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(214)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-137-2022
Date of Decision: 11.09.2024

SAJIDA

... Appellant

Versus

RAJA HUSSAIN & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Shruti Mandhotra, Advocate for
Mr. Kunal Dawar, Advocate
for the appellant.

Ms. Shubhra Singh, AAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 14.09.2021 passed by the Additional Sessions Judge (Fast Track Court), Faridabad.

2. The case of prosecution was that appellant/complainant/prosecutrix (hereinafter known as appellant) (name withheld) alleged that about 20 years ago, accused Raja Hussain Ansari (accused no.1) used to harass her and due to intervention of the Panchayat, he had stopped doing so. She further alleged that thereafter she got married and she had been residing with her husband and children. She further alleged that Sehnaz (accused

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no.2), who is daughter of her parental uncle and sister-in-law of Aliraj Ansari (accused no.3), gave her (prosecutrix) mobile number to accused Raja Hussain Ansari and threatened that in case she did not talk to Raja Hussain Ansari, her family members would be killed and after that Raja Hussain Ansari started continuously calling her through phone nos.7081963371 and 9838004209 and threatened her to leave her husband. She further alleged that the accused also threatened her that in case, she did not leave her husband, then her husband and children would be eliminated. She further alleged that Aliraj Ansari, brother of accused Raja Hussain Ansari was forcing her for the last two years by calling through phone no.9838004209 that in case she did not leave her husband, then her husband and children would be killed. She further alleged that accused Raja Hussain Ansari came to her house with a knife and showed her something written in the diary and phone and forcibly committed rape with her by pointing a knife. She further alleged that he also clicked her obscene photographs and threatened her that in case she made any complaint, then photographs would be sent on WhatsApp. The complainant prayed for taking legal action against the accused.

On the basis of the said complaint Ex.P1, FIR No.143 dated 08.12.2017 Ex.P18 was registered in Police Station Women, Sector-16A Faridabad for commission of offences punishable under Sections 376, 450, 506 and 34 IPC. Accused Sehnaz and Aliraj Ansari were joined in the investigation as anticipatory bail was granted to them by this Court vide order dated 21.11.2018 passed in CRM-M-51089. During investigation,



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accused Raja Hussain Ansari was arrested and during interrogation, he suffered his disclosure statement. The statements of the witnesses under Section 161 of Cr.P.C. were recorded. Other formalities regarding investigation were completed. After completion of investigation of the case, final report under Section 173 of Cr.P.C. was forwarded to the Court.

3. On commitment and on finding a *prima facie* case against the accused, accused Raja Hussain Answari was charge-sheeted vide order dated 19.04.2019 for commission of offence punishable under Sections 376, 450 and 506 of IPC, whereas accused Sehnaz and Aliraj Ansari were charge-sheeted for the commission of offences punishable under Sections 450 and 506 IPC. All the accused pleaded not guilty and claimed trial.

4. In order to prove the accusations, the prosecution examined as many as twelve (12) in this case and the details are as under:-

PW No.	Name of witness	Type of evidence	Remarks
1.	L/HC Kavita	Police Official	Police official
2.	Raja Hussain (Husband of the prosecutrix)	Private witness	Deposed about the incident as told by the prosecutrix
3.	Prosecutrix	Complainant	Deposed about the incident
4.	EASI Avdesh	Police Official	Deposed about suffering of disclosure statements by the accused



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5.	SI Anoj Kumar Draftsman	Police Official	Deposed about preparing scaled site plan
6.	Dr. Sadan Prasad	Medical Officer	Deposed about conducting medico legal examination of accused Raja Hussain
7.	SI Raj Rani	Police Official	Deposed about conducting the investigation
8.	Devender Nath Chobe	Police Official	Deposed about taking the documents on record.
9.	Ms. Sushma, JMIC, Faridabad	Judicial Magistrate	Deposed about recording statement of prosecutrix under Section 164 Cr.P.C.
10.	SI Maya	Police Official	Deposed about preparing final report under Section 173 Cr.P.C.
11.	Ms. Sangeeta Rawat	Private Witness	Deposed about recording the statement of prosecutrix in her presence.
12.	SI Sunita	Police Official	Deposed about recording of FIR and other investigation

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(i) PW1 Lady Head Constable Kavita deposed that on 09.12.2017, concerned MHC had handed over the special report of this case to her and she delivered the same to the Ld. Area Magistrate and higher police authorities without any delay.

(ii) PW2 Raja PW2 Raja Hussain deposed that his wife appellant "A" had told him that accused Raja Hussain had been having some sort of affair with her since childhood and that later he started harassing her and compelling her to get married to him by extending threats of eliminating him (PW2) to his wife with a purpose to have illicit relation with her and to get him killed and later to solemnize marriage with her. He further deposed that she also told him that earlier to her marriage with him, accused had harassed her on the way and she had made a complaint against him. PW2 further deposed that she also told that the said matter was settled finally through the Panchayat. He further deposed that accused Sehnaz made a call to him on phone and she requested to give her the phone number and address of his wife. He further deposed that his wife told him that Sehnaz had given that phone number to accused Raja Hussain and then accused Raja Hussain started contacting his wife on that telephone number. PW2 further deposed that his wife also told him that accused Raja Hussain along with co-accused Sehnaz and Ali Raj had made a plan to kill him and his children and to grab his property. He further deposed that on his insistence, he accompanied his wife to the CM window and to the SHO where they filed a complaint against the three accused. He further deposed that thereafter they left for their village

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in U.P to attend the marriage of the brother of his wife. him PW2 further deposed that his wife had also told him that accused Raja Hussain had committed rape upon her after extending threats to her showing some pages of a diary which had been written with regard to their earlier affair before marriage. He had also given a stamp paper to his wife for the purpose of marriage.

(iii) PW3 appellant deposed that one Sehnaz had called her husband on telephone about two years earlier and on her asking, her husband supplied her phone number to Sehnaz. She further deposed that Sehnaz had supplied her (prosecutrix) phone number and address to the accused Raja Hussain. PW3 further deposed that Raja Hussain started contacting her on her phone number. She further deposed that earlier to her marriage, he was after her and used to tease her time and again as he had committed rape upon her before marriage. She further deposed that accused had noted down the said occurrence and the time date of that occurrence in the diary. PW3 further deposed that on the basis of that diary entry, the accused started intimidating her from time to time on phone and he started blackmailing. She further deposed that after some days, he came to her residence, along with said diary. She further deposed that accused was holding a knife and a blade and he cut his hand. PW3 further deposed that at that time, none else was there at her house except her and the accused committed rape upon her. She further deposed that accused also clicked a photograph with her and then he left after one hour. She further deposed that the accused started alluring her to enter

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into marriage with him and told her that he would keep her in a better living condition than her husband and had given a written assurance on a stamp paper. PW3 further deposed that all the three accused had entered into a conspiracy and they all had been extending threats to her with the direction that either she should get married with accused Raja Hussain or they would kill her husband and children. She further deposed that he had also wanted to get the house transferred from her name to Raja Hussain. She further deposed that earlier she had not told anything to her husband because she was under fear. However, when she was to leave for her village in UP, she disclosed the above facts to her husband. She further deposed that thereafter, her husband took her to the police Station and moved a complaint Ex.P1 dated 15.10.2017 which bore her signatures at point 'A' but her FIR was not registered. PW3 further deposed that she moved a complaint at the C.M. Window which also reached the police Station and thereafter the FIR was registered. She further deposed that accused had already got registered a false case against her husband and brother. She further deposed that she was medico-legally examined at B. K. Hospital, Faridabad. PW3 further deposed that her statement under Section 164 Cr.P.C. Ex. P2 was also recorded by the learned Magistrate which bore her signatures at point 'A'.

(iv) PW4 EASI Avdesh deposed that on 7.10.2018 he was posted as ASI in Police Station Women, Sector 16-A. Faridabad and on that day accused Raja Hussain was interrogated and he suffered his disclosure statement Ex. P3. PW4 further deposed that on 28.11.2018, accused Sehnaz

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Khatoon was interrogated and she suffered disclosure statement Ex. P4 and thereafter, accused Raja Hussain led the police and reached the place of occurrence and demarcated the same vide memo Ex. P5.

(v) PW5 SI Anoj Kumar Draftsman deposed that on 22.12.2017, he had visited the spot and prepared scale site plan Ex. P6 on the direction and demarcation of ASI Sunita.

(vi) PW6 Dr. Sadan Prasad deposed that he had medico-legally examined Raja Hussain Ansari on request of the police and he had opined that there was nothing to suggest that the person examined was not capable of doing sexual intercourse. He prepared MLR of accused Raja bore Hussain Ex. P7, which bore his signature at point A.

(vii) PW7 SI Raj Rani deposed that on 7.10.2018. accused Raja Hussain Ansari was arrested and interrogated and he suffered disclosure statement Ex.P8 and led the police and reached at the place of occurrence i.e. H.No. 164. gali no. 5, Surya Vihar, Part-II Agwanpur, house of the prosecutrix and demarcated the same vide memo Ex. P9. She further deposed that thereafter, accused was taken to B.K. Hospital for his medical examination where his medical examination was conducted on request Ex. P10. PW7 further deposed that she also formally arrested Ali Raj Ansari and Sehnaz on 28.11.2018 on the direction of Hon'ble High Court and joined them in the investigation. She further deposed that report under section 173 Cr.P.C. was prepared by Inspector/SHO Indu Bala.

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(viii) PW8 Devender Nath Chobe, Head Moharar deposited that on 12.2.2018 he was posted as MHC in Police Station Taria Sujan, Kushinagar. U.P. and on that day, copy of FIR Ex. P11 was taken into police possession vide memo Ex.P12 by ASI Sunita in his presence which bore his signature at point A.

(ix) PW9 Ms. Sushma, learned Judicial Magistrate deposited that on 10.12.2017, prosecutrix was produced before her for recording her statement under Section 164 of Cr.P.C and she recorded statement Ex. P2 of prosecutrix and passed orders Ex. P13 and Ex.P14.

(x) PW10 SI Maya deposited that on 1.4.2019, she was posted as SI/SHO in Police Station Women, Sector 16- A, Faridabad and on completion of investigation. She prepared the report under Section 173 of Cr.P.C.

(xi) PW11 Ms. Sangeeta Rawat, Advocate deposited that on 8.12.2017, after the counseling of the prosecutrix, the statement of the prosecutrix was recorded by ASI Sunita in her presence and same was signed by prosecutrix and attested by her. She further deposited that she made endorsement Ex.P15 on the statement of prosecutrix and Ex.P15 bore her signature at point A.

(xii) PW12 SI Sunita deposited that on 8.12.2017, the prosecutrix had come along with her husband in the Police Station and submitted written complaint Ex.P1, whereupon she made endorsement Ex.P17 and recorded FIR Ex.P18. She further deposited that she carried out investigation of this case and got recorded statement of prosecutrix Ex.P19 in the presence of the



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Legal Aid Counsel and then on the next date, she visited the spot and prepared rough site plan Ex.P20. PW12 further deposed that on 9.12.2017 she moved application Ex.P21 for the medical examination of the prosecutrix, whereupon prosecutrix was medico-legally examined in the B.K. Hospital, Faridabad. PW3 further deposed that on 10.12.2017, she produced the prosecutrix before the Ld. Illaqa Magistrate and moved application Ex.P22, whereupon statement of prosecutrix was recorded under Section 164 of Cr.P.C by the Illaqa Magistrate, PW12 further deposed that on 12.2.2018, she visited the village of the accused namely Moran, Police Station Ariya, District Khushi Nagar, Uttar Pradesh and collected some documents from the court regarding an earlier FIR No.762 Ex.P23 dated 14.11.2017 and the other relevant documents.

5. Apart from the statements of the witnesses, the prosecution also relied upon the following documentary evidence:-

Sr. No.	Exhibit	Particulars	Date
1.	EX.P1	Complaint	15.10.2017
2.	EX.P2	Statement of prosecutrix under Section 164 Cr.P.C.	10.12.2017
3.	EX.P3	Disclosure statement of 7.10.2018 accused Raja Hussain Ansari	07.10.2018
4.	EX.P4	Disclosure statement of 28.11.2018 accused Sehnaz Khatoon	28.11.2018
5.	EX.P5	Demarcation memo	07.10.2018
6.	EX.P6	Scaled Site Plan	22.12.2017
7.	EX.P7	MLR of accused Raja Hussain	07.10.2018



8.	EX.P8	Disclosure Statement of accused	07.10.2018
9.	EX.P9	Demarcation memo	07.10.2018
10.	EX.P10	Application moved by police to Medical Officer	01.10.2018
11.	EX.PW8/ B	Statement of father of deceased	10.04.2017
12.	EX.P11	FIR No.762	14.11.2017
13.	EX.P12	Recovery Memo of copy of FIR No.762	12.02.2018
14.	EX.P13 & 14	Orders passed by learned Magistrate	10.12.2017
15.	EX.P15	Statement of prosecutrix	08.12.2017
16.	EX.P16	Consent for medical examination by prosecutrix	09.12.2017
17.	EX.P17	Endorsement	08.12.2017
18.	EX.P18	FIR No.143	08.12.2017
19.	EX.P19	Statement of prosecutrix	08.12.2017
20.	EX.P20	Rough site plan	09.12.2017
21.	EX.P21	Application	09.12.2017
22.	EX.P22	Application	10.12.2017
23.	EX.P23 (repeat)	FIR No.762	14.11.2017
24.	Mark-A	Hand written messages	xxxxxxx
25.	EX.D1 to D14	Photographs	xxxxxxx
26.	EX.D15	Pen-drive	xxxxxxx
27.	EX.D16	Recording conversation	xxxxxxx

6. The separate statements under Section 313 of Cr.P.C. of each accused were recorded, in which incriminating evidence was put to them. They denied the prosecution case. The accused stated that they had been

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falsely implicated in this case and that the prosecution witnesses had deposed falsely.

7. The accused Ali Raj Ansari appeared as DW1. He tendered affidavit under Section 65B of the Indian Evidence Act, 1872 Ex.DW1/A, Pen Drive Ex. D15 and transcript of the recordings Ex.D16. He further deposed that no editing has been done in the recording contained in Pen Drive Ex.P15 and it contains the original recordings. He further deposed that transcript Ex.D16 was a true and correct version of the conversation contained in Ex.P15. He further deposed that he had never seen the prosecutrix before appearing in this case and he had seen the prosecutrix for the first time on 29.03.2019.

8. Based on the evidence led, the accused came to be acquitted vide judgment dated 14.09.2021 passed by the Addl. Sessions Judge, Faridabad.

9. The aforementioned judgment is under challenge in the present appeal.

10. The learned counsel for the appellant contends that the Trial Court has wrongly taken into consideration that there are material contradictions in the deposition of the appellant whereas the Trial Court has failed to notice that the stand of the appellant had remained consistent in the complaint, statement under section 164 Cr.P.C. and even as witness PW-3 and in all the statements she has stated that her mobile number was taken by accused No. 1 from accused No. 2. Thus it was clear that accused No.2 had helped the accused No.1 contacting the appellant which led to harassment/

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exploitation/physical abuse of the appellant by accused No.1. Thus all the accused persons are liable to be punished for the offence committed by them.

She contends that the Trial Court failed to appreciate that the accused No.1 was after the appellant and in order to contact the appellant accused No.2 had helped him by providing the contact details of the appellant to accused No.1. After getting the contact details the accused No.1 had started calling to contact the appellant while threatening her using a diary wherein an incident prior to the marriage of the appellant was mentioned by accused No.1. When the accused No.1 had threatened the appellant to disclose the same publicly, then the appellant was subjected to rape by accused No.1 against her wishes and even photographs were also clicked as proof of meeting by the accused No.1. Later, the said photographs were used to pressurise the appellant to accept demands of accused No.1 and also to pressurize her to enter into marriage with him. These allegations are sufficient enough to show that the appellant was being forced/pressurised by the accused No.1, who had taken benefit by committing rape upon the appellant.

She further contends that the Trial Court had failed to appreciate the fact that in Indian society it would be disastrous for women in case her past relations were brought to the notice of her husband and family. Bringing past relations in front of her family would spoil her peaceful marriage relations and in the present case as well the accused No.1 had used the facts,

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diary entry, photographs etc. to manipulate the appellant to accept his illegitimate demands.

She further contends that the Trial court had wrongly concluded that the appellant and accused No.1 were having relations on the basis of transcripts of the conversation between appellant and accused No.1. However, it has been ignored by the Trial Court that in case everything was happening with the consent and free will of the appellant then there was no reason for the appellant to disclose the factum of rape under threat by accused No.1 to her husband as the same would spoil her image in the society and destroy her marriage. Despite these facts and the appellant after gathering all her strength raised her voice against the conduct of accused No.1 and informed everything about the occurrence to her husband who had duly supported the version of appellant while being examined as PW-2.

11. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, judgment of acquittal was liable to be set aside.

12. We have heard the learned counsel for the appellant and gone through the record.

13. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions in the prosecution case. Not only are there material contradictions, but even the manner in which the alleged incident has taken place as per the version of the

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prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that Sehnaz (accused no. 3) was having her mobile phone and supplied the same to the accused Raja Hussain Ansari (accused no. 1) and thereafter, he started calling and contacting on her phone number and under the threat of the accused, she was replying to the same. She further deposed that earlier to her marriage, he was after her and used to tease her time and again as he had committed rape upon her before marriage. She further deposed that accused had noted down the said occurrence and the time and date of that occurrence in the diary. PW3 further deposed that on the basis of that diary entry, the accused started intimidating her from time to time on phone and he started blackmailing. She further deposed that after some days, he came to her residence, along with the said diary and he was also having a knife and a blade and at that time. None else was there at her house except her and the accused committed rape upon her. She further deposed that accused also clicked a photograph with her and then he left after one hour. She further deposed that accused started alluring her to enter into marriage with him and told her that he would keep her in a better living condition than her husband and had given a written assurance on a stamp paper. PW3 further deposed that all the three accused had entered into conspiracy and they all had been extending threats to her with the direction that either she should get married with accused Raja Hussain or they would kill her husband and children. She further deposed that he had also wanted to get the house transferred from her name to Raja Hussain. She further deposed that earlier she had not told

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anything to her husband because she was under fear, however, when she was to leave for her village in UP, she disclosed the above facts to her husband.

14. In her cross-examination the appellant admitted that she had reported the matter to the police after one year of the date of the alleged rape. It is also clear from her statement that she had not disclosed the facts to her husband/PW2 for many months, but it is not clear as to when she disclosed the facts to her husband. PW2 had also not disclosed the date and time when his wife had disclosed about the offence committed by accused Raja Hussain and commission of rape upon his wife. He deposed that he did not remember the date, month and year when his wife told him about the incident. He further deposed that the incident of rape was committed two years prior to the date of disclosing to him by his wife. He also admitted that FIR No. 762 dated 9.11.2017, was registered in Police Station Taria Sujan, (U.P) but incident of rape by the accused was not mentioned in the said FIR.

15. In her cross-examination, PW3 deposed that they had moved one application on C.M. Window on 9.10.2017, and the occurrence had taken place on on 07.04.2016. But it is clear from the record of the case that no such complaint has come on record and even PW12/1.0 deposed that she had not verified about the said complaint. Apparently, that had there been any such complaint given to the C.M. Window, the same would have come on record either from the side of the prosecutrix or the police.

16. The appellant further deposed that no complaint was lodged by her to the police verbally or in writing regarding this occurrence, before that

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day when Ex.PI was scribed. She further deposed that her statement was recorded by police along with statement of her husband in Women Police Station after the recording of the FIR. She has deposed that the complaint Ex. P1 was given on 15.10.2017, but PW12/I.O deposed that the said complaint was received on 08.12.2017, which shows that prosecution is not clear that on which date complaint Ex.P1 was given in the police station.

17. It is clear from the statement of PW3/appellant that accused Raja Hussain was known to her prior to her marriage and since childhood. She further deposed in examination in-chief that her photographs were clicked by accused Raja Hussain but in cross-examination, she admitted that the said photographs were of a well dressed lady and the same were not vulgar. She deposed that the accused used to extend threats to make the said photographs viral on the social media, but once the photographs were not obscene and were of a well dress lady, there was no reason with the complainant to surrender to the alleged threat.

18. During cross-examination, transcript of the conversation (54 pages) was put to the appellant and she admitted the entire conversation Ex.D2 as correct and deposed that the same was the transcript of the conversation with the accused. The entire transcript would reveal that accused Raja Hussain and the appellant were intentionally known to each other.

19. After going through the settled law and the statement of the appellant she cannot be called a PW of the sterling quality. There is a



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variation in her version about giving the complaint and there is unexplained delay in reporting of the matter to the police, disclosing about the incident to her husband/PW2 and registration of the FIR. The transcript Ex.D2 speaks about the relations between her and the accused no.1. The statement of PW2 Raja Hussain is hearsay evidence and his statement cannot be considered for corroboration of the version of prosecutrix/PW3. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix/PW3 cannot be taken as the gospel truth and in the absence of any other supporting evidence, there is nothing to infer of that the accused Raja Hussain had committed the offence of rape. The offence of house trespass was also committed by the accused as he had relations with PW3 and remained in the house for about one hour without any objection on her part. The allegations regarding criminal intimidation can also not be believed.

20. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a



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presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

21. In view of the aforementioned discussion and keeping in view the law laid down in **Kallu @ Masih & Ors.** Case (supra), we find no reason to interfere with the well reasoned judgment of acquittal passed by the Court of Additional Sessions Judge, Faridabad. Therefore, the appeal stands dismissed.

22. We record our appreciation for the young Advocate Ms. Shruti Mandhotra who has argued vehemently and with great eloquence.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

11.09.2024
JITESH

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