

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

CRA-D No.955-DB of 2009 (O&M)

Date of decision: November 07, 2016.

Jai Singh

.....Appellant.

Versus

State of Haryana

.... Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate for the appellant.

Mr. Randhir Singh, Additional AG, Haryana.

LISA GILL, J.

This appeal has been filed by the appellant - Jai Singh challenging the judgment and order dated 31.08.2009 passed by the learned Sessions Judge, Karnal whereby he has been convicted for the offence punishable under Section 376 (2) (a) (ii) Indian Penal Code ('IPC - for short) and sentenced to undergo rigorous imprisonment for life, besides, pay a fine of Rs.20,000/- and in default thereof undergo rigorous imprisonment for a period of two years.

The facts of the case are that the prosecutrix, who is from the upper castes, on 23.01.2008 against the wishes of her parents got married to Mewa Ram son of Ishwar Singh, a member of the scheduled castes. The prosecutrix and her husband Mewa Ram in

view of their marriage apprehended danger to their lives at the hands of her parents and other relatives. Therefore, they approached this Court for a direction to the police authorities of Police Station Nissing, District Karnal for providing protection to their life and liberty. A direction was issued by this Court to provide protection to their life and liberty. The couple was consequently afforded necessary protection by Police Station Nissing. The incident in question where the prosecutrix was subjected to rape by the appellant took place on 26.06.2008. The statement Ex.PL of the prosecutrix was recorded by Sub Inspector (SI) Illam Singh, Incharge Police Station Nissing (PW-12) on 26.06.2008.

The prosecutrix stated that a telephone call was received by Sube Singh, a member of the scheduled castes, resident of their village Dachhar on his mobile phone on 25.06.2008 at about 8.00 p.m. from Jai Singh - appellant. The appellant - Jai Singh was the SHO of Police Station Nissing at that time. Sube Singh informed Mewa Ram, husband of the prosecutrix, regarding the telephone message which was to the effect that the parents of the prosecutrix from their village Bibipur Jatan would be coming to meet her at Police Station Nissing on the next day i.e. on 26.06.2008 and she should be sent to the police station. The prosecutrix and her husband came to Police Station Nissing from their village Dachhar on 26.06.2008 at about 8.45 a.m. The prosecutrix inquired about the whereabouts of Inspector Jai Singh from the driver (whose name she did not know). She was informed that the appellant was in his quarter. The prosecutrix and her husband went to the appellant's quarter where

the appellant met them. The prosecutrix and her parents used to meet at the police station on earlier occasions as well. She in fact used to meet her parents as well as the Inspector in the police station earlier also. She inquired about her parents from the appellant, on which he said that they had not yet arrived and he would inquire about them telephonically. The appellant called the prosecutrix's brother Rajinder on his mobile in their presence. He then told the prosecutrix and her husband that her parents would come after sometime.

Thereafter, the prosecutrix and her husband went to Kadyan Photo Studio, Nissing town and then went on to another shop to purchase make-up articles. After making the purchases, when they were returning from the shop, the prosecutrix told her husband that some of the make-up articles were not to her liking, thus, she wanted to return the same. Her husband went to the shop of another photographer. It was at about 10.45 a.m. The prosecutrix proceeded to return the make-up articles and when she was passing in front of the police station gate, the appellant was standing there. He informed the prosecutrix that her parents had come and she could meet them at his quarter. The prosecutrix accompanied the appellant to his quarter but her parents were not present there. When she inquired about them, the appellant asked her to sit and wait there as they would reach after some time. She sat down on a bed in the room. The appellant bolted the door of the room and thereafter removed his own clothes and forcibly undressed the prosecutrix. He put his mouth on her and committed rape with her.

After that the prosecutrix wore her clothes. She said to the appellant that she was going home and she came from the quarter. While she was coming, the appellant asked her to sit there for sometime as her parents were shortly coming. However, she did not agree to sit there and she came out from the quarter of the appellant. Her husband met her at the Bus Stand, Nissing and she disclosed all the facts to him.

The prosecutrix and her husband Mewa Singh then went to Police Office, Karnal with a complaint to report the incident. They informed the Superintendent of Police (Sh. Arshinder Singh Chawla, Senior Superintendent of Police, Karnal PW18) in this regard. At the Police Office Karnal, Deputy Superintendent of Police Assandh, whose name they later on came to know as DSP Vikram Kapoor (PW-19), took the prosecutrix along with her husband and her medical examination was got conducted from the Government Hospital, Karnal. After medical examination of the prosecutrix was conducted, the prosecutrix along with her husband reached Police Station Nissing and her statement was recorded by Sub Inspector/Incharge Illam Singh, Police Station, Nissing (PW-12). Jai Singh Inspector, it was stated had forcibly committed rape against her will. Legal action was asked to be taken against him. She had heard her statement which was correct. She signed her statement which was attested by SI Illam Singh, Incharge Police Station, Nissing.

Police proceedings Ex.PL/1 were recorded by SI/Incharge

SHO Illam Singh, Police Station, Nissing (PW-12) that on 26.06.2008

he was present at the Police Station and the prosecutrix along with her husband Mewa Singh came there and she got her statement recorded. The same was recorded and read over to her. She after admitting the same to be correct signed it in English, which he attested. From the statement, a prima facie case for the commission of offences under Section 376 (2) (1) IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act' - for short) were found to be made out and FIR was registered. Copies of FIR as special reports were being sent to the higher authorities. Some higher officers were asked to be deputed for investigating the case; besides, the Forensic Science Laboratory Team (FSL) was also asked to be sent at the spot. SI/SHO Illam Singh (PW-12) along with the complainant and her husband Mewa Singh were going to meet higher authorities of Police Station, Nissing.

Endorsement Ex.PL/3 was recorded to the effect that case FIR No.142 dated 26.06.2008 for the offences under Section 376 (2) (1) IPC and under Section 3 SC/ST Act was registered vide DDR No.14 dated 26.06.2008 at 4.00 p.m.

DSP Vikram Kapoor (PW19) on 26.06.2008 was posted at Assandh as DSP. He was called on telephone message by the SSP, Karnal (PW18) in his office. When he reached there, the prosecutrix and her husband Mewa Singh were sitting with the Reader of the SSP. SI Kulbir Kaur, Incharge Women Cell, Karnal (PW13) was also attending her. The SSP, Karnal (PW18) required that DSP Vikram Kapoor (PW19) should inquire with regard to the

allegations levelled by the prosecutrix against the appellant. On his inquiry, the prosecutrix apprised them that she was subjected to rape by the appellant and she wanted to get herself medically examined. DSP Vikram Kapoor (PW19) on telephone apprised SSP, Karnal (PW18) and took the prosecutrix for her medical examination. When they were taking her to the hospital, the appellant was also found present on the ground floor of the building where there is the office of the SSP.

Dr. Seema (PW1) along with Dr. Kanta conducted the medical legal examination of the prosecutrix. On examination, they found that the victim was conscious, cooperative, well oriented to time, place and person. Her pulse rate was 96 per minute. Blood pressure was 122/88 MMHG. She was married for six months. Her date of last menstrual period was 25.04.2009. There was no external mark of fresh injury anywhere on the body, thighs and perineum. Her gait was normal. On local examination, labia majora were normal looking and depressed. There was no fresh injury on edema or fresh bleeding. Labia Minora were hyper trophied and normal looking. There was no fresh injury or oedema or bleeding. The victim, it is stated, was married about six months ago and was having pregnancy of two months. On her vaginal examination, cervix was forward. Uterus was retroverted, soft 8 to 10 weeks in size. Slides were prepared from discharge and hair clippings were taken and packed for examination. A copy of MLR, sample seal impression, a packet bearing five seals containing chocolate brown underwear, slides of discharge and vial containing clipping of hair and an envelope

bearing five seals containing copy of MLR, forwarding letter and sample seal impression were handed over to the police. The opinion was kept pending for want of receipt of report from the FSL Madhuban.

It was later after perusing the FSL report (Ex.PC) that Dr. Seema (PW1) opined that the possibility of sexual assault in this case could not be ruled out.

The appellant - Jai Singh was medico legally examined on 26.06.2008 itself at 2.30 p.m by Dr. Lalit Kumar, Medical Officer, General Hospital, Karnal (PW2). In the opinion of the examining doctor, there was nothing to suggest that he was not capable of sexual act. Dr. Lalit Kumar handed over a sealed packet bearing four seals containing underwear along with sample seal impression to the police.

The medico legal reports Ex. PA/1 pertaining to the prosecutrix and Ex. PD/1 of the appellant were taken in possession by the police. The lady doctor (Dr. Seema) handed over to DSP Vikram Kapoor a sealed parcel containing underwear, sample seal and forwarding letter. These were taken in possession by the police vide memo Ex.PS. The sealed parcel containing underwear, sample seal and forwarding letter in respect of the appellant were taken in police possession vide memo Ex.PR.

The prosecutrix and her husband were taken to police post Jundla for the purpose of making inquiry from the prosecutrix. There she specifically stated regarding the commission of rape upon her by the appellant. Then they took her to Police Station Nissing

and at her instance FIR was registered.

Sealed parcels and other articles given by the doctors to DSP Vikram Kapoor (PW19) were handed over to DSP (Headquarters) Surinder Singh Bhoria (PW15) which were taken in possession by him vide recovery memo Ex.PO attested by HC Sushil Kumar. All the memos were signed by DSP Vikram Kapoor (PW19).

Investigation of the case was then handed over to DSP (Headquarters) Surinder Singh Bhoria (PW15). DSP Assandh Vikram Kapoor (PW19) handed over to him two applications Ex.PA and Ex.PD regarding medico legal examination of the prosecutrix and appellant respectively. The medico legal reports Ex.PA/1 and Ex.PD/1 of the prosecutrix and the appellant respectively were handed over to him. The recovery memo Ex.PR regarding taking in possession the underwear of the appellant and recovery memo Ex.PS regarding taking in possession the underwear of the prosecutrix, swab slides, sample seal impression and forwarding letter were handed over to him which were taken in possession vide recovery memo Ex.PO. The scene of occurrence, as pointed out by the prosecutrix, was inspected. A bed sheet, a small towel, blood stain from the floor and two tablets of viagra 50 were recovered from the scene of occurrence and taken in police possession vide recovery memo Ex. PK. A rough site plan (Ex.PT) of the place of occurrence was prepared. Photographs of the spot were also taken by HC Raj Kumar (PW4).

The prosecutrix was again taken to General Hospital, Karnal where she produced her salwar before the Medical Officer.

The 'salwar' (Ex.P2) which the prosecutrix was wearing was handed over by the doctor to the police in a sealed parcel. The same was taken in police possession vide recovery memo Ex.PM, which was signed by SI Kulbir Kaur (PW13). The appellant – Jai Singh was also again taken to General Hospital, Karnal on 26.06.2008 itself and an application (Ex.PE) was moved to ascertain the presence or absence of smegma or pubic hair of the victim on his person. The appellant was medico legally examined by the Medical Board consisting of Dr. Lalit Kumar (PW2) and Dr. Munish Garg on the application Ex.PE of the police. In reply to the queries put by the police, it was opined as follows:-

“(i) Smegma was absent on glans penis and prepucial space.

(ii) Present pubic hair was partially shaved. Cutting of hairs was not possible and no foreign hair was present.”

The statement of the prosecutrix under section 164 of the Code of Criminal Procedure ('Cr.P.C.' - for short) was recorded on 26.06.2008 at 9.55 p.m. before Sh. Ajay Tewatia, Additional Chief Judicial Magistrate, Karnal (PW17). True carbon copy of the statement was Ex.PU/1. The prosecutrix reiterated the version she had narrated earlier. The appellant was thereafter arrested and interrogated. The statements of the prosecutrix, Mewa Ram, HC Sushil Kumar, DSP Vikram Kapoor and SI Kulbir Kaur were recorded under Section 161 Cr.P.C. The appellant as well as the prosecutrix

were produced before the medical officer General Hospital, Karnal on 27.06.2008 for taking their blood samples for DNA analysis. Pursuant to the application (Ex. PV) moved by the police, the blood sample of the appellant was taken and handed over to the police in two sealed vials along with sample seal impressions which were taken in police possession vide memo (Ex. PP). Pursuant to application (Ex. PW), the blood sample of the prosecutrix was taken and handed over to the police in two sealed vials alongwith sample seal impressions, which were taken in police possession vide memo (Ex. PN). Statement of SI Kulbir Kaur and HC Sushil Kumar were recorded. The photostat copy of Matriculation Certificate of the prosecutrix and photostat copy of the Caste Certificate of Mewa Ram were taken in police possession vide recovery memo Ex.PQ on 02.07.2008. The copies of extract of admission and withdrawal register pertaining to the prosecutrix was also taken in possession vide recovery memo Ex.PX. The statements of MHC Mohinder Singh, EASI Ram Chander, Constable Inderpal, Constable Ajay Kumar and HC Sushil Kumar were recorded under Section 161 Cr.P.C. on 03.07.2008. The statement of Suba Ram was recorded on 18.07.2008. The statements of Raj Kumar, photographer and Constable Vir Shakti Singh were recorded on 20.07.2008. The supplementary statements of MHC Mohinder Singh and EASI Ram Chander were recorded on 27.07.2008. Documents including the FSL report Ex.PC and the DNA report Ex.PG were submitted.

The report/challan under Section 173 Cr.P.C. was presented on completion of investigation. The learned Sessions

Judge, Karnal on 19.09.2008 after perusing the documents and hearing arguments of the learned public prosecutor and learned defence counsel for the accused found that a prima facie case for the commission of offence punishable under Section 376 (2) (a) (i) and (ii) IPC was made out. The appellant was accordingly charge-sheeted on the allegation that he on 26.06.2008 at or about 10.45 a.m. in the area of premises of Police Station, Nissing, being a public officer committed rape upon the prosecutrix without her consent and against her will and thereby committed an offence punishable under Section 376 (2) (a) (i) and (ii) IPC which was within the cognizance of the Court framing the charge. The charge was readover and explained to the appellant in simple Hindi. He pleaded not guilty and claimed trial.

The prosecution in order to prove and establish its case examined as many as nineteen (19) witnesses. FSL reports Ex. PC and Ex.PC/1 with serological analysis of blood attached with the report Ex. PC/1 and DNA report Ex.PG were tendered in evidence.

The substance of the evidence appearing against the appellant during trial was put to him in terms of Section 313 Cr.P.C. In his defence he stated that he was innocent and did not commit rape on the prosecutrix. He was transferred from the Police Station Nissing on 25.06.2008, therefore, it is submitted that the question of calling the prosecution at Police Station Nissing on 26.06.2008 did not arise. He had relinquished the charge of the post of SHO Police Station, Nissing on 25.06.2008 and SI Illam Singh had taken over the charge from him on that very day. He had come to the Police Lines,

Karnal on 26.06.2008. He was called in the office of SSP, Karnal at about 12.00 noon regarding the allegations levelled against him. The prosecutrix was also put many queries by the SSP, Karnal. But at that time she had not levelled any allegation of rape against him. Thereafter he was allowed to go and the prosecutrix was taken away by DSP Assand (Vikram Kapoor PW19) and DSP (Headquarters), Karnal (Surinder Singh Bhorla PW15) to some unknown place and thereafter FIR of the present case was registered against him on the statement of the prosecutrix which was obtained by the said DSP by putting pressure on her at the instance of the SSP, Karnal. Thus it is stated that this was absolutely a false case registered against him. The appellant has, however, admitted that the prosecutrix performed an inter caste marriage with Mewa Ram against the wishes of her parents and that she had sought police protection from the High Court and as per directions of the High Court, he provided police protection to them being SHO of Police Station, Nissing. The appellant also admitted that on 26.06.2008 he was again taken to General Hospital, Karnal where on police application Ex.PE he was medico legally examined by the Medical Board but he did not know as to what report was given by the Medical Board. He also admitted that he was taken to General Hospital, Karnal on 27.06.2008 and on police application Ex.PB his blood sample was taken for DNA analysis. The blood sample was put into sealed vials and handed over to the police along with sample impression which were taken in police possession vide recovery memo Ex.PP. He stated that the

case was false and the witnesses had falsely deposed. No evidence was, however, led in defence by the appellant.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution had successfully proved its case against the appellant beyond any shadow of doubt. The present appellant, Jai Singh was, accordingly, convicted of the offence punishable under Section 376 (2) (a) (ii) IPC and sentenced as detailed above. Aggrieved from his conviction and sentence, the appellant has filed this appeal.

Learned counsel for the appellant has vehemently argued that the entire prosecution version is patently false. The conviction and sentence of the appellant is unsustainable in view of the evidence on record. It is submitted that though the appellant has not pleaded consent on the part of the prosecutrix as a defence, nevertheless it is apparent from the evidence on record. It is urged that consent of the prosecutrix, who was about 21/22 years of age at that time, is reflected from the evidence on record. To substantiate this argument, it is submitted that firstly there was no occasion for the appellant to have called the prosecutrix to the police station after the appellant was transferred on 25.06.2008. Furthermore, the occurrence is alleged to have taken place in the precincts of the police station, therefore, it is highly improbable that the prosecutrix never raised any alarm and none came to her rescue. In the interregnum of about 20 minutes for which the occurrence is alleged to have lasted, it is submitted that the prosecutrix made no attempt to

escape and as per the medical evidence on record, there is no injury on her person. It is contended that the said facts reflect the presence of consent on the part of the prosecutrix. The husband of the prosecutrix namely Mewa Ram has not supported the prosecution version. Reference is also made to the statement of Senior Superintendent of Police Sh. Arshinder Singh Chawla (PW18) wherein it is stated that the prosecutrix had narrated about the misbehaviour of the appellant but the prosecutrix did not clearly spell out the factum of rape committed by the appellant before the Senior Superintendent of Police, Karnal (PW18).

Learned counsel further submits that the insistence of the prosecutrix to get her medical examination conducted before recording her statement reflects that there is no element of force/rape involved in the occurrence as projected by the prosecution. The medical evidence on record as well as the oral evidence does not, thus, justify the conviction of the appellant. It is, thus, prayed that the impugned judgment and order be set aside and the appellant be acquitted of the charges against him.

Learned counsel for the State per contra submits that there is clear and cogent evidence on record, which proves the culpability of the appellant. The appellant has grossly misused his official capacity to violate the prosecutrix. He deliberately and intentionally called the prosecutrix to Police Station Nissing on the pretext of meeting her parents. It is further submitted that the factum of the telephonic call by the appellant to Sube Singh has not been refuted. There is not even a suggestion to this effect. The appellant

had called the prosecutrix inside his quarter when she was passing by the gate of the police station by saying that her parents had come and she could meet them in his quarter. As far as the absence of injuries is concerned, it is submitted that passive silence by itself cannot be construed to be consent. It is submitted that the fear and intimidation which the prosecutrix must have felt in the present factual matrix can be well imagined. She had just got married outside her caste against the wishes of her parents. The couple had to approach this Court for protection of their life and liberty. The very person supposed to provide protection had acted in a most reprehensible manner. The prosecutrix accompanied by her husband had, however, promptly proceeded to the office of Senior Superintendent of Police, Karnal after the occurrence in order to lodge a complaint. Action was taken immediately by the police authorities. The medical evidence and specifically the FSL report (Ex. PC) as well as the report of the DNA (Ex. PG) leave no doubt whatsoever regarding the guilt of the appellant. It is, thus, prayed that the impugned judgment and order passed by the learned Sessions Judge, Karnal being well reasoned, based on proper appreciation of the evidence should be maintained.

We have given our thoughtful consideration to the contentions as have been raised by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

The undisputed facts in the case are that the prosecutrix, is from the upper caste and she against the wishes of her family got

married to Mewa Ram. Her family members were opposed to this marriage as Mewa Ram did not belong to the same caste and was a member of the scheduled castes. The prosecutrix and her husband approached this Court seeking protection of their life and liberty as they apprehended danger at the hands of the family members of the prosecutrix. It is admitted that as directed by this Court, police protection was afforded by the police authorities at Police Station Nissing. At that time, the appellant Jai Singh was the Station House Officer (SHO) of Police Station Nissing. The prosecutrix had been meeting her parents at the police station on occasions prior to 26.06.2008 as well. The appellant was known to the prosecutrix due to this reason. There was, thus, no occasion for the prosecutrix to have come to the police station of her accord on 26.06.2008 along with her husband, if she had not been asked to come there on the pretext of meeting her parents. Message regarding meeting her parents was conveyed to her by Sube Singh.

The prosecutrix in her testimony as PW11 has deposed that she was a student pursuing final year of Bachelor of Arts. She had seen her statement Ex.PL which bears her signatures. She was married on 23.01.2008 to Mewa Ram against the wishes of her parents. Her parents were against the marriage as she was from the upper caste and her husband Mewa Ram was a member of the scheduled castes. The prosecutrix and her husband approached this Court for providing protection for their life and liberty. Under orders of this Court, police protection was provided by Police Station Nissing.

She stated that she did not know compounder Sube Singh resident

of Dachher. She and her husband had gone to Police Station, Nissing on 26.06.2008. At this stage, the prosecutrix started weeping. Initially her request for postponing the case for recording her statement was declined. She was provided a glass of water. After waiting for more than 45 minutes, the prosecutrix refused to give a statement. The Court time was also over. The case was, therefore, adjourned for the next day i.e. 07.11.2008. Meanwhile she was ordered to be kept in Nari Niketan with a specific direction that nobody shall meet her directly or indirectly till she was taken from the Court and brought in Court the next day at 10.00 a.m.

The prosecutrix on the next day deposed that a telephone call was received by Sube Singh from the appellant - Jai Singh, the then SHO Police Station Nissing on 25.06.2008. Sube Singh was a resident of the village where her matrimonial home was situated. The appellant informed Sube Singh that the parents of the prosecutrix would come to Police Station Nissing on 26.06.2008; therefore, she should also come present. This was conveyed to her husband by Sube Singh. Accordingly, the prosecutrix and her husband came to Police Station Nissing by bus on 26.06.2008. They reached the Police Station, Nissing at about 8.30 a.m. When they reached there, they met a Police driver. The prosecutrix asked him about her parents coming there. He told them that she should inquire from the quarter of SHO Jai Singh. The prosecutrix and her husband reached the quarter of the appellant. However, her parents were not present there and when she inquired about them from the appellant, he responded that he would contact them telephonically. The appellant

made a telephone call and then apprised the prosecutrix that her parents would be coming shortly. The prosecutrix and her husband told the appellant that they would in the meantime make some purchases from the market and he allowed them. Accordingly, the prosecutrix and her husband proceeded to the market. The prosecutrix purchased certain make-up articles and they went to Kadyan photographer, who informed them that he would be able to take their photographs by about 4.00 p.m. The prosecutrix asked her husband to contact another photographer and in the meantime she would return some of the make-up articles. When the prosecutrix was proceeding to return the said articles, she passed in front of the police station. The appellant was standing outside the gate of the police station and he told her by name that her parents had arrived in his quarter. They earlier also came to the quarter of the appellant to meet her and she then went inside the quarter of the appellant but she did not find her parents there. She told the appellant that her parents were not there. He said that they would be arriving there soon and he would be calling them on phone. The household luggage of the appellant was almost packed in the quarter. She discovered that her parents were not present in the quarter. No one apart from the appellant was present in the quarter. The appellant bolted the door from inside and took off his clothes. She raised a noise but nobody heard her as the quarter was far away. He then forcibly committed rape on the prosecutrix and thereafter told her not to disclose this incident to anyone. The prosecutrix then came out

from the quarter of the accused. While she was going towards the bus stand and the place where she could find her husband, she met her husband on the way and apprised him of the occurrence. Both of them took a bus bound for Karnal. They reached the office of Superintendent of Police, Karnal (Sh. Arshinder Singh Chawla, Senior Superintendent of Police, Karnal PW18) and apprised him of the occurrence. The Superintendent of Police called the Deputy of Superintendent of Police, Assandh (Vikram Kapoor, DSP Assandh PW19). He (PW19) then got her medically examined from Civil Hospital, Karnal. Her clothes were taken by the doctor. The DSP, Assandh (PW19) then brought her back to the office of Superintendent of Police. While she and her husband were being taken to Police Station Nissing on the way, they were taken to Police Post Jundla. The police official asked the appellant regarding the occurrence and he denied it. There were also altercations between her husband and the appellant. They were then taken to Police Station, Nissing where her statement Ex.PL was recorded, which bears her signature. The doctor had also obtained her signature on her MLR. The copy of MLR (Ex.PA/1) bears her signature. She had shown the place of occurrence to the police. Different articles were lifted by the police from the spot in her presence. Memo Ex.PK in this regard was prepared, which bears her signature as also that of her husband. She was again medico legally examined on the same day and this time the salwar (Ex.P2), which she was wearing at the time of occurrence was also taken by the doctor. At the time of her first

medical examination, the doctor had only taken her underwear (Ex.P1) and no other clothes. Her statement (Ex.PU/5) was also recorded by the Magistrate on the same day of occurrence, which she signed in token of its correctness. Her blood sample was also taken by the doctor for DNA test. The underwear Ex.P1 and the salwar Ex.P2 were the same, which she was wearing at the time of occurrence and were taken by the doctor. Out of the photographs Ex.P4 to Ex.P-10, she identified photographs Ex.P5, Ex.P6 and Ex.P10, which were of the scene of crime.

The prosecutrix was cross-examined at considerable length, however, nothing could be brought out which would help the appellant. She inter alia stated that when they were provided police protection, then her parents started visiting Police Station Nissing. The appellant allowed them to meet her there but they were not allowed to meet her husband. She had met her parents there four/five times before the occurrence. They used to try to convince her to leave Mewa Singh. The appellant in the presence of her parents used to take their side and tried to convince her that her parents were correct but in their absence and in the presence of her husband, he used to say that their's was a perfect match. It is also stated by her that at the time when she was called by name telling her that her parents had come, there were police officials present at the police station and persons from the public were also there on the road. It is stated as correct that the quarter of the SHO was within the boundary wall of the police complex. It was stated on her own that it was on the back side of the police station. There was no other

quarter adjoining or nearby the quarter of the SHO. It is also stated by her that it took only 15-20 minutes when she entered the quarter of the appellant till she was raped. She raised noise for the first time when the appellant started removing his wearing clothes but she did not raise any voice prior to this movement. At that time, she did not try to open the bolted door. However, she had tried to reach the door when the accused started removing her clothes. She tried to resist but could not give any scratch from her fingers nor could bite him. He had put his mouth on her mouth. She could not push the appellant from her leg because she was made to lie on the opposite side of the bed. Her legs were towards the head side of the bed. She had told the police that after rape the accused had asked her not to disclose it to anybody. She was confronted with her statement Ex.PL where it was not so recorded. It is stated by her that it might have taken 15-20 minutes then she entered the quarter and came out after the occurrence. It is also stated that the appellant was not called at the hospital at the time of her medical examination. It might have taken about one hour in the hospital in her going and coming for medical examination. However, when they came out from the hospital after her medical examination, the appellant was present outside. She was also taken to police post Jundla in the same vehicle. Lady Constable Kuldip Kaur (PW13), DSP Assandh (PW19), she herself and her husband (PW10); besides, the appellant and some other police officials were there in the same vehicle. They remained at Police Post Jundla for about 15-20 minutes. It is stated

as correct that at Police Post Jundla, the appellant had called her as his daughter.

The prosecutrix has given a consistent version about the occurrence as it took place on 26.06.2008 from the very outset till her deposition before the Court including her statement under Section 164 Cr.P.C. The fact that her husband Mewa Ram has not supported the prosecution version is inconsequential. At this stage, it is relevant to note that the testimony of Mewa Ram was recorded on 06.11.2008 when he was declared hostile. A perusal of the record reveals an observation of the learned trial Court that when the prosecutrix came inside the Court to depose on 06.11.2008, Mewa Ram uttered something in her ear. He was immediately asked by the learned Sessions Judge, Karnal not to speak to her. The examination-in-chief of the prosecutrix began on 06.11.2008 itself. She deposed that she was a student of Bachelor of Arts, Final year. She stated that she knew how to read and write in Hindi as well as English. The prosecutrix deposed that she married Mewa Ram against the wishes of her parents. Fearing for their life and liberty, the prosecutrix and her husband approached this Court seeking protection. Consequent to directions of this Court, necessary protection was afforded to them from Police Station Assandh. When she deposed that she alongwith her husband had gone to Police Station Nissing on 26.06.2008, the prosecutrix started weeping. She was provided a chair to compose herself. She made a request for postponing the case for recording her statement but the same was declined. The learned trial Court afforded the prosecutrix more than 45 minutes to compose herself

but the prosecutrix refused to give her statement before the learned trial Court. As Court time was almost over, the case was adjourned for the next day i.e. 07.11.2008 and it was directed by the learned trial Court that the prosecutrix be taken to 'Nari Niketan' with a specific missive that none would contact her directly or indirectly till the time she was brought in Court the next day at 10.00 a.m. The prosecutrix was further examined on 07.11.2008 when she narrated the facts of the case as revealed by her in earlier statements. She gave the same consistent version as narrated by her on earlier occasions. The testimony of the prosecutrix inspires confidence. There is no reason to disbelieve her testimony. When the testimony of the prosecutrix is found to be reliable, truthful and inspiring confidence, it may not be even necessary to look for corroboration of her statement. There are no compelling reasons or grounds on the record of this case which would justify rejection of her testimony.

The Hon'ble Supreme Court in **Deepak versus State of Haryana**, 2015 (2) R.C.R. (Criminal) 246 has held in respect to the evidentiary value of the testimony of the prosecutrix that unless there are compelling reasons which necessitate looking for corroboration of her statement or where there are compelling reasons for rejection of her testimony, there is no justification on the part of the Court to reject her testimony.

In **Om Parkash v. State of U.P.** (2006) 9 SCC 787 the Hon'ble Supreme Court said that it is settled law that the victim of sexual assault is not treated as accomplice and as such, her

evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case, even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course, a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. In the said case, the suggestion given on behalf of the defence that the victim had falsely implicated the accused did not appeal to reason. It was held that there was no apparent reason for a married woman to falsely implicate the accused after scathing her own prestige and honour. It was further said that the Courts while dealing with such cases should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not fatal in nature to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of a statement in material particulars. If for some reason, the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. If a prosecutrix is an adult and of full understanding, it was said, that the Court is entitled to base a

conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case, disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

In the present case, the statement of the prosecutrix, as already noticed, inspires confidence. Besides, the prosecution case is also corroborated by other evidence on record.

The FSL report Ex.PC has been proved by Dr. Richa Mehta, Senior Scientific Officer, Biology Division, FSL Madhuban (PW5). As per the said FSL report, Ex. PC relating to the prosecutrix it was observed that human semen mixed with blood was detected on exhibit-1a (slides). Human semen was also detected on exhibit-1b (pubic hair), exhibit-1c (underwear) and exhibit-6 (salwar Ex.P2); however, blood could not be detected on these exhibits. Blood was detected on exhibit-5 (cotton threads); however, human semen could not be detected on this exhibit. Neither blood nor semen could be detected on exhibit 2 ('kachha'), exhibit 3 (towel) and exhibit 4 (bed sheet).

As per FSL report Ex.PC/1, which relates to the appellant, it was observed that exhibit 5 (cotton threads) was stained with faint blood stains. According to the results of serological analysis of blood on the cotton thread at serial No.5, against the column relating to 'origin', it is mentioned; 'material disintegrated'.

Dr. Seema (PW1) after seeing the FSL report Ex.PC stated that she was of the view that possibility of sexual assault in

this case cannot be ruled out. Indeed from the FSL report Ex.PC sexual assault in the case cannot be ruled out as human semen was detected on exhibit 1b (pubic hair), exhibit 1c (underwear) and exhibit 6 (salwar), which relate to the prosecutrix. Dr. Seema (PW1) has though mentioned that there was no external mark of fresh injury anywhere on the body, thighs and perineum; however, the same would be inconsequential as the appellant is a strong person is aged 60 years whereas the prosecutrix was a young girl who was recently married. Even otherwise, as observed in Om Parkash's case (supra) that in a given case even if the doctor who examined the victim of sexual assault, does not find sign of rape, it would be no ground to disbelieve the sole testimony of the prosecutrix. However, the presence of human semen on the exhibits noticed above provide the necessary corroboration of rape being committed on the prosecutrix.

Besides, the DNA report (Ex. PG) mentions that five parcels with seals intact and tallying were received i.e:

Exhibit 1-Thermocol box containing two sealed vacutainer vial labelled as Jai Singh containing (1)

Blood sample marked as item No.1;

Exhibit 2-Thermocol box containing two sealed vacutainer vial labelled in the name of the prosecutrix containing (2) Blood sample marked as item No.2;

Exhibit 3-sealed cloth line cover containing;

Exhibit 4- A torn brown coloured cut dryer marked as item No.4;

Exhibit 4A. One piece of cotton thread marked as item No.4A and

Exhibit 5. One torn pink salwar marked as item No.5.

The result of the examination is mentioned as follows:-

“DNA was extracted from item No.1, 4, 5 and subjected to autosomal STR analysis by using Identifiler Kit. DNA profiles obtained from item Nos.4 and 5 are compared with DNA profile obtained from item No.1. The allelic patterns of item No.4 and 5 matches with the allelic pattern of the item No.1.”

The conclusion recorded is as follows:-

“The autosomal STR analysis indicates that the seminal stains on source of item Nos.4 and 5 matches with the DNA profile of Jai Singh (source of item No.1) and conclusively proved that he is associated with the act.”

In terms of the above report, the blood sample of appellant - Jai Singh i.e. item No.1 matches with the torn brown colour cut dryer marked as item No.4 and a torn pink salwar marked as item No.5.

Dr. Pandhu Guguloth, Assistant Director (DNA), FSL Madhuban (PW7) in his evidence stated that he had seen the report Ex.PG. It bears his signature. It is stated that electro-pherograms

were Ex. PG/1 to Ex. PG/4. In cross examination it is stated by Dr. Pandhu Guguloth (PW7) that in the report Ex.PG item 4 (i.e. a brown coloured cut dryer) pertains to underwear of the victim. Item 5 (i.e. one torn pink salwar) pertains to Salwar of the victim. The blood sample, it is stated, was received in their office on 27.06.2008 and the other parcels were received on 16.07.2008. It is further stated that Allelic means nothing but genes. It is stated as incorrect to suggest that Allelic pattern can be similar in many persons. It is voluntarily stated that allelic person (sic. pattern) of each person would be separate. It is stated as incorrect to suggest that DNA test was not a sure test. It was voluntarily stated that it is 100% sure test. It is stated as incorrect to suggest that the report Ex.PG was false and he was deposing falsely.

The seminal stains, therefore, found on the under garment and salwar (Ex. P1 and Ex. P2) of the prosecutrix, matched with the DNA profile of the appellant. The scientific evidence on record clearly proves the culpability of the appellant. The absence of injury on the person of the prosecutrix does not in any way falsify the prosecution case in any manner as is argued by learned senior counsel for the appellant.

The prosecution case is further cemented by the testimony of the official witnesses. Arshinder Singh Chawla, Senior Superintendent of Police, Karnal (PW18) has specifically deposed that the prosecutrix along with her husband Mewa Ram had appeared before him on 26.06.2008 at about 12.15 p.m. She revealed that SHO, Police Station Nissing had misbehaved with her.

She did not clearly say regarding rape being committed upon her by the appellant at that time. Senior Superintendent of Police, Karnal immediately called Vikram Kapoor, DSP, Assandh (PW19) to come there and inquire into the allegations raised by the prosecutrix. The prosecutrix had started weeping and lady Inspector Kulbir Kaur, Incharge, Women Cell, Karnal (PW13) was also called. After inquiry being made by DSP Vikram Kapoor (PW19), he informed Arshinder Singh Chawla, Senior Superintendent of Police, Karnal (PW18) that the prosecutrix was raising allegations of rape being committed upon her by the appellant and she wanted to get her medical examination conducted. The DSP was directed to immediately take the prosecutrix to General Hospital, Karnal where her medical examination was conducted. It is further stated by PW18 that he directed the DSP for registration of the FIR on allegations of rape. The prosecutrix was then taken to Police Station Nissing where FIR No. 142 (Ex. PL/2) dated 26.06.2008 was registered at her instance. Investigation was then handed over to Surinder Singh Bhoria, DSP (Headquarters), Karnal, (PW15) in public interest to ensure transparency and fair investigation. Shri Ashwinder Singh Chawla, SSP, Karnal (PW18) has stated that the appellant was apprised about the allegations against him and he was apprised that he should make himself available for all inquiry and investigation.

This position is affirmed by Vikram Kapoor, DSP Assandh (PW19) in his deposition before the learned trial Court. The testimony of Kulbir Kaur, SI (PW13) lends support to the prosecution case. SI

Illam Singh (PW12) has deposed that he recorded the statement

(Ex. PL) of the prosecutrix and formal FIR (Ex.PL/2) was recorded. He has stated that the prosecutrix and her husband came to the Police Station at about 3.00 p.m. Statement of the prosecutrix was recorded and the endorsement was appended by him at about 3.55 p.m. as 45 minutes were taken in recording the said statement. Surinder Singh Bhoria, DSP, Karnal (PW15) has given the entire details of the investigation carried out by him. Sh. Ajay Tewatia, Additional Chief Judicial Magistrate, Karnal (PW17) has testified that the statement of the prosecutrix under Section 164 Cr.P.C (Ex. PU/5) was recorded on 26.06.2008. He (PW17) recorded his satisfaction that the said statement (Ex. PU/5) suffered by the prosecutrix was voluntary and a true version of the occurrence. The official witnesses had no axe to grind against the appellant. There was no occasion for them to falsely depose against the appellant. It is stated by the appellant in his statement under Section 313 Cr.P.C. that the statement of the prosecutrix was obtained by the DSP Assandh (PW19) after pressuring her at the instance of the Senior Superintendent of Police, Karnal (PW18). However, there is no evidence on record to substantiate such an allegation. The fact that the appellant was transferred on 25.06.2008 is not material for the simple reason that it is not in dispute that his household articles etc. were still lying in his residential quarter as is apparent from Exs. P4 to P10. Besides, he had given a message to Sube Singh on 25.06.2008 asking him to inform the prosecutrix that her parents would be coming to the police station on the following day i.e.

26.06.2008 and she should come there. In fact the appellant very well knew that they were not coming and that he had made a misrepresentation to give shape to his illegal design of committing rape on the prosecutrix, which he did. The testimonies of the official witnesses are reliable and trustworthy.

Learned counsel for the appellant has vehemently argued that consent on the part of the prosecutrix is apparent from the evidence on record. Thus, the conviction of the appellant should be set aside. It is relevant to note at this stage that the appellant has pleaded false implication in this case. He has not set up a plea of consent on the part of the prosecutrix and neither has any such suggestion been put to the witnesses leave alone the prosecutrix. It is well known that a party is required to put his version in cross examination of his opponent's witness and failure to put such a question in cross-examination would be that his version is not disputed. In **M/s Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and another**, AIR 1958 Punjab 440, this Court held that it is well established rule of evidence that a party should put to each of his opponent witness so much of his case as concerns that particular witness. If no such questions are put, the Courts presume that the witness' account has been accepted.

In the facts and circumstances of the present case, there is no reason as to why the prosecutrix would be a consenting party for sexual intercourse with the appellant. She had been married about six months prior to the incident and that too in circumstances where she had gone against the wishes of her parents. It was a love

marriage and there is no evidence to show that she did not have cordial relations with her husband. The prosecutrix was in fact pregnant by about two months at the time of the incident. It is pertinent to note that the prosecutrix was about 22 years old at the time of occurrence and she was all alone in the official quarter of the accused within the precincts of the police station. It is not difficult to imagine the kind of intimidation and fear she might have experienced at that time. Dr. Seema (PW1) stated that it is not necessary that in the case in hand there would be sign of resistance or violence on the part of the prosecutrix. This, it is stated, may be due to variety of reasons including that she may be weaker in physical strength or may be in fear. The learned trial Court observed that the prosecutrix is a lean and thin lady of 22 years whereas the appellant is a strong bodied police officer of about 60 years.

The absence of any consent on the part of the prosecutrix is also apparent from the promptness with which the matter was reported by her to the higher authorities. It was a very natural and normal course adopted by the prosecutrix in approaching the Senior Superintendent of Police, Karnal immediately. It was apparent that any plea raised by her or complaint lodged by her on the premises of the Police Station Nissing might have fallen on deaf ears and she may have been further victimised. Therefore, she went to the Senior Superintendent of Police, Karnal along with her husband. Her medical examination was conducted at 1.20 p.m. on 26.06.2008 itself. Her statement (Ex.PL) was recorded at 3.55 p.m. by Illam

Singh, SI, Incharge Police Station Nissing.

At this stage, it will be useful to refer to Section 114A of the Indian Evidence Act ('the Act' - for short). Section 114A of the Act reads as under:-

“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

In terms of the above provision, there is a presumption as to absence of consent in certain prosecution for rape. It is provided that in a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 IPC where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court is to presume that she did not consent.

Clauses (a) and (b) of Section 376 (2) IPC would be relevant. Section 376 (2) (a) and (b) state that whoever (a) being a police officer commits rape - (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

The Hon'ble Supreme Court in **Deepak's** case (supra) with respect to Section 114-A of the Act has opined as under:-

“In order to enable the court to draw presumption as contained in Section 114-A against the accused, it is necessary to first prove the commission of sexual intercourse by the accused on the prosecutrix and second, it should be proved that it was done without the consent of the prosecutrix. Once the prosecutrix states in her evidence that she did not consent to act of sexual intercourse done by the accused on her which, as per her statement, was committed by the accused against her will and the accused failed to give any satisfactory explanation in his defence evidence on

this issue, the court will be entitled to draw the presumption under Section 114-A of the Indian Evidence Act against the accused holding that he committed the act of sexual intercourse on the prosecutrix against her will and without her consent. The question as to whether the sexual intercourse was done with or without consent being a question of fact has to be proved by the evidence in every case before invoking the rigour of Section 114-A of the Indian Evidence Act.”

In the present case, the appellant was a police officer and a public servant. He was in the limits of the police station where rape was committed, besides, the prosecutrix was in his custody as he had represented that her parents were coming to see her and they would meet her in his quarter. Besides, the act of rape was committed in the quarter of the appellant which was situated in the precincts of the police station. The fact of sexual intercourse being committed by the appellant on the prosecutrix stands proved. As has already been considered, there was no consent on the part of the prosecutrix to the sexual intercourse committed by the appellant. She in her statement Ex.PL stated that the appellant forcibly committed rape on her which she reiterates in her deposition in Court as PW11. In terms of Deepak’s case (supra), the question as to whether the sexual intercourse was done with or without consent being a question of fact has to be proved by the evidence in every case before invoking the rigour of Section 114-A of the Act. In the present

case, the fact of sexual intercourse is proved and it is also proved that it was without the consent of the prosecutrix. Therefore, Section 114-A of the Act would apply. In fact the appellant in his statement recorded under Section 313 Cr.P.C. has not taken the stand that the act of committing sexual intercourse was with the consent of the prosecutrix nor has he adduced any evidence to rebut the presumption contained in section 114-A of the Act. Question No.6 of the statement of the appellant recorded under Section 313 Cr.P.C. is to the effect as to what had he to say to the fact that he had bolted the door from inside and put off all his clothes. The prosecutrix raised a noise but nobody heard her as the quarter was far away. He then forcibly committed rape upon her. He told her not to disclose it to anybody and she came out from his quarter. To this he simply replied that it was incorrect. The appellant indeed did not plead consent and neither has any such suggestion been put to the prosecutrix or the other witnesses in this regard. There is no evidence on record which points to the prosecutrix having consented to the act in question.

In the instant case, the statement of the prosecutrix is found to be trustworthy and reliable. Moreover, her consistent statement is corroborated by the medical evidence on record. The offending act on the part of the appellant is duly proved by the evidence on record. As per the DNA report (EX.PG) including the electropherograms (Ex. PG/1 to Ex. PG/4), the semial stains found on the under garment and the salwar of the prosecutrix matched with

the DNA profile of the appellant. The FIR in question was lodged promptly. No mala fide has been proved against any of the official witnesses including the Senior Superintendent of Police, Karnal and the DSP, Assandh, who have fully supported the prosecution version.

It is, thus, apparent from the evidence on record that the appellant is guilty of the offence as charged. He acted in a most reprehensible manner by misusing the position of authority that he held. The prosecution has, thus, successfully proved its case beyond any reasonable doubt against the appellant. The learned trial Court has rightly convicted the appellant for the offence punishable under Section 376 (2) (a) (ii) IPC and sentenced him to undergo imprisonment for life besides pay fine.

At this stage, learned counsel for the appellant submits that the quantum of sentence is disproportionate to the offence in question, therefore, the sentence of life imprisonment imposed upon the appellant be reduced in the facts and circumstances of the case.

We have given our thoughtful consideration to this submission of the learned counsel for the appellant, but are unable to agree for reduction of the sentence imposed upon the appellant. Present is a case where the protector and custodian has himself turned into a predator and perpetrator of the crime. The appellant has grossly misused his official position in an extremely reprehensible manner. The prosecutrix was a young girl, who reposed trust in the appellant for providing protection to her and her husband as she was fearful of parents besides other relatives having married Mewa Ram

against their wishes. Thus, exploiting her already precarious position she was violated by the appellant. We, therefore, do not find any mitigating circumstance whatsoever to reduce the sentence imposed upon the appellant.

In view of the facts and circumstances discussed above, we find no ground to interfere with the conviction and sentence imposed upon the appellant. The impugned judgment and order passed by the learned Sessions Judge, Karnal are upheld. This appeal being devoid of any merit is, accordingly, dismissed.

(Lisa Gill)
Judge

(S.S.Saron)
Judge

November 07, 2016
rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No