

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

**CRA-AD-39-2020 (O&M)
Date of Decision: 10.05.2023**

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..... Appellant(s)

Versus

STATE OF HARYANA AND ANOTHER

..... Respondent(s)

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

Present: Ms. Mannat Pal Kaur Anand, Advocate (Amicus Curiae)
for the appellant.

LISA GILL, J.

1. Complainant has filed this appeal, being aggrieved of judgment dated 27.09.2019, passed by learned Additional Sessions Judge-cum-Special Judge, Rohtak, whereby respondent no.2 has been acquitted of the charges under Sections 376(2)(n), 354-C and 506 read with Section 34 Indian Penal Code.

2. Brief facts necessary for adjudication of the matter are that FIR No.102 dated 24.07.2018 under Sections 376(2)(n), 506 IPC was registered on the basis of a written complaint dated 24.07.2018, submitted by the complainant/prosecutrix. Prosecutrix stated that she alongwith her husband resided in rented accommodation and that respondent no.2 being son of maternal uncle of her husband used to visit their house regularly in her husband's absence and had been forcibly committed rape upon her since 28.12.2017. Respondent no.2 is alleged to have prepared her video due to which she did not disclose about commission of offence being fearful that he would publicize the video.

3. It is further stated that on 10.07.2018, respondent no.2 handed over some sleeping pills to her and under his pressure and at his bidding, she administered these sleeping pills to her husband in his meal. Thereafter, on 16.07.2018, it is alleged that maternal uncle and aunt of respondent no.2 came to her residence and took her to Gohana where a room had been taken on rent for her. Brother of respondent no.2 is stated to have shifted all her belongings at the said rented accommodation where respondent no.2 continuously committed rape upon her. Maternal uncle of respondent no.2 is also alleged to have tried to outrage her modesty on number of occasions. She kept tolerating their atrocities, however, on 23.07.2018 after managing to escape from their clutches, she narrated the entire sequence of events to her husband. It is alleged that respondent no.2 committed rape upon her while threatening her with death.

4. FIR No.102 dated 24.07.2018, under Sections 376(2)(n), 354-C and 506 read with Section 34 IPC was registered at Police Station Women District Rohtak on the basis of said application. Prosecutrix was medically examined at General Hospital, Rohtak on 24.07.2018. Medico-legal report and requisite parcels were taken in police custody. Statement of the prosecutrix under Section 164 Cr.P.C. was also recorded. Site plan of the place of occurrence was prepared on 25.07.2018. Respondent no.2 was arrested on 15.08.2018. Mobile phone was recovered from the accused. During investigation all the other accused (four in number) were found innocent with offences punishable under Sections 354-C and 34 IPC being dropped. Final report under Section 173 Cr.P.C. was prepared against respondent no.2 and submitted. Charge under Sections 376(2)(n), 342 and 506 IPC was framed, to which he pleaded not guilty and claimed trial. Prosecution examined as many

as 14 witnesses to buttress its case and proved the documents on record.

5. Statement under Section 313 Cr.P.C. of respondent no.2 was recorded wherein he denied all incriminating material put to him and pleaded innocence and false implication. Respondent no.2 stated that prosecutrix and her husband demanded money from his parents many a times even as he was in judicial custody. The conversation/s, it is stated, had been recorded by his parents and he sought to submit the same in defence. He tendered CDs Mark-A to Mark-D in defence evidence. Learned trial Court formulated the following points for determination:-

- (i) Whether the accused forcibly repeatedly committed rape upon the prosecutrix at her house and Gohana and wrongfully confined her at Gohana from 16.07.2018 to 22.07.2018 and committed criminal intimidation by threatening her to kill her and her son and committed the offence punishable under Sections 376 (2)(n), 342 and 506 of Indian Penal Code; and
- (ii) Whether the accused has succeeded in probalising his defence?

6. After considering the evidence on record, facts and circumstances learned trial Court concluded that prosecution failed miserably to prove its case against respondent no.2, thus, he was acquitted of the charges levelled against him. Aggrieved therefrom present appeal has been filed by the prosecutrix.

7. At this stage, it is to be noticed that this appeal was filed in January, 2020 but it came up for hearing only on 19.04.2022 due to outbreak of the pandemic COVID 19. Same was adjourned at request of learned counsel for the applicant/appellant and yet again adjourned on two occasions at request of learned counsel for the applicant/appellant. Record of the learned trial Court was requisitioned on 23.03.2023 and matter adjourned to 24.04.2023 but none appeared on behalf of the applicant/appellant. Last opportunity was afforded to

learned counsel for the applicant/appellant to address arguments, however, none again appeared on behalf of the applicant/appellant on 24.04.2023 when Amicus Curiae was appointed to assist the Court.

8. Learned counsel for the applicant-appellant argues that learned trial Court has grossly erred in acquitting respondent no.2 of the charges framed against him. It is argued that prosecutrix has given a clear and vivid account of the commission of offence right from December 2017. Prosecutrix has given the complete details as to how she was wrongfully confined at Gohana from 16.07.2018 to 22.07.2018 and how by criminally intimidating her by threatening to kill her as well as her son, offences under Sections 376(2)(n), 342 and 506 IPC were committed. Learned counsel further refers to DNA report Ex.P-17, duly proved by PW10 Dr. Rajeev Kawatra, Senior Scientific Officer, DNA Division, FSL, Madhuban, Karnal. Learned counsel submits that as per said DNA report, DNA profile of seminal stains on the *Salwar* of the prosecutrix is matching with DNA profile of respondent no.2, therefore, commission of the offence is duly proved on record. Thus, learned trial Court has erred in acquitting the accused. It is thus prayed that this appeal be allowed, judgment dated 27.09.2019 be set aside and respondent no.2 be convicted for the offences as charged and be punished accordingly.

9. We have heard learned counsel for the applicant-appellant and have gone through the record with her able assistance but we find no ground which calls for interference in the impugned judgment whereby respondent no.2 has been acquitted. This is so for the reasons as discussed hereinafter.

10. Perusal of the written complaint, on the basis of which FIR was registered, reveals that allegation raised by the prosecutrix is that respondent

no.2 regularly visited their residence in the absence of her husband and committed rape upon her since 28.12.2017. In her testimony before the learned trial Court she reiterated that respondent no.2 had committed rape upon her for the first time on 28.12.2017 at her residence in the absence of her husband and had prepared her video. He further threatened to kill her son in case she disclosed the same to her husband and also threatened to make the video viral. Prosecutrix in her testimony before learned trial Court went on to elaborate that on 28.12.2017 she had been drugged by respondent no.2 with a *Samosa* he had given her. She became unconscious and on the next morning sent her son to school. It was thereafter that respondent no.2 showed her the video which had been prepared by him at the time of committing rape upon her at night. She further admitted that she administered sleeping pills to her husband at the bidding of respondent no.2. Said sleeping pills were handed over to her by respondent no.2 and that under pressure of maternal uncle and aunt of respondent no.2, she fetched her house-hold articles on 16.07.2018 and accompanied them to Gohana. Further on their asking she told the owner of the rented room that she was wife of respondent no.2. Prosecutrix has narrated about being drugged by respondent no.2 and his maternal uncle and aunt through edibles i.e. *Chhole Bhature*. In her cross-examination prosecutrix has failed to even reveal the date of her marriage with her alleged husband Vikas - PW11. She revealed that she was earlier married with one Sandeep son of Maha Singh and her son aged 08 years was born from her first marriage. Her first husband, it is stated, had gone missing after the birth of her son on 23.11.2010. A missing report in this respect was purportedly lodged by her at Police Station Gohana but she could not offer any details thereof. She could

also not offer any proof of her marriage with Vikas - PW11. On one hand prosecutrix stated that she enjoyed good relations with her husband Vikas - PW11 and never concealed anything from him but paradoxically she admittedly never told him about commission of rape by respondent no.2 for such a long time. She had denied the suggestion that it is only to save her honour in society that she lodged the complaint against respondent no.2 when the matter came out in the open. Prosecutrix admitted that she was regularly talking with the accused, though, it is stated that accused forced her to talk with him as if she had affection for him. No video recording as alleged to have been prepared, was recovered despite mobile phone of the accused being duly recovered.

11. It is pertinent to note at this stage that at one point of time prosecutrix insists that she was drugged when she was raped by respondent no.2 but at the same time in the cross examination she claimed to be in her senses at the time of commission of rape and that she had succumbed due to threat extended by respondent no.2 regarding killing of her son, meanwhile admitting that she had never ever seen any weapon in the hand of the accused. The child was admittedly present at the time of commission of offence on various occasions. Furthermore, no evidence on record has been pointed out which indicates any reason why the prosecutrix would claim herself to be wife of the accused before the landlord of the premises, accused had taken on rent. There is no indication that she was kept confined and that she had no occasion to interact with anyone and asked for help.

12. There is no gainsaying that conviction of an accused can be based on the sole testimony of the prosecutrix, subject to such testimony being

entirely creditworthy and of 'sterling quality'. Testimony of the prosecutrix, who has deposed as PW7 is definitely not of such quality, which would impel the Court to base conviction of the accused solely on the same. Gainful reference in this respect can be made to the judgment of the Hon'ble Supreme Court in ***State of Himanchal Pradesh Vs. Asha Ram, 2006 Cri.L.J. 139***, wherein it is held that conviction can doubtlessly be founded on the sole testimony of the prosecutrix unless there are compelling reasons for seeking corroboration. Evidence of the prosecutrix is put on a higher pedestal than that of a injured witness and minor contradictions and insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The sine qua non for conviction on the sole testimony of the victim is that it should be consistent, reliable, probable and of sterling quality inspiring the confidence of the Court. However, in case, testimony of the victim does not inspire confidence, it is open to the Court to seek corroboration thereof. The Hon'ble Supreme Court in ***Santosh Prasad alias Santosh Kumar Vs. The State of Bihar, (2020) 3 SCC 443***, has been held that testimony of the victim should be of sterling quality. Reference has been made to para 22 of its earlier decision in *Rai Sandeep alias Deepu Vs. State (NCT of Delhi), (2012) 8 SCC 21*, which is reproduced as here under:-

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

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its

face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material

particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

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

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

13. Perusal of the evidence reveals that prosecutrix has given a version which is highly improbable and therefore, the need for corroboration. Evidence on record provides no corroborations thereof. We do not find the version of the prosecutrix to be of such quality to invite conviction of the accused solely on its basis. In the given circumstances it would not be safe to do so.

14. Similarly, testimony of Vikas – PW11, statedly husband of the prosecutrix does not inspire much confidence. PW11 - Vikas deposed that he remained on duty from 7:00 A.M. to 5:00 P.M. and that his wife shared everything with him. He could not tell the date on which his marriage was solemnized with the prosecutrix and neither did he have any proof of his marriage with her. He could not even reveal the duration for which they had been living together as husband and wife. Vikas PW11, admitted that he was

regularly coming to the rented house where both of them resided from 16.07.2018 till 22.07.2018 but he never lodged any complaint about his wife being missing. Conduct of Vikas - PW11 husband of the prosecutrix is indeed strange. It is opposed to all probabilities that a husband would not make any effort to trace out his wife who was missing for a week and would very conveniently wait for her to turn up and reveal details of rape being committed upon her by his cousin.

15. At this juncture, it is relevant to refer to testimony of PW12 ASI Rekha, who stated in her cross-examination that the prosecutrix voluntarily accompanied respondent no.2 and that they lived at Gohana. Evidence on record is far from convincing that the prosecutrix, a mature woman with a child had been taken forcibly by respondent no.2 and that rape had been committed upon her and that too in the presence of minor child.

16. Reference to DNA report Ex.P17 proved by PW10 Dr. Rajeev Kawatra is of no avail to the prosecutrix. In the wake of the evidence on record, which indicates that prosecutrix had voluntarily accompanied respondent no.2, matching of the DNA profile of respondent no.2 with the seminal stains on the Salwar of the prosecutrix is clearly irrelevant. The same does not in any manner by itself, prove commission of offence as alleged by the prosecution. Medical evidence on record also does not support the prosecution version. Admittedly, no mark of injury etc. was found on the person of the prosecutrix. Though absence of injuries by itself again can not be a ground to negate allegations raised by a prosecutrix, the same assumes importance in the factual matrix of the present case and create a doubt on the prosecution version.

17. Prosecution has indeed miserably failed to conclusively prove its case against respondent no.2 beyond reasonable doubt. Evidence on record clearly entitles the accused to benefit of doubt. Therefore, conviction of the accused on sole testimony of the prosecutrix which receives no corroboration from the evidence on record is not made out in this case. Learned counsel for the appellant is unable to point out any evidence whatsoever to indicate complicity of the accused in the commission of offence as alleged.

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

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

19. Reference in this regard can also be made to judgment of Hon'ble Supreme Court in *State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324*, wherein it is held that it is not permissible to interfere with

finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances.

20. Learned counsel for appellant, despite the vehement arguments is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 27.09.2019, passed by learned Additional Sessions Judge-cum-Special Judge, Rohtak, which calls for any interference by this Court.

21. No other argument has been raised.

22. There is a delay of 14 days in filing the appeal. As the appeal has been decided on merits, question of condonation of delay in filing the appeal is rendered academic. Application is disposed of accordingly.

23. Accordingly, appeal is dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

10.05.2023

Sunil

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