases were registered against them at Police Station Kalanaur, but they were

intentionally given up by the prosecution in this case as they had admitted that they had kidnapped him to kill him and had given beatings to him in the house of 'Bi'.

8. In the defence evidence accused examined DW1-Head Constable Kuljeet Singh, who brought Rapat Rojnamcha, Register No.2 and stated that as per record, an information was received in the police station to the effect that a quarrel had taken place at village Gudhan at the house of 'Bi' brother of 'Ba' DDR No.3 dated 10.01.2018 Ex.DW1/1 was entered regarding visit of the police party at village Gudhan. He also produced on record copies of FIR No.376 dated 06.10.2017 and FIR No.219 dated 18.05.2018 Ex.DW1/2 and Ex.DW1/3 respectively.

9. Besides that accused also tendered in defence evidence copy of order dated 30.1.2020 passed in CRR-3203-2019 as Ex.DA, copy of order dated 28.11.2018 passed in Criminal Appeal No.1480 of 208 titled as 'Raj Narayan Vs. State of Haryana' passed by Hon'ble Supreme Court as Ex.DB and uncertified copies of statement of Raj Narayan @ Kalu, statement of Basant and statement of Dr. Anil Kumar and MLR of Raj Narayan in case titled as State Vs. Baljeet and others (FIR No.23 of 2018, under Section 364, 325, 34 of IPC, P.S. Kalanaur).

10. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 12.01.2024.

11. Aggrieved of the said decision, present appeal has been filed by the appellant challenging acquittal of the accused/ respondent No.2.

12. Learned counsel for the appellant vehemently contended that

there is sufficient, cogent and convincing evidence on record against the accused to convict him for the alleged offences. He further contended that throughout there is consistency in every statement of prosecutrix that accused had committed rape upon her. He has submitted that minor contradictions are bound to occur with passage of time and these minor contradictions in the statements of the prosecutrix and PW8 'G' cannot be taken to be a ground for acquittal. He has argued that the delay in lodging of the FIR has been explained as family of the appellant took time to go to the police station for the first time as the honour of their family was at stake. He has urged that the minor children of prosecutrix were not cited as witnesses as the family did not deem it proper to involve them in this matter. No semen could be detected as per the FSL report as the prosecutrix was medico legally examined on 10.1.2018 and by that time she had changed her clothes. He has contended that judgment of acquittal has resulted into misconception of material law and is liable to be set aside being inconsistent and against the facts and evidence on record and has prayed that this appeal be accepted and judgment dated 12.01.2024 be set aside and accused be convicted for the offences as charged and be punished accordingly.

13. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond the reasonable doubt.

14. Admittedly, in the present case, prosecutrix is a major married lady aged above 33 years, having two children. Case of the prosecution hinges on the sole testimony of the prosecutrix. It is well settled that in rape cases conviction can be based on the sole testimony of the prosecutrix

without any corroboration, if it is found to be reliable, trustworthy, and of sterling quality.

15. Reference in this regard can be made to decision of Hon'ble Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi (2012) 8 SCC 21** wherein it has been held as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such

tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

16. Gainful reference can also be made to the decision in **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon'ble the Supreme Court observed that testimony of a victim of rape has to be treated as if she is an injured witness but same cannot be presumed to be a gospel truth in all circumstances. It was observed as under:

"9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time

when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

17. In the present case after appreciating the deposition of prosecutrix and other evidence on record serious doubt is cast upon the prosecution version.

18. FIR in the present case was registered on the basis of written complaint Ex.PW3/1 given by prosecutrix to the police on 10.01.2018. In the present case, four versions of prosecutrix have been brought on record which are Ex.PW3/1 (her complaint), statement before the counselor Ex.PW3/2, Ex.PW3/3 (statement under Section 164 Cr.P.C.) and her testimony on oath during trial in the Court on 30.11.2022.

19. As per version of the prosecutrix on the night of 9/ 10.01.2018, when she was sleeping at her house along with her children and her husband was sleeping in the other room, accused entered in her room and committed rape upon her. She and her children raised hue and cry which attracted her husband and he called his brothers and nephew. Accused also threatened to kill her.

20. Learned trial Court has rightly observed that in all human probabilities, version of prosecutrix is not found cogent, convincing and probable to be relied upon. On the face of it, the prosecution story seems improbable and unbelievable that accused would dare to trespass in her house when her husband was also present in the house and further commit rape upon her in the same room where her grown up children were sleeping with her.

21. In her complaint Ex.PW3/1 as well as her statement Ex.PW3/2 before the counselor, there is omission of this fact that her children were also sleeping with her at that time. This fact was introduced by her only in her statement recorded under Section 164 Cr.P.C. Ex.PW3/3, when she stated that her children were sleeping with her on the bed. It is again contradictory to her testimony in the Court wherein she stated that they were sleeping in the same room. In the scaled site plan Ex.PW2/1, in the said room a bed of 4' x 6' has been shown where offence is alleged to be committed, but no other cot has been shown in the said room. In her cross-examination, she stated that she has two children and age of her son is 13 years and of her daughter is 16 years. It seems quite improbable that the rape was committed upon the prosecutrix as alleged, when her grown up children of 13 and 16 years of age were sleeping with her on the same bed. Children of prosecutrix who allegedly witnessed the occurrence have not been cited as witnesses and no reason has been assigned for the same. In her statement under Section 164 Cr.P.C. Ex.PW3/3, she stated that her neighbours and brothers of her husband had also reached there, after hearing the noise and Sarpanch was also called. But said Sarpanch has also not been cited as a witness, who could have been an independent witness. Moreover, brothers and nephew of the husband were given up as prosecution witnesses by the prosecution for the reasons best known to it. The complaint of the prosecutrix Ex.PW3/1 and statement of prosecutrix Ex.PW3/2 suffered before the counsellor have also been endorsed by PW8 who is her sister-in-law (Jethani). It has not been explained that why the complaint of the prosecutrix was got verified from her sister-in-law and what need arose to get endorsed her allegations from PW8 'G'.

22. Learned trial Court has rightly observed that the story as projected by the prosecution is possible only in case of consensual relationship. It opens the prosecution case to serious doubt regarding happening of the incident in the manner as alleged by the prosecutrix.

23. The medical evidence on record also does not lend corroboration to the fact that forcible rape was committed upon the prosecution. PW7-Dr. Natasha Attri has categorically stated that no injury marks were present. Patient was conscious, co-operative and well oriented to time place and person and she was not emotionally disturbed at the time of her medical examination.

24. Learned trial Court has also rightly pointed out that version of prosecutrix is not reliable and convincing regarding handing over the clothes to the doctor at the time of the medical examination. In her cross-examination, she stated that she does not remember the colour of clothes which she had handed over to the doctor at the time of medical examination. PW3 (prosecutrix) has stated that she had changed her clothes in the morning before going to the police station and handing over the same to the doctor at the time of medical examination. Again her conduct does not appear to be natural that her clothes which she had worn at the time of incident were neither handed over to the doctor nor to the police.

25. This version of the prosecution is again doubtful that police did not record her statement and get her medically examined immediately despite the fact that police reached her house after the incident when she and her family members were present there. It has not been explained that why the lady police official was not called at the spot.

26. While appearing in the Court, prosecutrix stated that scuffle

took place between accused, her husband and brothers-in-law, when accused was trying to run away and was threatening them with dire consequences. Her complaint Ex.PW3/1 and her statement Ex.PW3/2 are silent regarding aforesaid fact of scuffle of accused with her husband and brothers-in-law. She did not mention regarding fact of gathering of neighbours at the spot, in her statements Ex.PW3/1, Ex.PW3/2 and Ex.PW3/3. Fact of calling Sarpanch is also found omitted in her statements Ex.PW3/1 and Ex.PW3/2. Trial Court has rightly observed that these omissions go to the roots of the case of the prosecution and cast serious doubt upon the prosecution version.

27. There is also unexplained delay in lodging the present FIR. The alleged occurrence stated to have taken place at about 9:30 P.M. on 09.01.2018 while the complaint was filed before the police on 10.01.2018 at 1:30 P.M. as per FIR Ex.PW12/1. Though, it is a well settled law that delay in lodging the complaint in the rape case is not fatal to prosecution case and not a ground to disbelieve the prosecution story. But in the facts of the present case when even as per the prosecutrix, the police had reached at her house at night time after the incident, then it is absurd that why the complaint was not given to the police at that time. When admittedly family members of prosecutrix and Sarpanch were also present at the spot, then it is improbable that the police officials did not record their statement or refused to take their complaint and asked them to come on the next day. Thus delay in lodging of FIR has not been satisfactorily explained.

28. DDR No.3 dated 10.01.2018 was produced by DW1 Head Constable Kuljeet Singh, vide which it was reported that on receiving information about quarrel in the house of 'Bi' police reached there but no

allegation of rape had been made in the said DDR. In her cross-examination, prosecutrix has categorically stated that police had taken 'Ba', 'Y' and 'Bi' on the said night to the police station. If the alleged rape had been committed upon her by the accused, then it has not been explained that why the aforesaid persons were taken by the police along with them. PW8 'G' has stated except case 'State Vs. Baljeet and others' no other case is pending against her son 'Y' and no other case is pending against her husband and brothers-in-law. DW1 Head Constable Kuljeet Singh has proved on record FIR No.376 dated 06.10.2017 Ex.DW1/2 and FIR No.219 dated 18.05.2018. Ex.DW1/3 registered against 'Bi', 'Ba' and 'Y', which has totally shattered credence of PW3 prosecutrix and PW8 'G' her sister-in-law.

29. Thus, after analyzing the evidence on record trial Court has rightly reached the conclusion that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offence as charged with and he has been rightly acquitted by learned trial Court.

30. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' **2014 (14) SCC 589**. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 12.01.2024 which calls for interference.

31. No other argument was raised.
32. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 12.01.2024 passed by learned trial Court being upheld.
33. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

13.02.2025

Komal

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