

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-148-2024 (O&M)
Date of decision: 20.12.2024.

S xxxx

...Appellant.

Versus

State of Haryana and others

...Respondents.

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

.....

Present: Mr. Naveen Upadhyay, Advocate
for the appellant.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 08.11.2023, passed by learned Additional Sessions Judge, Narnaul, vide which respondent No.4-accused Parveen Kumar has been acquitted of offences punishable under Sections 366, 328, 376, 379-A, 313, 376(2)(n) and 506 IPC.

2. The factual scenario, as per prosecution version is that on 31.10.2019, complainant/prosecutrix came to police station and submitted application alleging she was married with one 'P' (real name withheld) on 14.02.2018. She used to come to Mohindergarh from her matrimonial house for coaching. On 16.04.2018, Parveen son of Rameshwar resident of village Gagarwas, who was in distant relation to her, met her at Bus-stand, Mohindergarh in his white colour Verna Car bearing registration No. HR-26CA-9424. He gave her lift in his car and offered her cold-drink which was

laced with some intoxicant substance, regarding which she came to know later on. On the pretext of dropping her at her coaching centre, he brought her to Narnaul in Hotel Plaza. There, he sexually exploited her by force and also made a video of the intimate moments. She was not fully able to comprehend anything at that time and was feeling apprehensive. After the aforesaid incident, Praveen showed said video to her and started sexually exploiting her by blackmailing her with said video. Meanwhile, she became pregnant but Praveen got her child aborted. On 23.05.2018, when she came to Bus-stand, Mohindergarh for going to her coaching centre, Praveen again met her there. He forcibly took her to Narnaul and again had sexual intercourse with her against her wishes. Then, it increased and he started threatening her that if she would not follow his dictates, he would kill her brother and husband. On 24.05.2018, when she went to her coaching centre, Praveen snatched her four gold bangles weighing four tolas, and brought her to Narnaul in his car. At that time also he forcibly established sexual relations with her in a hotel room. She continued attending her coaching and gradually Praveen took two pairs of earrings (jhumki), two pairs of earrings (bali), three pairs of tops, two gold rings, three rings of her husband and one Mangalsutra from her by threatening and blackmailing her. He also kept on making physical relations with her against her will and without her consent. On 02.01.2019 and 17.01.2019, he sexually exploited her. On 22.03.2019, he sexually exploited her after taking her to a hotel in Kanina. He threatened her that she would face dire consequences if she disclosed the incident to anyone. On 31.05.2019, her in-laws and other family members came to know about the same and she became very upset, hence 01.06.2019, she left her house. Thereafter, whenever there was contact

between her and Praveen, he kept threatening her that if she would disclose about it to anyone, he would make viral her obscene video on social media and would defame her entire family. On 07.06.2019, her statement was got recorded under Section 164 Cr.P.C. and on 19.06.2019, Praveen again made physical relations with her by taking her to Narnaul and also threatened to cause her abortion. On 22.08.2019 he also snatched her gold chain weighing 2½ tolas, which was the last piece of jewellery article with her. He even made her accompany him to Om Hari Jewellers, Rewari to sell her chain for Rs.52,000/-. In his manner, Praveen sexually exploited her, got her pregnancy aborted, snatched entire gold jewellery from her, threatened her with dire consequences and ruined her life. It was requested that strict legal action be taken against Parveen.

3. On basis of above-mentioned statement Ex.P12, of the prosecutrix, formal FIR Ex.P21/A was registered by ASI Suresh Kumari, and investigation was set into motion, on 31.10.2019, the prosecutrix was got medico-legally examined at General Hospital, Narnaul on police requisition Ex.P19. Copy of MLR Ex.P20, after her medical examination was taken into police possession vide memorandum Ex.P2. No case property was obtained as the last incident was quite old one. On 01.11.2019, prosecutrix was produced before learned Sub Divisional Judicial Magistrate, Mohindergarh, alongwith police requisition Ex.P22 for recording her statement and statement of the prosecutrix under Section 164 of Cr.P.C. Ex.P13 was recorded by learned Area Magistrate. On the same day, copy of relevant visitor register Ex.P15 was obtained from Hotel Sun Plaza, Narnaul regarding visit of prosecutrix and accused on 20.07.2018 in the said hotel, which was taken into police possession. Then, rough site plan

Ex.P23, was prepared at the scene of crime of rape, i.e., Hotel Sun Plaza, Narnaul on her demarcation. On 10.11.2019, copy of relevant visitor register Ex.P9 was obtained from B.R. Guest House, Kanina regarding visit of prosecutrix and accused in the said hotel on 22.04.2019 which was also taken into police possession vide memorandum Ex.P1. On 11.11.2019, bill Ex.P11 regarding sale of gold chain with locket was obtained from Om Hari Jewellers, Rewari which was taken into police possession vide memorandum Ex.P3. During interrogation, accused suffered disclosure statement Ex.P6 regarding his involvement in the commission of crime and pursuant to disclosure statement of accused, memorandum of demarcation Ex.P8 was prepared at the place of occurrence of rape. Thereafter, the accused was got medico-legally examined at General Hospital, Narnaul and copy of MLR Ex.P21, was handed over by the attending Medical officer after examination. Vehicle make Hyundai Verna bearing registration No.HR26CA-9424, was produced by accused on the same day which was taken into police possession. Statements of witnesses were recorded. After completion of necessary investigation, challan report under Section 173 Cr.P.C was prepared and presented in the Court of Illaqa Magistrate. Thereafter case was committed to the Court of sessions for trial.

4. After having found a prima facie case, charge for offences punishable under Sections 366, 328, 376, 379A, 376(2)(n), 506 and 313 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

5. In order to prove its case against the accused prosecution has examined as many as 15 witnesses. PW1-Ramesh Kumar, EHC remained associated with Suresh Kumari, ASI during investigation on 10.11.2019 and

testified memorandum Ex.P1 regarding obtaining photocopies of visitor register of B.R. Guest House, Kanina.

PW-2 Meena, also remained associated with ASI Suresh Kumari, on 31.10.2019 and 11.11.2019 during investigation. She had testified memorandum Ex.P2 regarding obtaining MLR after medical examination of the prosecutrix as well as testified memorandum Ex.P3 regarding obtaining bill from Hari Om Jewellers.

PW-3 C-Satyapal, the Draftsman prepared scaled site plan Ex.P4, after visiting the place of occurrence, i.e., Hotel Sun Plaza, at the instance of ASI Suresh Kumari, on 08.01.2022.

PW-4 Nilesh, L/Constable also remained associated with ASI Suresh Kumari, on 01.11.2019 during investigation. She also testified regarding obtaining photocopies of visitor register of Hotel Sun Plaza, Narnaul vide memorandum Ex.P15.

PW-5 C-Pooja, remained associated with ASI Suresh Kumari, on 27.12.2019. She had deposed regarding suffering of disclosure statement Ex.P6 by accused; demarcation memorandum Ex.P8 and memorandum Ex.P7 regarding recovery of vehicle Verna, in respect of accused.

PW-6 Ramesh Chand, Manager B.R. Guest House, Kanina deposed regarding handing over photocopies of visitor register of B.R. Guest House, Kanina relating to visit of the prosecutrix and accused on 22.04.2019 to the police on that day.

PW-7 Mahesh Kumar, Proprietor of Hari Om Jewellers, Rewari deposed that on 21.08.2019, one lady came to his shop as she wanted to sell one gold chain and gold pendent. As told by her, she was pregnant and in need of money for her cesarean delivery. After 10 minutes, one male also

came to his shop and he tried to make them understand that he did not deal in purchasing gold jewellery without bills, but on her much insistence and due to humanity, he purchased the same for Rs.51,940/- against written acknowledgement Ex.P10. On 11.11.2019, he handed over photocopy of original bill Ex.P11 to the police vide memorandum Ex.P3. He identified his signature on the documents.

PW-8 prosecutrix testified as per her complaint Exh.P12.

PW-9 Sandeep, Manager Hotel Sun Plaza, Narnaul testified memorandum Ex.P15 regarding handing over photocopy Ex.P14 of visitor register of his hotel and ID proof Ex.P16 and Exh.P17, relating to visit of the prosecutrix and accused.

PW-10 "P" husband of prosecutrix testified that he was working in private company. His marriage was solemnized with prosecutrix on 14.02.2018 and after marriage his wife started taking coaching for exam of Haryana Police from Mohindergarh. He doubted about jewellery of his wife and whenever he inquired from her about jewellery, she used to tell him that same was lying at her paternal house. On 31.05.2019, he made a telephonic call to his father-in-law and on his inquiry, his father-in-law told him that whenever he had asked about the jewellery, prosecutrix told him that same was lying at her matrimonial house. On the same day, he made a telephonic call to his wife who was still at her paternal home and said to her that her father had apprised him that she had told him that gold jewellery was lying with him. On 01.06.2019, he again made telephonic call to his wife but she did not pick up his phone. Then, he made telephonic call to her father who disclosed that prosecutrix was not present at the house. He went to house of his father-in-law and they started searching for his wife. On

02.06.2019, they visited police station where his father-in-law moved missing complaint regarding his wife. On 06.06.2019, he received a telephonic call from the police who told him that his wife had been found in Delhi and she was in Police Station, Mohindergarh. Thereupon, he reached said police station but police did not allow him to meet his wife. He also noticed that accused with Ravinder, Sarpanch of village Gagarwas, was having conversation with concerned SHO as well as his wife. Police told him that they would drop his wife at One Stop Center, Narnaul and then they returned to their respective houses. He stated that on the same night, they came to know that police did not drop his wife at One Stop Center, rather, she remained in police station. On the next morning, he made inquiry from the police about his wife who told him that they had taken his wife from One Stop Center at 5.00 A.M. and now she was in the police station. On 28.10.2019, his wife returned to their house and told him that in month of April 2018, when she was going for coaching, at that time, accused met her at Bus-Stand, Mohindergarh in his Verna Car and asked her to sit in his car. When she sat in the said car, accused offered her cold-drink and after consuming the same, she became semi-conscious and was taken to a hotel in Narnaul. His wife told him that in the said condition, accused had committed rape upon her and also made her obscene video. Accused started blackmailing her and also took her gold jewellery. She told him that after said incident, she became pregnant and accused made her abort her pregnancy. She told him that statement which was made by her before learned Magistrate on 07.06.2019, was under pressure of accused and Ravinder, Sarpanch in collusion with the police. He stated that he made telephonic call to his father-in-law and on 31.10.2019, they met the police at

Narnaul and disclosed everything. Police recorded statement of his wife Ex.P12 on the basis of which, present case was registered.

PW-11 “J” father of prosecutrix, testified that he had retired from Indian Army. Marriage of his daughter was solemnized on 14.02.2018 with “P” and after her marriage, she was residing in her matrimonial home. On 01.06.2019, his daughter was found missing from his house. On 02.06.2019, he visited police station and filed missing report Ex.P18. On 06.06.2019, his daughter was recovered by police from Railway Station, Nizammudin and said information was received by him through police. They visited police station but police did not allow them to meet the prosecutrix and they returned to their houses and his daughter had gone with accused somewhere. In October 2019, husband of his daughter informed him telephonically that prosecutrix had told him that accused had been blackmailing her and had committed rape upon her and had also sold her gold jewellery. Thereafter, husband of prosecutrix had taken her to police station and he also reached there. On the basis of statement of his daughter, present case was registered.

PW-12 Ms. Girirbala Yadav, Advocate, District Court, Narnaul testified regarding statement of prosecutrix Ex.P12, which was recorded on 31.10.2019 in present case by the police.

PW-13 Dr. Renuka Yadav, Junior Resident, Santosh Medical College, Ghaziabad, Uttar Pradesh medico-legally examined the prosecutrix on police request Ex.P19 on 31.10.2019. She deposed that patient was 24 years old married female. She had come with alleged history of repeated sexual intercourse by the accused in Sun Plaza Hotel and B.R. Guest House since April 2018 against her wishes and under blackmail with last sexual act

in March 2019, as disclosed by the patient herself. On general physical examination, she observed that the patient was conscious, co-operative and well-oriented to time, place and person. Her vitals were stable. Secondary sexual characters were developed as per age. No external mark of injury was present over any part of body. On local examination, no visible mark of injury was noticed over inner side of thighs, labia majora or labia minora. Separation of thighs was also not painful. There was no redness or swelling. Her gait was normal. On P/V examination, there was no mark of injury seen on private parts. There was no redness, swelling and tenderness. She deposed that in her opinion, possibility of sexual intercourse could not be ruled out in the present case. She produced original medical record, testified Ex.P20 copy of MLR and identified her signatures on report.

PW-14 Rajbala, Inspector (since retired) was entrusted with investigation of this case on 08.01.2022. She deposed that, she got prepared scaled site plan from the draftsman on 08.01.2022 regarding place of alleged occurrence situated on 2nd floor of Hotel Sun Plaza, Narnaul. She also submitted charge-sheet under Section 173 Cr.P.C, after completion of investigation, on 14.01.2022.

PW-15 Suresh Kumar, L/ASI testified that on 31.10.2019, after registration of formal FIR Ex.P21/A, she produced prosecutrix before Medical Officer, Government Hospital, Narnaul for her medico-legal examination and after her examination, doctor handed over sealed parcels which were taken into possession vide memorandum Ex.P2. On 01.11.2019, prosecutrix was produced before learned Area Magistrate and learned Area Magistrate recorded her statement under Section 164 Cr.P.C. She also deposed regarding other investigation proceedings conducted during the

course of investigation.

6. Besides that learned prosecutor for State due to death of Dr. Himanshu tendered into evidence copy of MLR Ex.P11, which was prepared by Dr. Himanshu, Government Hospital, Narnaul after medico-legal examination of accused. Said doctor was of the opinion that there was nothing abnormal suggestive of that the accused could not perform sexual intercourse in normal course.

7. After closing of the prosecution evidence statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication. However, no evidence in defence was led by the accused.

8. After considering evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 08.11.2023.

9. Aggrieved of the said decision, present appeal has been filed by the appellant challenging acquittal of the accused/ respondent No.4.

10. Learned counsel for the appellant vehemently contended that from the prosecution evidence on record, it is established that accused by threatening the prosecutrix and by blackmailing her for several months to viral her obscene video, repeatedly committed rape upon the prosecutrix without her consent and also extorted gold jewellery from her. He has contended that statement of prosecutrix inspires confidence and her credibility could not be shaken even during her cross-examination. He has contended that it is well settled that conviction can be based on sole testimony of prosecutrix, if found reliable. There was no reason that

prosecutrix would rope the accused falsely on serious charge of rape, to harm her own dignity and honour and that of her family. He urged that trial Court has erred in holding that evidence on record, indicates in clear terms, that appellant had willingly accompanied the accused and resided with him for a period of around one week. Rather she was under constant fear and threat of her intimate videos becoming viral by accused, so she could not dare to resist accused/ respondent. She never accompanied accused/ respondent with her free will and without coercion, rather she was forced to do so by accused/ respondent. He also contended that prosecution has proved entries in visitor book of the hotel, therefore statement of appellant stands duly corroborated and evidence on record is sufficient to prove the case against accused beyond the shadow of reasonable doubt. With these submissions, he prayed that this appeal be accepted, judgment dated 08.11.2023 be set aside and accused be convicted for the offences as charged with and be punished as per law.

11. 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 indeed unable to prove its case against the accused beyond reasonable doubt.

12. Admittedly, in the present case, prosecutrix is a married lady aged above 25 years. Case of the prosecution hinges on the sole testimony of the prosecutrix. It is trite law that in rape cases, conviction can be based on the sole testimony of prosecutrix without any further corroboration if it is found to be reliable, trustworthy.

13. 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.”

14. 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.”

15. Now evidence in the instant case is also to be appreciated on the touch stone of legal proposition as above.

16. The accused has been charge sheeted for subjecting prosecutrix to sexual intercourse under threat and by force, whereas plea of accused is that he and prosecutrix were in sexual physical relations since many months.

Section 375 IPC defines rape and reads as under:-

“ 375 Rape- A man is said to commit 'rape' if he-

a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

1. Against her will.

2. Without her consent.

3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the

administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

6. With or without her consent, when she is under eighteen years of age.

7. When she is unable to communicate consent.”

17. In the instant case, prosecutrix has stated that rape was committed against her will as she was under threat from the accused, therefore cannot be assumed to be a consenting party.

18. In case of ***Uday vs. State of Karnataka 2003(2) RCR (Criminal) 99***, Hon'ble the Supreme Court held that there is no straitjacket formula for determining whether consent given by prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. It was held that:-

“.....In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.. .”.

19. Thus, it emerges that it would depend upon facts of each case in order to conclude whether consent given by prosecutrix was out of her free will or the same was consent given under “misconception of facts or otherwise” as contained under Section 90 IPC.

20. In order to prove rape, the law does not require corroboration and as already observed testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her

evidence is necessary. In State of *Maharashtra v. Chandraprakash Kewalchand Jain 1990(1) RCR (Criminal) 411*, Hon'ble Supreme Court at page 559 of the Report said:

“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 this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated 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 on the facts and circumstances of each case. But if a 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.”

21. In **Vijay @ Chinee v. State of Madhya Pradesh 2010(3) RCR (Cri.) 794**, Hon'ble Supreme Court referred to its own above two decisions in Chandraprakash Kewalchand Jain and also few other decisions and observed as follows :

“Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.”

22. Trial Court has rightly held that fulcrum of the prosecution case rests upon version of prosecutrix. Prosecutrix has stepped into the witness box as PW-8 and has deposed that her marriage was solemnized with 'P' on 14.02.2018. After some time, in the month of April 2018, she started taking coaching from K.D. Campus, Mohindergarh. On 16.04.2018, accused who was her distant cousin met her at Bus- Stand, Mohindergarh. He offered to drop her at her coaching center in his car. She accepted his offer and sat in his car. Then, he offered her cold-drink and after consuming the same she became semi-conscious. He then took her to Hotel Sun Plaza, Narnaul and made physical relations with her without her consent in that semi-conscious condition and also videographed the intimate moments. Thereafter, by showing her that video and photographs threatened to make viral the same, if she disclosed the said incident to anyone. She testified that on 23.05.2018, accused met her again and by blackmailing her, again had physical relations with her. On 24.05.2018 also, he met her at Bus-Stand, Mohindergarh and blackmailed her. He snatched her gold bracelet and thereafter, gradually took her gold jewellery consisting of one pair of gold bracelets, three pairs

of gold ear-rings, gold chain, five pairs of silver anklets, five gold rings, one mangalsutra. On 21.08.2019, accused sold her gold chain and pendent to Hari Om Jewellers, Rewari for Rs.52,000/- and kept that amount with him. On inquiry by Jeweller, accused introduced her as his wife. He repeatedly made physical relations with her by blackmailing her. She became pregnant and by giving her some medicine he got her pregnancy terminated. On 31.05.2019, her husband and father inquired from her about the Jewellery and she came under mental stress, and left her paternal home on 01.06.2019. She deposed that she requested accused to return her Jewellery and delete her obscene videos, upon which accused asked her to make her father understand and withdraw the complaint which he had filed in the police station, otherwise, he would make her videos viral. On 06.06.2019, police recovered her from Delhi with accused, but police and accused pressurized her not to make any statement against the accused before learned Magistrate. On the next day, her statement was recorded by learned Magistrate at Mohindergarh, which she made under pressure of family of accused. She was sent to Nari Niketan, Karnal, but accused alongwith one Advocate visited Nari Niketan, Karnal and obtained her signatures on some blank papers, stating these papers were for her release from Nari Niketan. Accused then took her to Mohindergarh in the house of his friend. Accused sold gold jewellery on 22.08.2019, and took her to Bishnoi Hospital, Narnaul and fled away from there after leaving her in the hospital. On 23.08.2019, she gave birth to a pre-mature male baby who was now around three years old. Her cousin Devender alongwith his wife visited the hospital and got her discharged from the hospital and took her to their house on 28.10.2019. She went to her matrimonial home and on 30.10.2019, she

alongwith her husband and father visited the police station and suffered statement Ex.P12. Her medico-legal examination was conducted at Government Hospital, Narnaul on 31.10.2019 and on 01.11.2019, her statement Ex.P13 was recorded by learned Area Magistrate.

23. Cross-examination of prosecutrix conducted by the defence side is very material. Perusal of the same reveals that she admitted that on that very day, she had seen original cancellation file bearing UCR No.141-2021 pertaining to FIR No.268 dated 02.06.2019 under Section 346 IPC Police Station, Mohindergarh, which was lodged by her father in Court, as well as carbon copy of the statement under Section 164 Cr.P.C. Ex.D1; her original statement under Section 161 Cr.P.C. dated 6.6.2019 Ex.D2; statement under Section 161 Cr.P.C. dated 07.06.2019 Ex.D3; statement dated 06.06.2019 recorded by Rajbala, L/HC, Ex.D4; and application dated 06.06.2019 Ex.D5. She admitted that these statements were made by her before learned Magistrate and before police which were read over to her and then she appended her signatures, after finding the same to be correct. She admitted that she did not disclose before learned Sub Divisional Judicial Magistrate, Mohindergarh on 07.06.2019, the facts as had been mentioned in her complainant/ statement Ex.P12 and Ex.P13, when she appeared before him for recording statement under Section 164 Cr.P.C. She further admitted that she did not disclose any of such facts mentioned in Ex.P12 and Ex.P13 before police at the time of recording of any of her statements Ex.D2 to Ex.D5. She admitted that she had filed application Ex.D6 before the Deputy Commissioner to release her from Nari Niketan, Karnal. She further admitted that she had seen Power of Attorney, Ex.D7 in favour of Sh. Mukesh Yadav, Advocate bearing her signatures at point-A. She further

admitted it to be correct that Ex.D8 was copy of writ petition which was filed by her before the Court for issuing direction to release her from Nari Niketan and before decision of said writ petition, she was released from Nari Niketan by order of DC, Mohindergarh which was issued by him on her representation Ex.D6. She further admitted it to be correct that she remained in Nari Niketan, Karnal from 20.06.2019 to 08/09.08.2019 and she did not make any complaint before the officials of Nari Niketan against accused and she did not apprise them regarding facts mentioned in Ex.P12 and Ex.P13. She did not file any complaint before the DC, Narnaul against the accused and facts, as mentioned in Ex.P12 and Ex.P13, were not mentioned by her in Ex.D6. She admitted that she visited Hotel Sun Plaza on 20.07.2018 and she had seen Ex.D9 which bears her signature at Point-A. She admitted that she had produced her ID proof/ Aadhar Card Ex.D10 before Manager of Hotel Sun Plaza, Narnaul. She admitted that she visited B.R. Guest House with the accused and Ex.D1 was copy of her DL. She admitted that for the first time, when she visited Hotel Sun Plaza, she went there on foot and did not raise any hue and cry nor made any complaint to the Manager or staff of the said Hotel and Guest house. She admitted that photographs Ex.D11 to Ex.D13 of her and accused were clicked on 22.08.2019 in the mobile. She admitted that accused was in their relations and he used to visit them many times before 16.04.2018 alongwith his mother. She admitted that she was daily commuter from her village as well as from her matrimonial home when she was taking coaching. She admitted that at the time of visit to Ratna Ultra-Sound at Rewari, the accused was with her. She did not disclose anything before the doctor and the staff at that time about commission of rape upon her or that she was under threat or

duress of accused.

24. Cross-examination of prosecutrix goes a long way to prove that physical relationship between her and accused existed for period of several months with her consent. Though as per allegations, accused had been harassing, blackmailing and threatening her in order to coerce her to have sexual relations with him since April 2018, yet, admittedly, prosecutrix never raised any grievance before any person at any stage. She neither gave any complaint before police nor approached any competent authority. No obscene photos or videos were recovered from the possession of accused. As per allegations, she was raped during day time at Hotel Sun Plaza, Narnaul and in B.R. Guest House, Kanina, She did not seek any help from the said Hotel/Guest house. Trial Court has rightly observed that prosecutrix, being a mature married woman, well educated Science student and well versed with ways of life, could distinguish between her good and bad. Therefore, if she remained involved with the accused for a period of several months and allowed him to have sexual intercourse with her without any demur, it certainly leads to an inference that she voluntarily consented for the same. It is rightly recorded by learned trial Court that there is no positive evidence to conclusively prove that accused had forced, threatened or blackmailed the prosecutrix to submit her body to satisfy his sexual lust. Rather allegations in testimony of the prosecutrix belie the case of prosecutrix that she was subjected to rape.

25. PW-1 EHC Ramesh Kumar, testified that he obtained copy of Aadhaar Card of the prosecutrix from B.R. Guest House while receiving relevant copy of visitor register showing visit of prosecutrix with the accused. Similarly, PW-4 Nileshe, L/Constable stated in her cross-

examination that during visit to hotel Sun Plaza with the Investigating Officer, they found, during checking of visitor register, that, prosecutrix had affixed her signatures at the time of visit with the accused in that hotel, in the visitor register.

26. PW-5 C-Pooja, who also remained associated in investigation with PW-15 Investigating Officer, has categorically stated during her cross-examination that it came up during investigation that accused did not capture or click any obscene photo of prosecutrix with his mobile nor any objectionable video of the prosecutrix was found saved in mobile phone of the accused.

27. PW-6 Ramesh Chand, Manger of B.R. Guest House, has also admitted in his cross-examination, that prosecutrix herself affixed her signatures in the visitor register which was marked as Ex.P9 at Mark D1 and she also appended her signatures at the time of leaving the room for identification purpose, the prosecutrix herself handed over her driving licence, copy of which was Ex.D1. He admitted that prosecutrix did not make any kind of complaint against any person when she had stayed in their guest house on 22.04.2019.

28. PW-9 Sandeep, Manager of Hotel Sun Plaza, admitted during his cross-examination, that when accused and prosecutrix checked-in their hotel on 20.07.2018, he himself was at the reception and he did not notice any such sign that prosecutrix was scared or appeared to be scared of anyone rather she was in a calm and composed state of mind. He admitted that prosecutrix stayed with accused for about two hours and during this period, she did not complain to their management or any hotel staff about the conduct or behaviour of accused. He has again categorically stated that

when accused and prosecutrix left their hotel, they were in normal condition and at the time of check-in, prosecutrix herself had handed over her ID for booking the room in their hotel.

29. PW15 ASI Suresh Kumari, revealed during her cross-examination, that B.R. Guest House, Kanina and Hotel Sun Plaza, Narnaul were situated in thickly populated area and many employees used to remain present in the reception room of hotel. Visitor register was found to be maintained in both the hotels. Aadhaar card of the prosecutrix was found in the hotel record and the rooms were found booked by the prosecutrix. Prosecutrix even affixed her signatures in the visitor register at both hotels. She testified that it came up during investigation that prosecutrix herself represented as wife of accused before staff of both the hotels' and in that regard, relationship was found recorded by the hotel staff at the time of booking of the room. She admitted it to be correct that in Ex.P10, it had been mentioned that prosecutrix was wife of accused, had sold one gold chain and a locket and that ID of prosecutrix was also mentioned in it as she had received Rs.52,000/- from Goldsmith herself. She categorically stated that no person was found during investigation who stated that the prosecutrix was pressurized and was taken to hotel rooms by force by accused. She further admitted that during whole of the investigation, she did not find that any sedative substance given to the prosecutrix at any point of time by the accused. Thus, Investigating officer did not find any material which could support the prosecution version.

30. Husband of prosecutrix while appearing as PW-10 testified that accused had raped his wife against her wishes and blackmailed her with her obscene photo/ video but he admitted in his cross-examination that on

31.05.2019, conversation took place between him and his wife on mobile and on 01.06.2019, in the morning, when he called on the mobile of his wife, she did not respond. He admitted that for the first time, after 06.06.2019, he met his wife on 28.10.2019 and till then, he did not know anything about accused having done anything wrong with his wife, as his wife did not apprise him about alleged wrongful acts of the accused. He admitted that when his wife told him that she had lived with the accused after 06.06.2019, he did not inquire as to where both of them had lived or as to whether it was against her wishes and rather admitted that he came to know, after his wife went missing, that his wife had been visiting many hotels and restaurants with the accused and had also stayed there. He admitted that his wife was graduate in Science and that whatever he testified on oath in Court was based upon hearsay only. He pleaded his ignorance as to whether his wife was in love with accused and had been with accused out of her own free will. He testified about not finding the accused in compromising condition with prosecutrix at any time prior to present case. Thus, testimony of this witness does not come to aid of prosecution case.

31. PW-11 "J", father of prosecutrix stated that he had no personal knowledge about the accused harassing or blackmailing his daughter in any manner, and admitted, during his cross-examination, that when he got lodged FIR No.268, regarding missing of his daughter on 02.06.2019 with the police of Police Station, Mohindergarh, she had left the house of her own accord and thereafter, he gave statement voluntarily in that FIR before the Court on 19.02.2021 that he was fully satisfied with untraced report.

32. Medical evidence on record also does not corroborate the prosecution version. From MLR Ex.P20, it is clear that no force was used

against the prosecutrix. PW13 stated in clear terms that no struggle marks, old or fresh were found on her neck, breast and thighs during alleged sexual act at the time of her medical examination. No mark of injury, on her private parts were found, no tenderness or sign of bleeding was present and separation of thighs was not painful.

33. The opinion of doctor that possibility of sexual intercourse cannot be ruled out, ipso facto, in the given factual matrix cannot form the basis of conviction of accused.

34. Thus, statement of prosecutrix cannot be held to be such sterling quality so as to form the sole basis to convict the accused.

35. Learned trial Court has rightly held that had prosecutrix not been on intimate terms with the accused, she would not have eloped with him and would not have posed herself as his wife before the jeweller at Rewari. Prosecutrix is admittedly a married, well educated Science graduate, who was preparing for competitive exam. The witnesses examined from Hotel Sun Plaza and B.R. Guest House categorically stated that during her respective visit to their hotel, prosecutrix was in a calm and composed state of mind and was in her full senses at the time of check in and check out. Thus, the ingredients, required for constituting the offence of rape are not proved on the basis of evidence on record.

36. Learned trial Court has further rightly held that commission of offence under Section 506 IPC is not proved in the absence of any overt act. Admittedly, there was no overt act on the part of the accused in the instant case.

37. As is borne out from the evidence on record, offence under Section 366 IPC is also not constituted as prosecutrix willingly

accompanied the accused and resided with him for a period of around one week from 01.06.2019 to 06.06.2019 and subsequently after release from Nari Niketan as well till 28.10.2019.

38. Prosecution evidence is also lacking to the effect that any poison, or any stupefying, intoxicating or unwholesome drug etc., was administered by the accused to the victim or he caused the victim to take such substance, with the intention to commit or facilitate commission of offence of rape. There is no direct, reliable and cogent evidence in this respect except the bald assertion of the prosecutrix. Learned trial Court has rightly held that the charge under Section 328 IPC was incidental to the main charge and an off shoot and that material before this Court does not justify proceedings even with regard to subsidiary offence.

39. Charge framed against accused under Section 379A IPC that accused had stolen gold jewellery from the prosecutrix after blackmailing her with her obscene video is also not established. PW-2 HC-Meena, has specifically deposed that during investigation, it was found that jewellery was sold by the prosecutrix at her own at the shop of Mahesh Jeweller at Rewari and she herself had received the money from the shopkeeper. Similarly, PW-7 Mahesh, owner of Hari Om Jeweller, has also clearly stated that prosecutrix handed over photocopies of her DL and Aadhaar Card to him for her identification proof and when she came to his shop, she was not under pressure or coercion of anyone. He further stated that accused had left his shop for collecting his ID from his Car and in his absence, when he made inquiry from prosecutrix regarding her relation with him, she disclosed that he was her husband. He has clearly stated that payment of Rs.52,000/- was made by him to accused who handed over said amount to

prosecutrix and money was put by prosecutrix in her bag in his presence.

40. The prosecutrix also levelled allegation against the accused that he was responsible for aborting the pregnancy caused due to his act. While appearing as PW-8 prosecutrix stated that when she told accused about her conceiving the child as a result of sexual relations with him, accused gave her some tablets and aborted her child, however there is no evidence on record in this regard. Prosecutrix did not at any stage, state such facts before Judicial Magistrate, Advocate or before Deputy Commissioner that accused had forcibly administered such tablets to her. Though while appearing as PW-8 she stated that she had got conducted her ulter-sound from which she came to know that her pregnancy had been terminated, yet no such report has been produced on record. During her statement prosecutrix also stated that she gave birth to a pre-mature baby on 23.08.2019, but again it is not the case of prosecutrix nor she stated anywhere that she became pregnant from the accused twice. There is no DNA report to ascertain paternity of the child. The ingredients of Section 313 of IPC, are also not proved.

41. Thus, after analyzing the evidence on record it can safely be concluded that prosecution has indeed failed to prove its case against the accused beyond reasonable doubt. Evidence on record is insufficient to convict the accused for the offences as charged with and he has been rightly acquitted by learned trial Court.

42. 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' **2014 (14) SCC 589**. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 08.11.2023 which calls for interference.

43. No other argument was raised.

44. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 08.11.2023 passed by learned trial Court is upheld.

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

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

20.12.2024.

Komal

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