

CRA-AD-145-2020(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-145-2020 (O&M)

Date of decision: 05.09.2024.

P xxxx

....Appellant.

Versus

Pankaj and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Saksham Malhotra, Advocate (Amicus Curiae)
for the appellant.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 19.12.2019, passed by learned Additional District and Sessions Judge, Fast Track Court, Sonapat, vide which respondent-accused Pankaj has been acquitted.

2. The factual scenario, as per prosecution version is that on 25.12.2018, the prosecutrix submitted a complaint to the police that on 24.12.2018 at about 8.00 P.M., she was cleaning utensils in the courtyard of her house and her husband was sleeping in a room after taking medicine as he was unwell and her in-laws were not present in the house. Her neighbour, namely, Pankaj son of Shiv Kumar came to her house and bolted the door of the room from outside where her husband was sleeping. He pressed her mouth and dragged her upstairs room and committed rape upon her. In the

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meantime, on hearing her voice, when her husband knocked at the door, Pankaj fled from there while extending threats to her that if she would disclose about the incident to anyone he would kill her and her family. A prayer was made for taking action against the accused upon aforesaid complaint of the prosecutrix. Formal FIR No.515 dated 25.12.2018, under Sections 376, 452, 323, 342 and 506 IPC at Police Station Sadar, Sonapat, was registered. Medico legal examination of the prosecutrix was conducted at General Hospital, Khanpur, Gohana. She was produced before learned Judicial Magistrate Ist Class, Gohana and her statement under Section 164 Cr.P.C. was recorded. Accused was arrested. Site plan of the place of occurrence was prepared. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented before the Court of Judicial Magistrate Ist Class, Sonapat and thereafter the case was committed to the Court of sessions for trial.

3. Finding a prima facie case, charge for offences punishable under Sections 452, 342, 376, 323 and 506 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

4. As many as 13 witnesses were examined by the prosecution to prove its case. Statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication for extracting money from him. However, no evidence in defence was led by the accused.

5. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was

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accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 19.12.2019.

6. Aggrieved of the said decision, present appeal has been filed by the appellant challenging acquittal of the accused/ respondent No.1.

7. Learned counsel for the appellant vehemently contended that findings recorded by learned trial Court that story projected by prosecution is improbable and belies logic, is based upon surmises and conjectures without any reasoning to that effect. No reason has been given by learned trial Court while holding that prosecutrix was a consenting party. Moreover, this was not even the case of respondent/ accused in the trial. Learned counsel further contended that non matching of DNA was of no consequence in the present case as prosecutrix being married lady could have had sexual intercourse with her husband after the alleged occurrence before her medico legal examination. He argued that accused is proved to have committed house trespass by entering into the house of the prosecutrix and committed rape upon her. Case of prosecution stands duly proved from statement of prosecutrix herself. The law is well settled that conviction can be based on the sole testimony of the prosecutrix and does not need any corroboration. Learned counsel submits that prosecution version was brushed aside by learned trial Court without any cogent reason. It is thus prayed that this appeal be accepted, judgment dated 19.12.2019 be set aside and accused be convicted for the offences as charged and be punished accordingly.

8. In order to prove its case, prosecution has examined PW1 EASI Rajesh Kumar No.642/ SPT, who deposed that on asking of ASI Samunder,

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he visited the place of occurrence and prepared scaled site plan Ex.PW1/A with correct marginal notes on the demarcation of prosecutrix.

PW2-Constable Dharmender No.1931/SPT Police Station Sadar, Gohana, tendered into evidence his affidavit Ex.PW2/A deposing therein that on 09.01.2019, he deposited the case property at FSL Madhuban which had been handed over to him by Malkhana Moharar on the same day, in the intact condition.

PW3-Constable Dal Singh No.346/SPT Police Station Sadar, Gohana, tendered into evidence his affidavit Ex.PW3/A deposing that on 25.12.2018 L/ ASI Sudesh deposited the case property in Malkhana. On the same day, the same was handed over to Constable Dharmender for depositing it with FSL, Madhuban. C. Dharmender deposited it on the same day in intact condition and handed over the receipt to him.

PW4 Prosecutrix is the most material witness of the prosecution. She deposed that on 24.12.2018 at about 8.00 P.M., she was cleaning utensils in the courtyard of her house. Then accused Pankaj came to her house and asked about her husband. She pointed towards the room where her husband was sleeping after taking some medicine as he was unwell. Pankaj closed the said door and slightly bolted it and then pressed her mouth with his hands while holding her neck with his elbow and took her to the room upstairs. He threatened to kill her and also beat her and thereafter committed wrong act with her. She was semi-conscious and in that condition also he slapped her several times. When she made a noise with her feet on the floor, then her child aged 2 ½ years woke up and started calling her . Her husband also woke up and knocked at the door. She was

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semi conscious at that time and on seeing her husband coming, accused fled from the spot out of fear. Her husband came upstairs in the room. She was perplexed due to this act of the accused and she had received injuries by way of fist and danda blows. When her husband inquired from her, she named Pankaj for this act and asked her husband to make a call to her father-in-law who was in the adjoining house in gher. Her father-in-law reached there and her husband narrated the whole incident to him. She asked her husband and father-in-law to go to police and thereafter they went to Police Station Gohana at about 11/ 11.30 P.M. On her dictation, application Ex.PW4/A was got written by her brother which bears her signatures as she was unable to write due to injuries on her hand. She testified that the police officials at Police Station asked her to come on the next day as no lady police official was present there at that time and they again went to Police Station, Gohana on the next day i.e. 25.12.2018. In the presence of lady police official she was taken for her medico legal examination at Government Hospital, Gohana and her clothes were taken into possession vide memo Ex.PW4/B. Her statement Ex.WP4/C was also recorded by Area Magistrate which also bears her signatures. She deposed that after 9-10 days, on her demarcation, police prepared site plan Ex.PW4/D. She identified the accused Pankaj through video conferencing and stated that he had committed wrong act with her.

PW5-Rajbir, father-in-law of prosecutrix, deposed that on 24.12.2018 after 8.30 P.M. he received a call from his son Manish, who asked him to come immediately as some incident had happened. Thereafter, he reached there and his wife also reached at the spot and the incident was

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revealed to them. His son Manish told him that accused Pankaj committed rape upon the prosecutrix after entering into the house. He also asked from the prosecutrix as to what had happened to her and she replied that Pankaj had spoiled her life and she wanted to commit suicide and he consoled his son and daughter-in-law and informed the police on No.100, but he did not get any response. Then he made a call at No.1091 which was attended by a lady official and he apprised her about the incident. Her daughter-in-law also showed him hair uprooted from head by the accused. He assured his daughter-in-law that he would go to the house of the accused to complain about this incident to his family members. Thereafter, he went to the house of the accused and called out name of Shiv Kumar (father of accused) while standing outside the house. After hearing his call, Pankaj came downstairs and he asked him why Pankaj had committed bad act with his daughter-in-law. Pankaj caught hold of him from his neck and in the meantime father of accused, his mother, sister and wife also came at the spot and after throwing him on the ground started beating him. After intervention of co-villagers he was saved. After reaching his house he again made a phone call at No.1091 on which police came to their house and made inquiries from him as well as from other family members regarding the incident. In the meanwhile, his other relatives also arrived at their house and accused and his other family members also came to his house and gave beating to his relatives.

PW6-Dr. Sanjeev Kumar, ASMO, Government Hospital, Gohana proved MLR of accused Ex.PW6/B and stated that after medical examination he handed over the parcel containing underwear of accused alongwith copy of MLR and other papers.

PW7-Lady Constable Ritu No.1791/SPT deposed regarding taking the prosecutrix to Government Hospital, Gohana for her medico legal examination and taking into police possession clothes of prosecutrix handed over by doctor through memo Ex.PW4/B.

PW8-Dr. Chhavi Rathee, Medical Officer, PHC, Khanpur Kalan, Sonapat tendered affidavit Ex.PW8/A in her evidence and proved MLR of prosecutrix Ex.PW8/B and deposed that after her medical examination she handed over to police a parcel containing the clothes and vaginal swabs of prosecutrix with copy of MLR and other papers.

PW9-SI Sudesh, SHO WPS Jhajjar, partly investigated the case and had deposed about the investigation proceedings conducted by him.

PW10-Constable Sandeep No.2040/ SPT Police Station Sadar, Gohana remained associated with SI Samunder, during investigation of the present case. He deposed about the various investigation proceedings conducted by Investigating Officer.

PW11-Manish (husband of prosecutrix) deposed that on 24.12.2018 he was ill and was sleeping at the ground floor of their house and his wife/ prosecutrix was cleaning utensils. At about 8.00 P.M., suddenly he woke up on hearing a noise and saw accused Pankaj was coming downstairs from first floor of his house. Door of his room was bolted slightly from outside. He deposed that accused Pankaj had extended threats to kill prosecutrix and her family if she would disclose to anyone about the incident of rape. He made a phone call to his father to reach there from the outer house, where he was sleeping. He further deposed that he went to the first floor of his house where prosecutrix was lying unconscious

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and he asked her what had happened with her and then she apprised him that Pankaj had come to their house and had committed rape with her. In the meantime, his father also reached at his house and made a call to police at Helpline No.1091.

PW12-Mr. Sachin Yadav, learned Sub Divisional Judicial Magistrate, Gohana has stated that prosecutrix was produced before him by the police on 25.12.2018 and he recorded her statement under Section 164 Cr.P.C. Ex.PW4/C without any addition or omission on his part.

PW13-SI Samunder No.89/SPT, partly investigated the case and has deposed about the various investigation proceedings conducted by him during the investigation.

9. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

10. Admittedly, in the present case, prosecutrix is a married lady aged above 25 years, having three children. Case of the prosecution hinges on the sole testimony of the prosecutrix. It is well settled that in rape cases conviction can be based on the sole testimony of the prosecutrix without any corroboration, if it is found to be reliable, trustworthy, and of sterling quality.

11. Reference in this regard can be made to decision of Hon'ble Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi (2012) 8 SCC 21** wherein it has been held as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber 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 everyone 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 similar such tests to be applied, it can 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.”

12. Gainful reference can also be made to the decision in **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon’ble the Supreme Court observed that testimony of a victim of rape has to be treated as if she is an injured witness but same cannot be presumed to be a gospel truth in all circumstances. It was observed as under:

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

13. In the present case after appreciating the deposition of

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prosecutrix and other evidence on record serious doubt is cast upon the prosecution version.

14. FIR in the present case was registered on the basis of written complaint Ex.PW4/A given by prosecutrix to the police on 25.12.2018. From the evidence on record, it emerges that there are material contradictions in the statement of prosecutrix recorded under Section 164 Cr.P.C. as well as her deposition made in the Court as PW4 and her written complaint Ex.PW4/A. When appearing as PW4, she stated that she made noise with her feet on the floor, upon which her 2 ½ years old child woke up and started calling her and on hearing this noise her husband woke up. While in her statement recorded under Section 164 Cr.P.C., PW4 stated that her husband came to the room upstairs on hearing her noise. It is relevant to note at this stage that in her complaint, prosecutrix stated that the door of the room, where her husband was sleeping was bolted from outside by the accused. In her statement under Section 164 Cr.P.C. too, the room is stated to have been bolted from outside. However, while deposing as PW4 before learned trial Court, she stated that the room was slightly bolted by the accused. In cross-examination, she stated that when rape was being committed, the bolt of the room, where her husband was sleeping, was closed and she did not know who opened the bolt of the room.

15. On one hand, she stated that accused had bolted the door of room from outside, in which her husband was sleeping, but on the other hand, she claims that her husband had reached in the room upstairs where alleged incident took place. It has not been explained that when door of the room of her husband where he was sleeping was bolted from outside, how

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he managed to come out of the room and reach the room upstairs where the prosecutrix and her three children were sleeping.

16. It is further to be noted that in her cross-examination the prosecutrix stated that she raised hue and cry when accused had committed rape upon her. It is quite strange that nobody heard her hue and cry. She again contradicts herself as in her examination in chief she is silent about raising any hue and cry and rather stated that she made noise with her feet on the floor which woke up her child who started calling her and then her husband was attracted to the spot. She is silent about raising of any hue and cry also in her statement recorded under Section 164 Cr.P.C. and in her complaint Ex.PW4/A.

17. Prosecutrix admitted in her cross-examination that her brother-in-law and sister-in-law (Jeth and Jethani) alongwith their family are residing in the same house and there is no separate partition wall in the house. Joint family lives together in the house. She further stated that there are houses around her house in the vicinity and there is a street adjacent to their house and various people pass from there and door of their courtyard opens in the street. It is opposed to all probabilities that accused dared to enter their house situated in thickly populated area where she was living in a joint family and that too at 8.00 P.M., which cannot be regarded as odd hours of the night, thereafter drag her forcibly to a room upstairs and commit rape upon her in a room in which her three children were sleeping.

18. During her cross-examination, prosecutrix was confronted with her complaint Ex.PW4/A where the factum of holding her neck by accused with his elbow and taking her to the first floor room and giving of fist, kick

and danda blows by the accused to her, do not find mention. It was also not mentioned therein that when she made noise with her feet upon the floor, her child woke up and started calling her and it attracted her husband to the room. While appearing as PW4, she stated that she mentioned in her complaint Ex.PW4/A that she and her husband narrated the whole incident to her father-in-law, but it was not so mentioned there. She further stated that she mentioned in Ex.PW4/A that she asked her father-in-law to go to Police Station, Gohana to get the case registered, but the same does not find mention in Ex.PW4/A. She stated that she got recorded before learned Magistrate that due to injuries on her hands, she got her statement recorded through her brother but again this fact was found missing in the statement Ex.PW4/C. It is thus apparent that the testimony of the prosecutrix (PW4) cannot be said to be of sterling quality on the sole basis of which conviction can be based. However, in the given case necessary corroboration of the version given by the prosecutrix is also not available. PW-11 in his examination-in-chief stated that on 24.12.2018, he was unwell and was sleeping on the ground floor of his house and his wife was cleaning utensils. At about 8.00 P.M., he heard some noise on which he woke up and he saw the accused coming downstairs from the first floor of his house. He added that the door was slightly bolted from outside. The accused is stated to have extended threats to kill him and his family if he disclosed anything about the incident of rape with his wife, on which he made telephonic call to his father, who reached from the other house in which he was sleeping. He further stated that he went to the first floor of their house and saw his wife unconscious, who then revealed that rape had been committed upon her

by the accused. She was not fully conscious when she revealed all these facts. In the meantime, his father reached the house and called police. He was confronted with his statement Ex.DB before the police where the factum of the door of his room being slightly bolted from outside is not mentioned. Neither is there a mention about a telephonic call to his father. He had denied the suggestion that a demand of Rs.24,00,000/- was raised by his father through a notice dated 12.12.2019 or that his parents had gone to the jail at Sonapat on 08.01.2019 to meet the accused. It is pertinent to note at this stage that it has been admitted by PW5-Rajbir, father-in-law of the prosecutrix that he and his wife went to District Jail, Sonapat and met accused Pankaj on 29.12.2018 and also admitted it to be correct that he got served a notice to the father of the accused Shiv Kumar through counsel. The prosecutrix and her husband have feigned ignorance of this notice to Pankaj's father Shiv Kumar to pay an amount of Rs.24,00,000/- on 12.12.2019 for defaming his daughter-in-law. Learned trial Court has rightly observed that it is highly unnatural conduct of father-in-law of prosecutrix, as no person whose daughter-in-law had been subjected to rape would go to meet the accused in the jail. It also opens the prosecution case to serious doubt regarding happening of the incident in the manner as alleged by the prosecutrix.

19. The medical evidence available on record also does not corroborate the version of the prosecutrix. Prosecutrix was medico legally examined on 25.12.2018 by PW8-Dr. Chhavi Rathee, Medical Officer, PCH, Khanpur Kalan, Sonapat. This witness has categorically stated that on local examination, that hymen was all torn, no mark of external injury was

present on perineum. In her cross-examination, she has again categorically stated that there was no external injury visible on the private parts of the prosecutrix. As per FSL report Ex.PX, human semen was detected exhibit-1a (Slides) and exhibit-1b (Salwar) and exhibit-2 (underwear). However, as per DNA report Ex.PY, DNA profile of seminal stains on source of item No.1A (slides) and item No.1B (Salwar) is not matched with the DNA profile of accused Pankaj (source of item No.3). Learned trial Court has thus rightly observed that in view of the medical evidence it cannot be concluded that prosecutrix was forcibly raped by the accused as alleged by her.

20. In the backdrop of the facts and circumstances of the present case and discussion as above, testimony of prosecutrix cannot be accepted to be of sterling quality and her sole testimony is not sufficient to convict the accused and moreso in the absence of any corroborating evidence.

21. After analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offence as charged. He has been rightly acquitted by learned trial Court.

22. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in **'Mahamadkhan Nathekhan vs. State of Gujarat'**

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2014 (14) SCC 589. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 19.12.2019 which calls for interference.

23. No other argument was raised.

24. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 19.12.2019 passed by learned trial Court being upheld.

25. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

05.09.2024.

Komal

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