

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CRA-S-3136-2019 (O & M)  
Judgment reserved on: 21.10.2022  
Pronounced on: 12.01.2023

Pankaj Singh

...Appellant

Versus

State of Haryana

...Respondent

CRA-AS-283-2019 (O & M)

‘S’

...Appellant

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Vijay Kumar Sheoran, Advocate for the appellant  
in CRA-S-3136-2019 and  
for respondent No.2 in CRA-AS-283-2019.

Ms. Deepshikha Chauhan, AAG, Haryana.

Mr. Sumit Sangwan, Advocate for the complainant  
in CRA-S-3136-2019 and  
for the appellant in CRA-AS-283-2019.

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**SUVIR SEHGAL, J.**

This judgment will dispose of both the above-mentioned  
appeals as they arise out of judgment of conviction and order of sentence  
dated 25.09.2019, whereby Pankaj Singh, convict (appellant in CRA-S-

3136-2019 and respondent No.2 in CRA-AS-283-2019) has been held guilty and convicted for commission of offence under Sections 342, 376 and 201 of the Indian Penal Code, 1860, (for short “IPC”) and sentenced as under:-

| Offence under Section | Sentence                                                                                                                                                                                      |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 342, IPC              | Rigorous imprisonment for a period of six months alongwith fine of Rs.1,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for a period of one month.  |
| 376, IPC              | Rigorous imprisonment for a period of ten years alongwith fine of Rs.1,00,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for a period of one year. |
| 201, IPC              | Rigorous imprisonment for a period of three years alongwith fine of Rs.5,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for a period of one month. |

Convict-Pankaj Singh, is in appeal challenging the judgment of conviction and order of sentence, whereas the complainant-prosecutrix in the connected appeal is before this Court seeking enhancement of fine and award of compensation under Sections 357 and 357-A of the Code of Criminal Procedure, 1973 (for short –“the Code”). Complainant is also challenging the acquittal of the convict for offences under Sections 365, 354-D (ii) and 506, IPC. For the sake of convenience, facts are being taken from CRA-S-3136-2019.

Briefly stating, FIR, Annexure P-1, has been registered on the complaint of the prosecutrix, who is married lady, stating that she had gone to Hansi on 22.05.2018 for purchasing medicines. She was waiting for a bus, when Pankaj, who is a friend of her brother-in-law, Mahesh, offered her a lift. On the way, Pankaj stopped at Jindal Guest House on the pretext of a stomach ache, where he took her to a room, physically assaulted her and clicked her obscene photographs from his mobile. He warned that in case, she reveals the incident to anyone, he will show the photographs to her family members and threatened to kill her. She managed to escape and confided in her husband. On her complaint, FIR No.34 dated 23.05.2018 was registered for offences under Sections 365, 342, 376, 354-D (ii), 506 of IPC.

Investigation was conducted and Pankaj was arrested on 30.10.2021. Challan under Section 173 of the Code was presented before the trial court on 17.11.2018 and a copy was furnished to the accused. Case was committed to the Sessions Court and Pankaj was charge-sheeted for offences under Sections 365, 342, 376, 354-D (ii), 506 and 201 of IPC vide order dated 21.10.2019. Pankaj pleaded innocence and claimed trial. Evidence of the prosecution was closed on 16.09.2019. Pankaj denied all the allegations in his statement under Section 313 of the Code and stated that he has been falsely implicated. He tendered whatsapp chat mark 'D-1' and photographs mark D-2 to D-10. After due appreciation of the evidence and the case law, the trial court convicted and sentenced Pankaj as noticed above.

Learned counsel for the convict has argued that the story of the prosecution is false and there is an unexplained delay of 02 days in lodging of the FIR. He submits that the prosecutrix was a consenting party. While

referring to the testimony of the prosecutrix, counsel has urged that there is an improvement in the version recorded in the FIR and statement under Section 164 of the Code. Counsel submits that Jindal Guest House is located in the same place as her maternal village and there was no reason to stop at the guest house. Still further, it is his submission that there were no marks of external injury on the prosecutrix and the appellant has not forced himself upon her. He submits that the judgment of conviction and order of sentence deserve to be set aside.

Opposing the prayer, counsel for the State as well as counsel for the complainant have made a detailed reference to the testimony of the prosecutrix as well as the evidence led by the prosecution to submit that the prosecutrix has supported the allegations levelled by her. It has been argued that she has been consistent throughout and there is no reason to disbelieve her. It is submitted that trust imposed by the prosecutrix, has been betrayed, she has been raped and it is a fit case for award of compensation to her.

I have heard counsel for the parties at length and examined the record with their able assistance.

Prosecutrix has been examined as PW-7 and has deposed on the same lines as the allegations in the FIR and statement recorded under Section 164 of the Code. Despite extensive cross-examination, the defence could not break her testimony. The argument of the counsel for the convict that the prosecutrix has cooked up the story of rape and he has been falsely implicated, does not hold water. The mere fact that there are minor inconsistencies in the version of the prosecutrix regarding the place, where the convict met her is not of much significance. Submission by the counsel

that the prosecutrix and the convict had gone to a number of hotels, before

checking in at Jindal Guest House is not substantiated from any material on the record. The convict has failed to produce any evidence to this effect. Furthermore, it deserves to be noticed that although Bajrang Lal, PW-8, the owner of Jindal Guest House had stated that both the convict and prosecutrix had described themselves as husband and wife, but his deposition not supported from the entry register, Ex.PW-8/B, which bears the signatures of the convict alone. The identity proof of the prosecutrix was never produced before him.

The absence of any resistance or injury on the person of the prosecutrix is not to be given any importance as it is the case of the prosecution that the prosecutrix was suffering from back ache and was under treatment. She could not possibly have resisted the convict. This Court therefore, finds the testimony of the prosecutrix to be unblemished and worth reliance.

Legal position is well settled. It has been held by the Supreme Court in **State of Maharashtra Versus Chandraprakash Kewalchand Jain** (1990) 1 SCC 550, in Para 16 as under:-

*“A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps in mind and feels satisfied that it can act on the evidence of the*

*prosecutrix, there is no role of law or practice in corroborated in the Evidence Act, similar to illustration (b) to Section 114, which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend upon the facts and circumstances of each case. But if the prosecutrix is an adult and of full understanding 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. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness...”*

In **State of Punjab Vs. Gurmit Singh** (1996) 2 SCC 384,

in Para 21, Supreme Court observed as under:-

*“ We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of the case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to*

*throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.”*

When examined in the backdrop of the above observations of the Apex Court, it is clear that there is no reason to doubt the testimony of the prosecutrix, who is an educated lady and well aware of the implication of the accusation levelled by her. No reason could be brought forth as to why she will falsely implicate the convict, who is known to her and her family. In the face of the evidence led by the prosecution, this Court has no reason to doubt her testimony and is of the opinion that there is no need to look for any supporting evidence.

This Court is, therefore, of the view that the conviction can be based on the sole testimony of the prosecutrix, which has been found to be trustworthy, credible and the evidence led by her, is of sterling quality. Strength is also drawn from the judgment of the Apex Court in **Phool Singh Versus State of Madhya Pradesh 2022 (1) R.C.R. (Criminal) 264.**

Section 114-A of the Indian Evidence Act, provides the presumption to be drawn against the accused as to the absence of consent and lays down as under:-

*“114-A.Presumption as to absence of consent in certain prosecution 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.”*

Noticing this provision, Supreme Court in **Deepak Versus State of Haryana** 2015 (2) RCR (Criminal) 246 has held that:-

*“25. 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 the 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 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.”*

Insofar as the facts of the present case are concerned, prosecutrix has unequivocally stated that the convict misled her and by adopting deceitful means, took her to the guest house, where he raped her. No defence evidence has been led. In such circumstances, this Court can safely draw the presumption under Section 114-A of the Evidence Act to hold that the consent of the prosecutrix was lacking.

To substantiate the argument that the relationship between the parties was consensual and the prosecutrix was a consenting party, reliance has been placed by the counsel for the convict upon the whatsapp chat, Ex.D-1, as well as the photographs, Exs.D-2 to D-10. These documents have been scrutinized. There is neither anything in the whatsapp chat or in the photographs to show that the prosecutrix had suggested a physical relationship between them nor the Court can adduce from these documents that the prosecutrix was a consenting party.

Having considered the submissions made by counsel for the convict, this Court does not find any reason to disagree with the findings arrived at by the trial court. The Court below has not only found the convict guilty of a heinous crime, but is also justified in awarding a sentence of rigorous imprisonment of 10 years. Therefore, conviction and sentence of the convict under Sections 342, 376 and 201, IPC, are upheld.

Counsel for the complainant although has filed a cross appeal seeking reversal of acquittal under Sections 365, 354-D (ii) and 506, but he has not been able to make out a case and refer to any evidence regarding the commission of the said offences. No exceptional circumstance could also be pointed out by him for award of compensation. The appeal filed by the victim, therefore, is without any substance.

In view of the above, while upholding the conviction and sentence awarded by the trial court, both the appeals are hereby dismissed.

Pending applications, if any, are disposed of.

Trial Court Record be sent back.

Keeping in view the judgment of the Supreme Court in

**Nipun Saxena Versus Union of India (2019) 2 SCC 703**, it is ordered that

the name of the prosecutrix be deleted from the website as well as the entire

record of this Court and she be described as ‘S’ in CRA-AS-283-2019. The title of the appeal shall henceforth be as under:

“‘S’ Versus State of Haryana and another”.

12.01.2023  
*sheetal*

(SUVIR SEHGAL)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |