

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

**Criminal Appeal No. S-93-SB of 2014 (O&M)**

Date of decision : March 26, 2018

Ram Mehar and another .....Appellants  
Versus  
State of Haryana ....Respondent

**Criminal Appeal No. S-915-SB of 2016 (O&M)**

Pala @ Satpal .....Appellant  
Versus  
State of Haryana ....Respondent

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

Present: Mr. Anupam Gupta, Senior Advocate with  
Mr. Gautam Pathania, Advocate and  
Mr. Ashok Kumar, Advocate  
for the appellants (in CRA-S-93-SB-2014).

Mr. Sandeep Gahlawat, Advocate  
for the appellant (in CRA-S-915-SB-2016).

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

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**LISA GILL, J.**

This judgment shall dispose of two appeals i.e. CRA-S-93-SB-2014 and CRA-S-915-SB-2016 as both these appeals arise out of a common judgment and order dated 24/28.10.2013.

CRA-S-93-SB-2014 has been preferred by the appellants – Ram Mehar and Surender and CRA-S-915-SB-2016 has been preferred by Pala @ Satpal challenging judgment dated 24.10.2013 passed by the learned Additional Sessions Judge, Jind, whereby appellants - Ram Mehar and Surender have been convicted for the offences punishable under Sections 376(2)(g), 365, 366, 506 read with Section 34 IPC and appellant – Pala @ Satpal has been convicted for the offence

punishable under Section 376(2)(g). Vide order dated 28.10.2013, appellants – Ram Mehar and Surender have been sentenced to undergo rigorous imprisonment for ten years besides pay a fine of ₹5,000/- for the offence punishable under Section 376(2)(g) IPC and in default thereof undergo rigorous imprisonment for two months; to undergo rigorous imprisonment for seven years besides pay a fine of ₹2,000/- for the offences punishable under Sections 365/34, 366/34 IPC and in default thereof undergo rigorous imprisonment for one month and to further undergo rigorous imprisonment for two year besides pay a fine of ₹1,000/- for the offence punishable under Section 506/34 IPC and in default thereof undergo rigorous imprisonment for 15 days. Appellant – Pala @ Satpal has been sentenced to undergo rigorous imprisonment for ten years besides pay a fine of ₹5,000/- for the offence punishable under Section 376(2)(g) IPC and in default thereof undergo rigorous imprisonment for two months.

Brief facts necessary for adjudication of this case are that FIR No. 143 dated 11.09.2011 (Ex. PE) for the offences punishable under Sections 365, 366, 376(g), 506, 34 IPC was registered at Police Station Julana on a written complaint (Ex.PA) submitted by the prosecutrix. The prosecutrix aged about 32 years submitted a complaint (Ex. PA) on 11.09.2011 before the SHO, Police Station Julana, District Jind.

In the complaint, it is stated that she was married to PW1 and had three children out of the said wedlock. It is stated that the

complainant alongwith her children and husband were sleeping in their house on 12.07.2011 when the appellants – Ram Mehar and Surender entered their house at about 12.30 midnight. They enticed her and pressurised her to leave her house. They also coerced her to take some of the gold and silver ornaments from her house and threatened her that in case she raised alarm, they would kill her husband and children. As per the said complaint, the appellants – Ram Mehar and Surender took the prosecutrix to one Yadav Hotel, Machha Diary, Gaziabad, where she was kept for 2/3 days and both of them with the help of their accomplices committed rape upon her one after the other. Thereafter, the appellants told her that they were being pressurised by the police and other villagers, hence, they would have to go to Police Station Julana. The complainant was pressurised to suffer a statement in favour of the appellant - Ram Mehar and other accomplices before the police and villagers to the effect that she had gone with them out of her own accord. It is further averred in the complaint that the prosecutrix was taken to Julana in an Indica car by Ram Mehar, Surender and two other accomplices. She was again threatened to make a statement in favour of Ram Mehar and others by the family members of Ram Mehar, who were standing outside the police station. In order to save the life of her family members, the prosecutrix allegedly suffered a statement in favour of the accused persons and the matter was allegedly compromised while deciding that the prosecutrix would reside with her husband and children. No specific date is mentioned in the complaint

but it is mentioned as 17.07.2011 in the supplementary statement of

prosecutrix (Ex. DG) recorded on 13.09.2011.

It is further alleged that when the complainant was returning home from the police station with her husband, Ram Mehar and his friends forcibly kidnapped her and threatened her husband not to inform the police. The said incident of abduction is stated to have taken place in the midst of the bustling market area of Julana in broad daylight. It is alleged that the appellant – Ram Mehar and his friends again took the prosecutrix in their car to Nizamundin, Delhi where she was kept for about 15 days and subjected to rape. Thereafter, the appellant - Ram Mehar allegedly took the prosecutrix forcibly to Paonta Sahib in Himachal Pradesh. Friends of Ram Mehar used to come to meet him and give him money and weapons at Paonta Sahib. As per the complainant, Ram Mehar used to talk to his friends and family members everyday on telephone. He repeatedly threatened to kill the prosecutrix and her family members. His friends also used to threaten her. It is alleged that Ram Mehar committed rape upon the prosecutrix every day. The prosecutrix stated that one day Ram Mehar had gone out and she managed to call her husband by asking a neighbour for help. She revealed the facts to her husband, who alongwith some other villagers, reached Paonta Sahib while looking for her. Ram Mehar allegedly fought with them and threatened to kill them but husband of the prosecutrix somehow managed to save her from their clutches on 09.09.2011. It is stated that the appellants - Ram Mehar, Surender, their family members and friends are still troubling and harassing her as well as her family members with an intention to

kill them. Legal action was, thus, prayed for against the appellants for having committed rape upon her and threatening to kill her and her family. On the basis of this typed written complaint, which does not bear any date FIR No. 143 (Ex. PE) was registered on 11.09.2011.

Investigation, in this case, was carried out by ASI Ranbir Singh (PW13). PW13 visited the spot in village Gatoli on 12.09.2011 but found the house of the prosecutrix locked. The prosecutrix and her husband were found present on the next day on 13.09.2011. Medical examination of the prosecutrix was conducted by Dr. Shweta Jain (PW4). Draft site plan (Ex. PV) was prepared. Statements of the prosecutrix and her husband were recorded. Inspector Rohtash Singh, SHO, Police Station Unchana verified the facts of the case. The appellant - Ram Mehar was arrested on 27.09.2011. He demarcated the place of occurrence, which allegedly took place on 17.07.2011. Draft site plan (Ex. PX) thereafter was prepared. Scaled site plan (Ex. PS) was prepared on 05.10.2011. The appellant – Surender was presented before the Inspector Rohtash Singh (PW10) on 14.10.2011 by Ex-Sarpanch Satbir Singh and was taken in custody. The appellant - Satpal was arrested on 13.11.2011.

It is to be noted at this juncture that the prosecutrix committed suicide on 08.10.2011. FIR No. 106 under Section 306 IPC was registered on 18.07.2012. All the three appellants have been convicted by the learned Additional Sessions Judge, Jind in the said matter. Two appeals i.e. CRA-S-81-SB-2014 and CRA-S-1314-SB-2016 filed by the appellants in respect to their conviction under Section

306 IPC are being dealt with separately.

After completion of investigation, final report under Section 173 Cr.P.C. in this case was presented on 09.12.2011. The matter was committed to the Sessions Court on 08.02.2012. Charge under Sections 365, 366 read with Section 34 IPC was framed against the appellants - Ram Mehar and Surender and charge under Section 376(2)(g) IPC was framed against all the three appellants, who pleaded not guilty and claimed trial. The prosecution examined as many as thirteen (13) witnesses to prove its case and tendered certain documents. The appellants in their statements under Section 313 Cr.P.C. denied the incriminating evidence put to them. They pleaded innocence and false implication. In defence, two witnesses were examined and documents Exs. DA to DM were proved.

Learned trial Court on considering the facts and circumstances of the case concluded that the prosecution had successfully proved its case beyond reasonable doubt against all the appellants and convicted them for the offences punishable under Sections 365, 366, 376(2)(g), 506 IPC and sentenced them as detailed in the foregoing paras.

Aggrieved from their conviction and sentence, the appellants have preferred these appeals.

Learned senior counsel for the appellants vehemently argues that the evidence on record is woefully insufficient to sustain the conviction of all the appellants. It is argued that the learned trial Court appears to have been swayed by the factum of the prosecutrix

committing suicide after registration of this case and has ignored the glaring deficiencies in the prosecution evidence. It is submitted that as per the prosecution version as mentioned in Ex.PA, the prosecutrix was enticed by the appellants – Ram Mehar and Surender to leave her house alongwith valuables. It is urged that this fact in itself reflects an element of consent on the part of the prosecutrix, admittedly a mature lady having three children. The story put forth, it is contended, is highly improbable and conjectural inasmuch as two persons entering the house of the prosecutrix in the dead of the night and alluring her away without any hue and cry being raised by her or her husband, who was admittedly, present at home is far fetched. Moreover, husband of the prosecutrix has given a different version in the proceedings under Section 306 IPC (on 18.02.2013) while stating that he was very much awake when the appellants entered his house. He stated that he was locked by the appellants in another room and threatened with dire consequences. Thereafter, prosecutrix was forcibly taken away by Ram Mehar and Surender. While deposing in the present proceedings on 16.10.2012 husband of the prosecutrix stated that he alongwith his children were asleep on 12.07.2011. He found his wife alongwith gold and silver ornaments to be missing when he woke up in the morning on 13.07.2011. It is further stated that on her return on 17.07.2011 at the police station his wife revealed that she had been forcibly taken away by all the three appellants. He reported her to be missing on 13.07.2011, though no such report is available on record. Thereafter, the matter is stated to have been compromised between the parties on

17.07.2011 when the appellants - Ram Mehar and Surender accompanied by the prosecutrix as well as the husband of the prosecutrix were present at the police station. It is urged that the allegation of the appellants – Ram Mehar and Surender kidnapping the prosecutrix in the middle of a busy bazaar/market on 17.07.2011 is again opposed to all probabilities. There is no evidence on record in this respect. Thereafter, the conduct of the husband of the prosecutrix in not approaching the authorities immediately is clearly suspect. Application (Ex. DA) was moved much later by the husband of the prosecutrix on 15.08.2011 wherein he stated that his wife has been taken by the appellants - Ram Mehar and Surender even after the compromise which took place in the police station on 17.07.2011. The matter was duly inquired into by the police authorities and it was found that the prosecutrix had accompanied the appellant - Ram Mehar out of her own free will as is reflected in report (Ex. DB). Reference is made to report (Ex. DM) proved by DW2. The prosecutrix, it is submitted, remained with the appellant - Ram Mehar and thereafter at Paonta Sahib, as per the prosecution version. The absence of any element of force and presence of consent, it is urged, is apparent from the facts and circumstances of the case.

Reference is also made to the proceedings under Section 107, 151 Cr.P.C. (Ex. DH) against the appellants and the husband of the prosecutrix at Paonta Sahib wherein it is mentioned that a quarrel had taken place on 06.09.2011 in respect to the illicit relations of the prosecutrix with the appellant - Ram Mehar. It is stated that the said

documents have been duly proved by the defence by examining DW1 – Ram Aasre, Sub Inspector, Ist India Reserve Battalion, Bangarh, District Una, Himachal Pradesh. Learned senior counsel further refers to the statement of the brother of the husband of the prosecutrix (brother-in-law of the prosecutrix) recorded on 15.08.2011 before the police authorities to the effect that the prosecutrix had gone with Ram Mehar and Surender besides all of them did not bear a good character and their whereabouts were not known. It was prayed that the custody of his sister-in-law (prosecutrix) be handed over to them after investigating into the matter. Learned counsel for the appellants reiterates that the factum of the prosecutrix committing suicide has coloured the decision in the present case. Crucial evidence in the matter relating to Section 306 IPC has peculiarly been led in the present matter and then read in the other case. Arguments in respect to the matter arising out of the FIR under Section 306 IPC have been heard separately and shall be dealt with in CRA-S-81-SB-2014 and CRA-S-1314-SB-2016.

Learned counsel for the appellants submits that there is nothing on record to indicate that the prosecutrix was ever abducted or subjected to rape by the appellants. It is contended that an association, however, illicit or immoral cannot be given the colour of a forcible or illegal act. The husband of the prosecutrix, it is submitted, was clearly aggrieved of the serious blow to his prestige which was perceived to be lowered in his community by his wife's act. He sought appeasement by ensuring that she is brought back to the matrimonial home and remedial

steps taken to restore his image in society by projecting his wife to be a victim.

In respect to the appellant – Pala @ Satpal, it is additionally argued that he has not been specifically named in the complaint (Ex. PA) neither did husband of the prosecutrix name the said appellant in his statement before the police. Pala @ Satpal is sought to be involved at a later stage without any evidence on record to inculcate him. It is, thus, prayed that both these appeals be allowed, impugned judgment and order dated 24.10.2013 and 28.10.2013 be set aside and all the appellants be acquitted of the charges against them.

Learned counsel for the State while refuting the arguments raised by learned counsel for the appellants submits that there is specific, clear and cogent evidence on record, which proves the guilt of the appellants beyond the shadow of reasonable doubt. Mere fact that complaint was not immediately lodged cannot detract from the prosecution version once the prosecutrix herself submitted complaint (Ex.PA) detailing the events as they unfolded. Similarly, just because the prosecutrix was a 32 years old married women, having three children does not necessarily indicate that she was a consenting party. It is, thus, prayed that both the above said appeals be dismissed and the impugned judgment and order dated 24.10.2013 and 28.10.2013 be upheld.

I have heard learned counsel for the parties at length and have carefully gone through the record with their able assistance.

FIR No. 143 (Ex. PE) was registered on the basis of an

undated complaint duly typed in Hindi and signed by the prosecutrix who was admittedly illiterate. It is stated in the complaint that the prosecutrix on 12.07.2011, alongwith her children and husband were sleeping in their house. The appellants - Ram Mehar and Surender entered their house in the dead of night at about 12.30. They allured her to accompany them and pressurised her to take along valuables from her house including some gold and silver jewellery. It was under threat of her children and family being killed that she accompanied the said appellants. They stayed at one Yadav Hotel, Machha Diary in Gaziabad where she was kept for 2/3 days and subjected to rape by the above said two appellants alongwith their companions. She was then brought to the Police Station, Julana by the appellants as pressure was allegedly built up by the police and the villagers. The prosecutrix is further alleged to have been pressurised to state that she went with the said two appellants out of her own free will and give a statement in favour of the appellants, which she ultimately did when she was brought to Julana police station by Ram Mehar, Surender and two other persons in an Indica car. Thereafter, she was accompanying her husband from the police station that the appellant - Ram Mehar and his friends kidnapped her and threatened her husband not to take any action or he would be done to death. Prosecutrix was again taken to Nizamuddin, Delhi where she was kept for 15 days and subjected to rape. Thereafter, she was forcibly taken to Paonta Sahib in Himachal Pradesh. It is mentioned in the complaint that various friends of Ram Mehar used to visit him to give him money and arms. Ram Mehar used

to talk to his friends and family everyday. He threatened the prosecutrix that he would kill her as well as her family. Ram Mehar's friends are also alleged to have threatened her. It is averred that Ram Mehar used to commit rape upon the prosecutrix everyday. It is further alleged that one day when Ram Mehar had gone out the prosecutrix asked someone for help and managed to call her husband upon which her husband alongwith some villagers came to Paonta Sahib looking for her. Ram Mehar quarrelled with them but they somehow managed to rescue her from his clutches on 09.09.2011. It is alleged that Ram Mehar, Surender and their family members still have an intention to kill her and her family. Thus, written complaint (Ex. PA) praying for action against the said appellants for kidnapping and rape was submitted on 11.09.2011 on the basis of which FIR No. 143 (Ex. PE) was registered. Medical examination of the prosecutrix was thereafter conducted. Medico legal report is Ex. PH. PW4 - Dr. Shweta Jain examined the prosecutrix on 13.09.2011. The prosecutrix unfortunately passed away on 08.10.2011 having committed suicide by hanging herself.

It is to be noted that statement of the prosecutrix under Section 164 Cr.P.C. was not recorded.

It is to be noted that after the prosecutrix was allegedly kidnapped on 17.07.2011 the second time, PW1 – husband of the prosecutrix lodged a complaint on 08.08.2011, (Ex. DJ). He suffered a statement before the police authorities at Police Station Julana on 15.08.2011 (Ex.DA) to the effect that his wife had illicit relations with

Ram Mehar and she had accompanied the appellant - Ram Mehar on

13.06.2011 and the matter was compromised in the police station on 17.07.2011. It was agreed that his wife would stay with him. Accordingly, PW1 alongwith his wife were coming back from the police station that his wife went to get a battery of her mobile. It is stated that when she did not return, PW1 realised that she has been taken away by Ram Mehar. It was prayed that his wife be looked for and recovered. The matter was inquired into and vide report (Ex.DM), it was found that the prosecutrix had left out of her own accord and no action was called for. PW1 was duly confronted with these documents. He admitted his signatures on Ex. DA. Thereafter, another statement of PW1 was recorded on 12.09.2011 (Ex. DD) wherein again he has mentioned about illicit relations of his wife with Ram Mehar. PW1 was duly confronted with Ex. DD and he admitted his signatures thereon.

Husband of the prosecutrix at that stage stated that the prosecutrix accompanied the appellant Ram Mehar herself. There is no allegation of abduction of the complainant's wife. Statements of the prosecutrix as well as her husband were recorded on 12.09.2011 to the effect that the matter has been compromised between the parties. The prosecutrix stated that she would live with her husband and no action be taken against anyone.

Unfortunately, she committed suicide on 08.10.2011. A telephone call was received regarding death of the prosecutrix at the police station Julana on 08.10.2011 from Dharampal son of Tek Chand.

Proceedings under Section 174 Cr.P.C. were conducted. PW1 – husband of the prosecutrix recorded his statement that his wife used to

remain sad for a number of days and used to feel ashamed. Due to this reason, she committed suicide and none was to blame for that. DDR No. 11 dated 08.10.2011 was recorded in view of his statement.

However, an application dated 22.02.2012 was moved in the present case for further investigation in the matter with an allegation that all the accused used to pressurise the prosecutrix directly or indirectly to withdraw the case filed by her and in case she did not compromise the matter, they would defame her and they used to threaten her to kill her family members. Further investigation was directed by the ACJM, Jind on 28.01.2012. Thereafter, FIR No. 106 under Section 306 IPC was registered on 18.07.2012. It is to be noted that the suicide note, which was relied upon by the learned trial Court in the matter under Section 306 IPC has been produced in the present proceedings as Ex. PB. The alleged suicide note recovered on 08.01.2011 statedly lying near the dead body of the prosecutrix is a hand written note on a piece of paper stating that appellants - Ram Mehar, Surender, Pala, one Mussa, Ram Kumar (the latter two not proceeded against) have spoiled the life of the prosecutrix, they should be punished. It is further written that due to them, the prosecutrix was dying of shame. The name of the prosecutrix is mentioned, alleged to be her signatures. It is to be noted that PW1 – husband of the prosecutrix specifically stated that she was illiterate and could only append her signatures. The hand writing on the alleged suicide note has been compared with random writing on a scrap of paper (Ex. PC). The said specimen (Ex. PC) was handed over by the husband of the

prosecutrix to ASI Ranbir Singh (PW13) on 30.05.2012 and was taken in possession vide recovery memo (Ex. PD). There is nothing on record to prove that the said writing (Ex.PC) was of the prosecutrix. The report of the hand writing expert is available on record of this case as Ex.P1.

PW1 - husband of the prosecutrix in his statement before the learned trial Court in the present case stated that he alongwith his children and wife were sleeping in their house on 12.06.2011. When he woke up in the morning, he found his wife missing. Certain gold and silver ornaments lying in the Almirah were also found missing. PW1 stated that his wife on returning to the Police Station, Julana on 17.07.2011 revealed that she had been forcibly taken away by the appellants – Ram Mehar, Surender and Satpal, who repeatedly raped her and thereafter brought her to the police station under threat of the police. While returning from the police station, all the three appellants came on a motor cycle, stopped them and kidnapped his wife while threatening to kill him and forcibly took his wife away on a motorcycle. It is stated that PW1 again went back to the police station to report the incident. He was assured that needful shall be done. PW1 searched for his wife but to no avail. After one and a half months, he received a call from his wife from Paonta Sahib, who revealed that she was sexually exploited by administering some intoxicant to her. PW1 alongwith his co-villagers went to Paonta Sahib. They spotted Ram Mehar walking in a street on which they chased him. Ram Mehar opened the lock of a house, went inside. PW1 entered the house and

found his wife lying on a cot in a semi-conscious state. They sprinkled water on her face. She re-gained consciousness and when they asked her to accompany them to her village, she initially refused due to fear of the appellant - Ram Mehar while stating that he would beat her and kill her. Police authorities at Paonta Sahib came to the spot and took PW1, his wife as well as Ram Mehar to the police station. They were released on the next day and they came back home. Thereafter, application (Ex.PA) was moved before the police authorities. PW1 further stated that being ashamed, his wife ultimately committed suicide on 08.10.2011, leaving behind a suicide note (Ex. PB).

In his cross examination, PW1 stated that he did not see any of the accused taking away his wife on 12.07.2011 at midnight. An application was moved on 13.07.2011 though no such application is available on the file. In the cross examination, PW1 has admitted his signatures on Ex. DA. He further admitted that the compromise (Ex. DB) was effected in the police station in respect to his complaint dated 15.08.2011 (Ex. DA). He denied the proceedings under Section 107, 151 Cr.P.C at Paonta Sahib. He admitted that his brother Krishan accompanied him at that time he went to Paonta Sahib. It is admitted by PW1 that his wife was illiterate. PW1 further admitted that the place from where the accused had kidnapped his wife on 17.07.2011 is one of the busiest places in Julana. There were several shops and commercial establishments in the area. At the time of occurrence, all the shops were open and the place was fully crowded. It is revealed that the prosecutrix committed suicide in the house of his brother whereas

rough site plan dated 13.09.2011 is of his house. No ornaments or valuables were recovered from any of the accused persons.

Though the evidence led in the matter under Section 306 IPC is not to be read in the present case, it is to be mentioned that PW1 while deposing in the matter under Section 306 IPC has given a different version in respect to the alleged incident of the intervening night of 12/13<sup>th</sup> June, 2011 when his wife was kidnapped for the first time by Ram Mehar and Surender. PW1 stated that his wife was taken away forcibly by the appellants - Ram Mehar and Surender on 12.07.2011 while threatening to kill him if he disclosed the incident to anyone. They confined him in a room and locked it from the outside while going away. PW1 further stated that his alarm attracted his neighbour. It is stated that he collected a number of people and went to the Police Station, Julana but the police sent them back with an assurance that action shall be taken against the accused but nothing was done. In his deposition in the present case on 16.10.2012, PW1 specifically mentioned that he had woken up in the morning and found his wife missing. He never saw any of the accused taking away his wife on 12.07.2011 whereas in his statement recorded in the matter under Section 306 IPC on 18.02.2013, he gives a different version wherein he identified the appellants – Surender and Ram Mehar as the persons forcibly taking away his wife. Admittedly, no evidence of any such complaint is available on record and the reason for change of the version given by him in the present case on 16.10.2012 is not available.

In the present matter, PW1 has denied the proceedings under Sections

107, 151 Cr.P.C. at Paonta Sahib while admitting the same in his deposition in the matter regarding Section 306 IPC. It is pertinent to note that in the proceedings arising out of the FIR under Section 306 IPC, the present case file was summoned as Ex. DB and PW1 was duly confronted with the relevant documents/statements.

PW13 ASI Ranbir Singh, the Investigating Officer in his cross examination admitted that he never visited Paonta Sahib, Gaziabad or any other place outside Julana with regard to investigation of the case. No arms or weapons were recovered from the appellant - Ram Mehar. PW13 expressed ignorance whether the deceased was educated or an illiterate person.

DW1 SI Ram Aasre proved the record in regard to the proceedings dated 06.09.2011 under Section 107, 151 Cr.P.C at police Station Paonta Sahib, District Sirmor, Himachal Pradesh. Photocopies of calendra Ex. DH, DDR Ex. D1 containing the statements of Lady Constable Mathura Devi and Constable Ramesh Chand were proved. Medico Legal report dated 07.09.2011 of the prosecutrix, her husband, Ram Mehar and others form part of the calendra. DW2 Constable Anil Kumar, Police Station Julana proved application dated 08.08.2011 (Ex. DJ) moved by the husband of the prosecutrix before the Senior Superintendent of Police, Jind. The findings recorded by the police on 15.08.2011 (Ex. DK), the findings by the SHO, Police Station Julana (Ex. DM) and statement of one Dharampal (Ex. DL) were proved.

The prosecution version, in this case, reveals a number of inconsistencies, which are material and substantial. A serious doubt is

indeed cast on the prosecution version. This is so for various reasons as detailed hereunder.

It is not in dispute that the prosecutrix aged 32 years was married and a mother of three children. It is highly improbable that she could be allured or enticed to leave her matrimonial home in the dead of night on 12.07.2011 and that too alongwith her valuables in the manner stated. Thereafter, she was allegedly confined for a few days at Yadav Hotel, Machha Diary, Gaziabad. The defence has proved certificate dated 22.03.2013 (Ex. DN) by the Gram Panchayat, Dhoom Manikpur Dadri, District Gautam Budh Nagar to the effect that at Dairy Machha, there is no such establishment by the name of Yadav Hotel for the past about three years in the locality.

Be that as it may, the prosecution story that the prosecutrix was under duress on 12.06.2011 and thereafter was again kidnapped in the midst of the busiest market place at Julana, is not substantiated by any evidence on record. There is nothing on record to show that the husband of the prosecutrix immediately reported the matter to the police authorities. In fact, PW1 in his cross examination stated that he only made a verbal complaint to the police authorities on 17.07.2011. In case, the prosecutrix had been kidnapped from the midst of the market place, there would have been some witnesses, who would have corroborated the prosecution story. However, none has been examined, despite the fact that the husband of the prosecutrix – PW1 has clearly stated in his cross examination that at the time of the alleged occurrence, shops and commercial establishments were open and the

place was crowded.

Further, the prosecutrix is alleged to have been kept at Gaziabad for a number of days and thereafter at Paonta Sahib. There is nothing on record to indicate the telephone number from which the prosecutrix called her husband, revealing herself to be kept forcibly at Paonta Sahib. It is stated by the prosecutrix in her statement (Ex. DG) that she sought help from a neighbour at Paonta Sahib and called her husband. However, the identity of this neighbour is not revealed. No reason is forthcoming as to why the husband of the prosecutrix did not immediately intimate the police authorities but undertook to rescue his wife on his own accompanied by his brother and other villagers.

The defence has proved the calendra under Section 107, 151 Cr.P.C (Ex. DH) wherein it is specifically mentioned that information was received on 06.09.2011 that 4/5 people alongwith one woman were fighting amongst themselves near Beheral barrier. On this information, SI Ram Aasre (DW1) alongwith other police officials proceeded to the spot. Near the barrier, they saw five men and one woman fighting with each other. They were abusing and scuffling with each other. On inquiry, they revealed their names to be Dharampal son of Tek Ram, Satyawan son of Sunehra Singh, Dalbir son of Ram Chand (husband of the prosecutrix), Sultan son of Ram Chander (brother of PW1), Ram Mehar son of Dhup Singh (appellant) and the name of the prosecutrix is mentioned. It is stated that due to suspicion about the prosecutrix having illicit relations with Ram Mehar, a fight had taken place. However, the prosecutrix was protesting but the said persons

were fighting with each other. They were all brought to the police station. Their medical examination was conducted. Proceedings under Section 107, 151 Cr.P.C were initiated. DDR (Ex. D1) is a part of the calendra. Statements of Lady Constable Mathura Devi as well as the official giving information are attached with the calendra. Medical examination report (Ex. PH) is also attached. In respect to the prosecutrix, it is specifically mentioned that no injury was detected on her person neither is there any mention of the prosecutrix being in a state of intoxication. A perusal of the said calendra as well as earlier statement of Dharampal (Ex. DL) do not indicate any element of force exerted by any of the appellants. It is to be noted that Dharampal son of Tek Ram, who professes to be the brother of PW1 from the brotherhood, has been given up by the prosecution for reasons best known to it.

As per the medical evidence on record, no injury was detected on the person of the prosecutrix. As per the FSL report (EX. PJ), semen was not detected though the same would be irrelevant in the facts and circumstances of the case as the medical examination was admittedly conducted much after the alleged incident. However, as per the FSL report dated 02.02.2012, in respect to the samples taken on 13.09.2011, no common drugs has been detected in the blood samples of the prosecutrix.

The learned trial Court has greatly stressed upon the medico legal report (Ex. PH) in respect to the medical examination conducted on 13.09.2011 to urge that the prosecutrix was shown to be

partially sedated. In my considered opinion, medical examination of the prosecutrix indicating partial sedation on 13.09.2011 does not in any manner indicate that she was kept under the influence of any intoxicant etc. by the present appellants. This is specifically so for the reason that in the medical examination conducted at Paonta Sahib, there is no such observation. No injury was detected on the person of the prosecutrix at that stage on 09.09.2011 and neither was she found to be under influence of any intoxicant or drug on 09.09.2011. Therefore, mention of her being partially sedated on 13.09.2011 is of no avail to the prosecution.

As per FSL report dated 02.02.2012 (Ex. PJ), no common drug was detected in the blood sample. Therefore, observation of the learned trial Court that it is possible that the deceased/prosecutrix might have been given some other uncommon drug by the appellants is clearly erroneous and the learned trial Court has travelled in the realm of presumption which is not justified for convicting an accused. To the contrary, the observation by PW4 that the prosecutrix was partially sedated on 13.09.2011, creates a further doubt in the prosecution version, especially when the same is read in conjunction with the medical examination of the prosecutrix conducted at Paonta Sahib. Similarly, the learned trial Court has misdirected itself by presuming that in case the prosecutrix had voluntarily eloped with the appellant – Ram Mehar she would not have submitted the complaint (Ex. PA) neither would she have committed suicide. It is further wrongly presumed by the learned trial Court that in case the prosecutrix had

willingly accompanied the appellant, she would not have called her husband – PW1 from Paonta Sahib.

It is unfortunate that the prosecutrix, in this case, committed suicide on 08.10.2011. However, suicide note (Ex. PB) does not inspire much confidence. The manner of its recovery as well as its comparison with a cryptic piece of writing alleged to be of the prosecutrix does not augur well for the prosecution. A detailed discussion regarding the same forms part of the judgment of even date in the appeals against conviction of the appellants under Section 306 IPC. All the appellants have been acquitted of the charge under Section 306 IPC vide the said judgment while affording the benefit of doubt to them.

As far as the appellant – Pala @ Satpal is concerned, he has not been named either in the complaint (Ex. PA) or by the husband of the prosecutrix in his statement under Section 161 Cr.P.C. It is at a much later stage that he has been named as an accused without there being any concrete evidence against him.

A comprehensive evaluation and perusal of the evidence on record creates a palpable doubt on the prosecution version. The discrepant time line as well as statements of the material witnesses, unnatural conduct of the husband of the prosecutrix and divergent stands taken at different points of time, cast a significant dent on the prosecution version. Doubtlessly, in this case, benefit of the statement of the prosecutrix is not available due to her unfortunate demise on 08.10.2011. However, the evidence on record does not unerringly point

to the guilt of the appellants. As discussed above, there is nothing on record to cogently prove that the prosecutrix was forcibly taken away from her matrimonial home on 12.07.2011 by appellants - Ram Mehar and Surender or that she was subjected to rape by all the three accused. The prosecution story that the prosecutrix was thereafter again abducted on 17.07.2011m, taken to Nizamuddin, then Poata Sahib, illegally confined there by all the appellants, kept under intoxication and subjected to rape is not free from a substantial doubt. The foundational facts of the prosecution case are shaky and discrepant. It is trite that the prosecution is under a duty to prove its case beyond reasonable doubt. In the present case, a serious doubt is cast on the prosecution case. Shadow of doubt looms large thereon. Benefit of doubt necessarily has to accrue to the accused in the facts and circumstances of the case. All the appellants are indeed entitled to the benefit of doubt in this case.

Accordingly, both these appeals are allowed. Consequently, impugned judgment dated 24.10.2013 and order dated 28.10.2013 passed by the learned Additional Sessions Judge, Jind are set aside. All the appellants – Ram Mehar, Surender Singh (in CRA No. S-93-SB of 2014) and Pala @ Satpal (in CRA No. S-915-SB of 2016) are acquitted of all the charges against them. The appellants be released forthwith in case not required in any other case.

**(Lisa Gill)**  
**Judge**

March 26, 2018  
rts

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