

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

**CRA-AD No. 33 of 2023(O&M)**

**Date of Decision: August 03 , 2023.**

RXXXXX

..... APPELLANT

**Versus**

State of Haryana and another

..... RESPONDENTS

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL  
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Mukesh Yadav, Advocate  
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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**LISA GILL, J.**

1. This appeal has been filed by complainant/prosecutrix challenging judgment dated 16.03.2022 passed by learned Additional Sessions Judge (Fast Track Court), Gurugram whereby accused/respondent No.2 has been acquitted of the charges under Sections 376/506 IPC.

2. Prosecution case is that FIR No.62 dated 02.03.2020 under Sections 376/506 IPC, Police Station Farrukhnagar, Gurugram was registered on the basis of application (Ex.P4) to the effect that on 02.03.2020 in the afternoon at about 2.00 p.m., prosecutrix had gone to her agricultural fields to change the line of sprinklers. Accused/respondent No.2, who it is stated, was already hiding in the fields of mustard crop, suddenly grabbed the prosecutrix, threw her on the ground and committed rape upon her by forcibly dragging her in the fields.

Thereafter, the accused threatened to kill her if she narrated the incident to anyone while running away from the spot. When the prosecutrix raised alarm, people in nearby fields were attracted and they gathered at the spot. They caught hold of accused and beat him up. In the meantime, husband of the prosecutrix came to the spot and accused/respondent No.2 was made to sit in the house of her uncle (Tau). Information was given to the police and respondent/accused was handed over to them. He had sustained injuries, therefore, accused was taken to the hospital by the police.

3. Formal FIR as aforementioned, was registered and investigation set in motion. Rough site plan (Ex.P17) was prepared on pointing of the prosecutrix. She was medico-legally examined at General Hospital, Gurugram. Three sealed parcels containing the vaginal swabs, clothes alongwith the forwarding letter and sample seal, handed over by the attending medical officer, were taken in possession by the police vide memo, Ex.P18. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded before the learned Area Magistrate, Gurugram on 03.03.2020 vide Ex.P6. Respondent/accused was discharged from the General Hospital, Gurugram on 04.03.2020 and arrested vide memo (Ex.P8). Disclosure statement (Ex.P9) is stated to have been suffered by the respondent/accused regarding his involvement in the commission of the offence. Accused/respondent No.2 was also medico-legally examined. Scaled site-plan (Ex.P7) was prepared. Case property was deposited at RFSL, Bhondsi, Gurugram on 20.04.2020 for DNA profiling. Statements of witnesses were recorded under Section 161 Cr.P.C. and on completion of investigation, final report under Section 173 Cr.P.C. was filed on 19.05.2020. Case was committed to the court of Sessions. Charges under Sections 376/506 IPC against

respondent/accused were framed on 15.12.2020 to which he pleaded not guilty and claimed trial.

4. Prosecution in order to substantiate its case, examined 14 witnesses. Prosecution evidence was closed on 08.03.2022. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he denied the entire incriminating material and evidence put up him. Respondent/accused claimed innocence and pleaded false implication. Accused while himself testifying as DW1 in defence, claimed that prosecutrix was known to him even prior to her marriage. Her father would often visit their house and their families were on visiting terms. He further stated that even after her marriage, prosecutrix continued to visit their house because father-in-law of prosecutrix and father of the respondent/accused were both serving the same department i.e., Haryana Roadways and were on visiting terms. It is further stated that prosecutrix would attend social functions held by them before and after her marriage. He claimed that both of them were in a consensual relationship prior to her marriage and thereafter as well. Photographs of his family functions i.e., Ex.D1, Ex.D2 and Ex.D3 were produced in evidence wherein the prosecutrix and her father-in-law are stated to be present. DW1 further claimed that prosecutrix had four mobile numbers and would call him from one of the mobile numbers as detailed in his testimony. On the day of alleged incident, prosecutrix herself is claimed to have called him to the fields while disclosing that her husband is away. Prosecutrix had come to the fields on her own to meet him and it was a consensual sexual relationship, which was established between them. However, suddenly father-in-law of the prosecutrix, who had suspicion, came to the spot and it was under duress and pressure that prosecutrix lodged the present case against him.

5. Learned trial court on considering the evidence on record, facts and circumstances concluded that prosecution had failed to conclusively prove its case beyond reasonable doubt against accused/respondent No.2, thereby acquitting him of the charges against him. It was held by the learned trial court that in view of material discrepancies in the testimony of the prosecutrix, who was 30 year old and admittedly a married lady, conviction could not be based solely on the basis of her testimony. Moreover, evidence on record did not corroborate the version set-forth by her and evidence on record was not sufficient to prove that there was commission of rape or that the prosecutrix was subjected to sexual intercourse against her will and without her consent. Aggrieved therefrom present appeal has been filed by the complainant/prosecutrix.

6. Learned counsel for the appellant vehemently argued that learned trial Court has grossly erred on facts and in law in acquitting the respondent/accused of the charges against him. Commission of the offence, it is argued, is succinctly proved from the evidence on record. It is contended that sole testimony of the victim, which is absolutely credible and trustworthy by itself, is sufficient for conviction of the accused. A victim of rape, it is contended, is not to be considered an accomplice, therefore, there is no question of seeking corroboration of her testimony. Learned trial court, it is submitted, has acquitted respondent No.2/accused while wrongly relying upon photographs, Ex.D1 to D2. Prosecutrix, it is submitted, is not visible in the said photographs. Furthermore, the mobile phone, which prosecutrix is alleged to have been using to call respondent No.2/accused, was never produced, neither had the call detail record been called for, to prove the stand taken by respondent No.2/accused

which is otherwise not worthy of credence as no documentary evidence thereof has been presented.

7. Learned counsel further submitted that mere absence of injury on the person of the prosecutrix cannot be a reason to acquit the accused, especially in the wake of sufficient evidence on record which points to the guilt of the accused. Similarly, merely because the appellant is 30 year old and married, does not provide immunity to the respondent. Learned trial court, it is reiterated, has erred in acquitting respondent/accused from the charges against him. It is, thus, prayed that this appeal be allowed, judgment dated 16.03.2022 be set aside and respondent No.2/accused be convicted for the offences as charged and be punished accordingly.

8. We have heard learned counsel for the appellant and have gone through the record with his able assistance.

9. Having heard learned counsel for the appellant and carefully perusing the evidence on record, in our considered opinion, we find that learned trial court has correctly acquitted respondent No.2 of the charges against him. This is so for the reasons as discussed in the following paras.

10. It is a settled position of law that conviction of an accused for offence punishable under Section 376 IPC can be based on the sole testimony of the prosecutrix, however, caveat in this situation is that testimony of the prosecutrix should be of 'sterling quality' and completely trustworthy. Gainful reference in this respect can be made to the judgment of the Hon'ble Supreme Court in State of Himanchal Pradesh Vs. Asha Ram, 2006 Cri.L.J. 139, wherein it is held that conviction can doubtlessly be founded on the sole testimony of the prosecutrix unless there are compelling reasons for seeking

corroboration. Evidence of the prosecutrix is put on a higher pedestal than that of an injured witness and minor contradictions and insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. *Sine qua non* for conviction on the sole testimony of the victim is that it should be consistent, reliable, probable and of sterling quality inspiring the confidence of the Court. However, in case, testimony of the victim does not inspire confidence, it is open to the Court to seek corroboration thereof. The Hon'ble Supreme Court in **Santosh Prasad @ Santosh Kumar Vs. The State of Bihar, (2020) 3 SCC 443**, has held that testimony of the victim should be of sterling quality. Reference has been made to para 22 of its earlier decision in **Rai Sandeep alias Deepu Vs. State (NCT of Delhi), (2012) 8 SCC 21**, which is reproduced as here under:-

“5.4.2 In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a “sterling witness”. In paragraph 22, it is observed and held as under:

“22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre 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 against 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 every one 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 such similar tests to be applied, can it 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.”

5.4.3 In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be

considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?”

11. Testimony of the prosecutrix, who has deposed as PW3 in this case is definitely not of such quality, which would impel the court to base conviction of the accused solely on the same. Prosecutrix, who testified as PW3, stated that she was caught hold of by respondent No.2/accused, who was hiding in the fields of mustard crop, he forcibly dragged her in the fields, threw her on the ground and subjected her to rape. Surprisingly, as per medical evidence on record there was not even a scratch on the person of the prosecutrix.

12. PW8 Dr. Shalki Sharma, Medical Officer, General Hospital, Sector 10, Gurugram, who medico-legally examined the appellant/prosecutrix on 02.03.2020 has deposed that victim was 30 years old and married, brought with alleged history of sexual assault by the accused in the fields. No fresh mark of injury was found present over any part of the body of the appellant/prosecutrix. Possibility of sexual assault was not ruled out by PW8 Dr. Shalki Sharma. It is indeed opposed to all logic and probability that in the event of prosecutrix being dragged in the mustard fields and forcibly subjected to rape, she would not suffer even a scratch. It is pertinent to note, at this stage, that though absence of injury on the person of the prosecutrix by itself can definitely not be a ground for acquittal of the accused, however, in the present case, absence of injuries coupled with the factual matrix of the case indeed causes a dent in the prosecution version with benefit of doubt becoming available to the accused. Argument raised by learned counsel for the appellant that as per report, Ex.PH of the Chemical Examiner i.e., PW2 Dr. Anil, human semen detected in both of the

vaginal swabs as well as Salwar and underwear of the prosecutrix is sufficient to prove the prosecution case, is untenable in the facts and circumstances of the case. Prosecutrix is admittedly a married lady, aged 30 years, therefore, mere detection of human semen cannot be taken to be a conclusive evidence in such circumstances to prove that the prosecutrix was subjected to forcible sexual intercourse by the accused. It is further to be noted that accused/respondent No.2 himself stated that he and the prosecutrix had a consensual sexual relationship.

13. It is opposed to all probabilities that the prosecutrix would raise alarm only after the commission of offence when accused/respondent No.2 was running away upon which some passers-by apprehended him and beat him up. There is material discrepancy in the statement of the prosecutrix in this regard. In her statement under Section 164 Cr.P.C., prosecutrix stated that she was coming from their well, when she was waylaid by the accused in the mustard fields. He gagged her and committed rape. She managed to remove his hand from her mouth and told him that she was accompanied by her father-in-law, upon which he left her, fled and stood away from her. While she was going home, accused, it is stated, threatened her not to reveal this incident to anyone or he would kill her. He continued to follow her despite the prosecutrix asking him not to, upon which she told a passer-by who in turn told some others. Accused was, thus, apprehended and beat up by them. Her family was called by the passer-by. However, prosecutrix in her statement before the learned trial court stated that accused by dragging her in the mustard field, committed rape upon her and then ran away, thereafter she raised alarm on which he was apprehended. She admitted to be carrying her mobile at that time. It is in this scenario coupled

with the defence set up by accused/respondent No.2 that testimony of the prosecutrix is not found to be trustworthy, therefore, the need for corroboration, which is not forthcoming from the evidence on record. Furthermore, it is admitted by the prosecutrix while testifying as PW3 that her father-in-law and father of accused/respondent No.2 were known to each other as they served the same department. Paradoxically, prosecutrix claimed that she was not acquainted with accused/respondent No.2 and had seen him only on the date of occurrence. However, accused/respondent No.2 was duly named in the FIR and moreover, evidence of the Investigating Officer, PW11 ASI Sarita and PW14 ASI Madhu clearly proves that family of the prosecutrix and the accused were on visiting terms and that accused used to visit the house of the prosecutrix. PW13, husband of the appellant/prosecutrix has also admitted that his father and father of accused/respondent No.2 were working in the same department and they were known to each other and they used to enjoy good friendship and were on visiting terms though it was stated that it was in old times.

14. Keeping in view the description of the place of alleged occurrence, it is highly improbable that in case there had been resistance by the appellant/prosecutrix none would have come to know of the occurrence if it took place as alleged. It is pertinent to note, at this stage, that no sign of struggle was found at the spot of alleged occurrence, which is again strange keeping in view the fact that the occurrence took place in fields of standing mustard crop. Apprehension of accused/respondent No.2 at the spot by itself can again not be indicative of the prosecutrix being subjected to rape by him or of lack of consent on her part.

15. Learned counsel for the appellant further argued that prosecutrix is

not visible in the photographs, Ex.D1 and D2, therefore, reliance on said photographs has incorrectly been placed thereon by the learned trial court. Having perused the testimony of DW1, we find that not even a suggestion has been put to DW1 regarding absence of the prosecutrix in the said photographs. Furthermore, learned trial court has taken in account the complete conspectus of evidence on record to arrive at conclusion of acquittal of accused/respondent No.2 and has not relied merely upon the photographs, Ex.D1 and D2 as is sought to be urged before us.

16. Another argument raised before us is that there is no documentary evidence to indicate that prosecutrix had called respondent No.2 or that he was in possession of the cell phone as alleged by respondent No.2. However, we find no merit in this argument as this fact by itself cannot be of any avail to the prosecution. It is a matter of record that respondent No.2 was conveniently present at the spot when the prosecutrix had gone to the spot on her own, whereas on an earlier occasions, it is stated she had been accompanied by her father-in-law.

17. After wholesome and careful consideration of entire evidence on record, we do not find any ground to interfere in the impugned judgment whereby accused/respondent No.2 has been acquitted of the charges under Sections 376/506 IPC. Prosecution has indeed miserably failed to conclusively prove its case against accused/respondent No.2 beyond reasonable doubt. Evidence on record clearly entitles the accused to benefit of doubt. Learned counsel for the appellant is unable to point out any evidence whatsoever to indicate complicity of the accused in the commission of offence as alleged, beyond the pale of reasonable doubt.

18. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206 held that:-

“Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

19. Reference in this regard can also be made to judgment of Hon'ble Supreme Court in State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is a settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances.

20. Learned counsel for appellant, despite vehement arguments, is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 16.03.2022 passed by learned Additional Sessions Judge (Fast Track Court), Gurugram, which calls for any interference by this Court.

21. No other argument has been raised.
22. Accordingly, appeal is dismissed.

( LISA GILL )  
JUDGE

August 03 , 2023.  
'om'

( RITU TAGORE )  
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No