

2024:PHHC:149962-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-187-2024

Date of decision: 18.11.2024

Rxxxx

..... Appellant

V/s

State of Punjab and anr.

...Respondents

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

Present: Mr. Mitul Singh Rana, Advocate, for the appellant.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 13.03.2024 passed by the Additional Sessions Judge, Fast Track Special Court, Hoshiarpur.

2. The FIR in the present case came to be registered on 08.09.2020. The judgment of acquittal was passed on 13.03.2024. This appeal dated 05.06.2024 has come up for final hearing now i.e. after a period of 04 years having elapsed from the date of the registration of the FIR.

3. The brief facts of the case are that an application bearing No. 3598 dated 09.12.2019 was moved by complainant/prosecutrix aged 26 years daughter of Ashok Kumar, resident of Mukerian, District Hoshiarpur, against accused Deepak Kumar with the allegations that the accused had committed fraud with her by performing marriage with her during the subsistence of his first marriage and now for divorce, he was threatening to

kill her and to make viral her nude photos on social media. It was stated that the accused was doing the work of body building and was running a Gym, namely, 'The Tone Zone Gym' 154, Bats Residency, Hanuman Mandir MG Road, Sukhrali, near Bullz Wear Gurugram and he was also running a supplements store. Despite being already married, the accused performed marriage with her deceitfully. The accused performed marriage with her on 29.11.2016 as per Sikh rites in the Gurdwara, namely, Hind Di Chadar (Regd.) at Mukerian in the presence of his family members, friends and relatives. After the marriage, they cohabited as husband and wife in Sector 15, Gurgaon in a rented premises. After 04 months of the marriage, the accused left her in the house of her sister Rekha Nanda by saying that his parents were annoyed with their marriage and when they would agree, he would take her with him. However, a long time had elapsed on this pretext. During this period also, the accused took her to hotels in Mukerian, Dasuya, Jalandhar and Gurgaon, where he developed physical relations with her. Despite her asking, he did not take her to her in laws. He put off the matter by saying that his parents were still annoyed with their marriage, but he assured that he would make them agree. She went with the accused to his house forcibly. However, his parents did not allow her to stay there. They abused her and turned her out of the house. Every time, the accused took her to the rented premises, his friends Rakesh Yadav, Bajinder, Rahul and Rocky used to do obscene acts with her in his presence but he remained silent. He developed relations with her being husband and wife continuously at Mukerian. Subsequently, in the month of February/March 2019, her brother

in law (Jija Ji), namely, Rajan Nanda uploaded the photographs of her marriage with Deepak on face book. A telephone call was received from Ram Gopal Verma, after which she and her family came to know that Deepak Kumar was already married to Rubby Verma daughter of Ram Gopal Verma of Faridabad and was having two daughters. Thus, the accused had committed fraud with her by performing a second marriage with her. She and her family made enquiries and it emerged that accused Deepak was already married and the persons claimed to be his brothers at the time of marriage were not his family members. All of them in connivance with each other committed fraud with her. Even now when she came to know about the real facts about Deepak Kumar, he had threatened to develop physical relations with her forcibly and on her refusal, he was threatening to kill her and was also threatening to take a divorce. Being husband and wife, Deepak Kumar had also made her video and clicked nude photos and he was now threatening to upload the same on social media in order to defame her. She apprehended danger to her life at the hands of accused. He was threatening to kill her and her family.

Along with the application, she attached the photocopy of the marriage certificate issued by the Gurdwara and photocopies of summons of litigations initiated by Rubby Verma against accused Deepak Kumar. On the said application of the complainant/prosecutrix, an enquiry was conducted by DSP, Sub Division, Mukerian. After seeking opinion of DA (Legal), the case was registered against the accused. During investigation, the prosecutrix was produced at Civil Hospital Mukerian for her medical

examination on 21.09.2020, but she refused for her internal medical examination. Her statement under Section 164 Cr.PC was recorded on 29.09.2020. The accused could not be arrested and PO proceedings were initiated against him. A challan was presented against him before the Area Magistrate on 07.11.2020. Thereafter, the accused was granted interim bail by this Court vide order dated 18.01.2021 passed in CRM-M-41695-2020 and in compliance with that order, he joined the investigation. His interim bail was confirmed vide order dated 23.03.2021. After completion of investigation, a supplementary challan was presented before the Area Magistrate.

4. On presentation of the challan, copies of the same were supplied to the accused as required under Section 207 of Cr.PC. Since, the offence covered under Section 376 IPC, was exclusively triable by the court of Sessions, so, the Area Magistrate, vide order dated 15.06.2021 committed this case to the court of learned Sessions Judge, Hoshiarpur.

5. Finding a prima facie case, the accused was charge sheeted under Sections 495, 493, 376 IPC, to which he did not plead guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined the following witnesses : -

Sr. No.	Prosecution Witness(es)	Name of the Witness(es)	Details of the Witness(es)
1.	PW-1	Prosecutrix	Victim
2.	PW-2	Rajan Nanda	Witness
3.	PW-3	ASI Madan Lal	Witness
4,	PW-4	Dr. Mandeep Kaur	Medical Officer
5.	PW-5	Insp. Amarjit Kaur	Investigating Officer

7. Later, the State tendered into evidence, the certified copy of the reply filed in the petition under Section 125 of Cr.P.C vide Ex.PX, certified copy of interim maintenance reply in the same case Ex.PX1, certified copy of income and expenditure affidavit of Deepak Kumar Verma Ex.PX2 and photographs of Deepak Verma with his wife Rubby Mark-PX1 to Mark-PX3. The A.P.P. stated that PWs Rubby Verma and Narinder Singh Cheema were the witnesses to prove the first marriage of Rubby Verma with accused Deepak Kumar Verma. But in view of the documentary evidence in respect of the marriage of the accused with Rubby Verma, he gave up both the witnesses, namely, Rubby Verma and Narinder Singh Cheema being unnecessary.

8. The incriminating circumstances appearing in the prosecution evidence against the accused were put to accused during his statement recorded under Section 313 Cr.PC. He denied all the allegations and pleaded his innocence. He took the plea that a false case had been planted upon him. No rape was committed by him upon the prosecutrix. He did not perform

second marriage with the prosecutrix nor did he cheat her as the prosecutrix

as well as her family members were well aware of the fact that he was earlier married with Rubby Verma.

9. In order to substantiate its case, the prosecution examined PW1 Prosecutrix, who stated that she was a sportswoman. She met accused Deepak Kumar Verma in year 2015 at a sports meet in Gurgaon now Gurugram. He was an organizer of sports events. She came in contact with the accused and they exchanged phone numbers. He started motivating her on the pretext that she could rise in sports. During their conversation, the accused proposed marriage. After 5/6 months there was a competition in Sukhrali in Gurugram and she along with one of her students reached Sukhrali for participation. Arrangement of her stay were made by the accused. After the competition was over, he took her roaming around the city. He wanted to take her to his home but she refused to accompany him as she told him that she was not married yet. But he compelled her and under his compulsion she went to his house at Sukhrali Gurugram. The mother of the accused was doing tailor work and at that time his mother, brother and father were present at home. The accused had told her to touch their feet and his parents told her that the girls should not be touching feet. The accused asked her to show to his parents that she could do house hold work and he asked her to prepare tea but his mother firstly refused but on the insistence of accused Deepak, she prepared tea. She was given shagun and a suit while she was leaving the house of the accused by the mother of the accused. Thereafter, she came back to Mukerian. The accused told her that now she had visited his house and he requested her to get married to him. As she was

a sports-person she told the accused that she had a career in sports due to which she could not marry him for three years at least. He stated that if she could not marry him then they could get engaged. In the end of 2015 she got engaged with the accused and the ring ceremony was arranged at the Gym and it was attended by her brother-in-law, sister and their children. The accused insisted upon her to accompany him to other places but she refused to do so till they were married. He took her to hotels at Mukerian and also in Dasuya and Jalandhar and developed physical relations with her in the hotels despite her protest. Her parents were against her accompanying the accused and they insisted her that she should get married to the accused. When she asked the accused to marry her, he replied that his mother was a heart patient and he would contact his brothers regarding the marriage and he took some time for the same and even asked her to consult her parents. She talked with her parents and they agreed to the marriage. On 29.11.2016, she was married with accused at Mukerian at Gurudwara Sahib Hind Di Chadar. The brother of the accused, namely, Rakesh Yadav, Rocky and Vijender along with their wives attended the marriage and from her side, her whole family attended the marriage. The accused asked her to stay at Mukerian and he said that he would come within 2/3 days and take her to his house. She replied that as she had been married, he should take her to the matrimonial house and her parents would not allow her to live with them. Thereafter, he took her to Gurugram at Sector 14, where there was a Gym managed by him and there was room opposite to that gym. She used to live in that room. However, the accused never stayed in that room during the

night hours. Even on Saturday and Sunday, he did not remain with her and she used to stay alone. She asked the accused as to what was happening and he replied that his parents were against the marriage and he was trying to make them accept the marriage. When she asked about the prospects of joining his family then he used to get angry and he used to beat and abuse her and get irritated. She was surprised to know that the three persons namely, Rakesh, Rocky and Vijender, who attended her marriage and were introduced by the accused as his brothers, were not his brothers but they were his friends. The three persons along with Rahul used to address her in an indecent manner. When she told the accused that they had been addressing her indecently, he replied that this was the culture of Gurugram. There was one competition in Sukhrali and she asked the accused to let her accompany him but he again got angry and gave severe beatings to her. This incident occurred in the year 2016. She told about her ordeal to her sister and brother in law (Jija) and she told them that she had full details of her marriage and she did not upload the photographs and certificate of marriage on facebook but her brother-in-law Rajan Nanda helped her and uploaded the photographs of her marriage and marriage certificate on the facebook from his ID. When those photographs were uploaded, her brother in law (Jija) received a call and that caller asked about the uploaded photographs and also inquired about her and from his conversation he introduced himself as father-in-law of the accused and he identified himself as Gopal Verma and he also asked about her marriage with the accused. He also asked about her present address. He also inquired about their knowledge about the first wife

of the accused but her brother-in-law (jija) replied in the negative that they had no knowledge about the marital status of Deepak Kumar Verma. The said Gopal Verma told her brother-in-law that the accused was already married with Ruby Verma and he had two daughters from that marriage. After uploading the photographs, the accused called her and asked her the reason for uploading the same. When he did not find her reply satisfactory, he started giving beatings to her. Even, the mother of the accused called the accused on the mobile phone and asked about the photographs and he cleverly replied that those photographs were fake. On hearing his reply to his mother, she asked the accused as to why he has said that the marriage photographs were fake. He did not give any reply to her query. After that he left her and came at about 09:00 PM. She asked him as to what had been going on. She asked about his marital status and why he had replied wrongly to his mother that their marriage photographs were fake and she also asked some questions about their marriage. On this, he replied that he did not know anything and he asked her to pack her baggage and he wanted to drop her at her residence. He brought her at her residence at Mukerian and he did not come inside and left her there without meeting anybody. This occurrence took place in the middle months of 2016. Thereafter, she tried to contact him continuously but the accused did not attend to her calls. In the meantime, the wife of accused, namely, Ruby Verma sent her the photographs of her marriage and some other photographs on whatsapp. While she was staying at Mukerian with her sister when the accused had left her there, within two months therein, she received a call of the friend of accused, namely. Rakesh

Yadav and he informed her that Deepak had met with a serious accident and there were less chances of his survival. He asked her to come to Gurugram and told her that he would pick her from Bus Stand Gurugram. She reached Gurugram and Rakesh Yadav picked her and took her to the house accused Deepak Kumar Verma. She reached there and she was shocked to see that accused had not met with an accident and in that house father, mother and brother of accused were present along with accused. All of them started blaming her that she was aware about the first marriage but she had still married the accused and that she had brought a stigma to their family and ruined their family name and they asked her to sign some blank documents. They wanted that she should sign the divorce papers but she refused to sign the blank documents which they could have used for obtaining the divorce. Thereafter, she came back to Mukerian. The accused through his friends and other people started calling her and threatening her. When, she did not fall to the threats of the accused, then he politely and cleverly started talking to her that she should meet him once. On his call, she went to Gurugram where the friends of accused named above Rakesh Yadav, Rocky, Vijender and Rahul met her along with the accused and they gave threats to her that she should sign some blank papers which were meant for divorce and he even threatened to kill her. She further stated that thereafter, the accused started giving threats to her that he had a desi pistol and he would kill her. He even threatened her through her Instagram account by posting threat messages to her. He also sent her some personal pictures and threatened her that he would make them viral. She had seen the application moved to the SSP

which was Ex.PW1/A. Carbon copy of her medical examination was Mark PW1/A. She had seen her statement under Sec.164 Cr.PC containing 9 pages which was Ex.PW1/B. Photographs of the marriage were Mark PW1/B to Mark PW1/G (six in number).

The statement of PW-2 Rajan Nanda, brother-in-law of the prosecutrix was recorded which was on similar footing as the deposition of the prosecutrix.

The statements of PW-3 ASI Madan Lal, PW-4 Dr. Mandeep Kaur, Medical Officer, Mukerian and PW-5 Inspector Amarjit Kaur were recorded as to the different aspects of the investigation.

9. Based on the evidence led, the respondent No.2-accused came to be acquitted vide judgment dated 13.03.2024 passed by the Additional Sessions Judge, Fast Track Special Court, Hoshiarpur.

10. The aforementioned judgment is under challenge before this Court.

11. The learned counsel for the appellant contends that the judgment of acquittal has been recorded on the basis of conjectures and surmises. Minor discrepancies had been given undue weightage. The marriage of the prosecutrix with the accused had been proved beyond reasonable doubt. All the prosecution witnesses were consistent in material particulars as to the manner in which the occurrence took place. He, therefore, contends that the impugned judgment dated 13.03.2024 was liable to be set aside and the accused-respondent No.2 ought to be convicted for having committed the offence in question.

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

13. It is an admitted fact that both the prosecutrix and accused were majors. Criminal proceedings against the accused were initiated on an application bearing No. 3598 dated 09.12.2019 moved by prosecutrix against accused Deepak Kumar Ex.PW1/A in which she has stated that on 29.11.2016 accused performed marriage with her in the Gurdwara, namely, Hind Di Chadar (Regd.) at Mukerian. After marriage, they cohabited as husband and wife in Sector 15, Gurgaon in a rented premises. After passing of 4 months of the marriage, the accused left her in the house of her sister Rekha Nanda by saying that his parents were annoyed with the marriage and when agree, he would take her with him. She stated that accused took her to different hotels and developed physical relations with her. Despite her asking repeatedly, he did not take her to his house. However, she went with the accused to his house forcibly, but his parents did not allow her to stay there. They abused her and turned her out of the house. In the month of February/March 2019, her brother in law (Jija Ji) namely Rajan Nanda uploaded the photographs of her marriage with Deepak on face book. A telephonic call was received from Ram Gopal Verma, after which she and her family came to know that Deepak Kumar was already married to Rubby Verma daughter of Ram Gopal Verma of Faridabad and was having two daughters. However, when the prosecutrix appeared into witness box as PW1 she made material improvements by exaggerating the facts, which was never the case of prosecutrix in her first version i.e. application Ex.PW1/A.

She stated certain new facts. During the examination-in-chief itself, she stated that she had met the accused in the year 2015 at Gurgaon during sports event. The accused took her to his home at Sukhrali Gurugram, where his mother, brother and father were present and she prepared tea. She was given shagun and a suit. She further stated about the accused proposing marriage and refusal by her. In the end months of 2015 she got engaged with the accused and her ring ceremony was arranged at the Gym and it was attended by her brother in law and sister and their children. However, the aforesaid facts of meeting of the prosecutrix with the accused in the year 2015 with respect to a sports event at Gurgaon and her visiting the house of accused as well as asking of the accused to perform marriage and her refusal for marriage being a sports woman for 3 years and thereafter, the performance of ring ceremony, was never part of her version in application Ex.PW1/A. Moreover, in the application Ex.PW1/A, it is the version of prosecutrix that accused did not take her to his house, but in court, she put up a new story that after the sport events, he compelled her to accompany him to his house and under compulsion of accused, she went with him to his house and met his parents. She further stated that when she asked the accused to marry her, he replied that his mother was a heart patient and he would contact his brothers regarding the marriage and he took some time for the same. However, as stated above, when the accused asked her for marriage, she refused marriage for 3 years for the sake of her career in sports. Apparently, she has taken a contradictory stand. During the further examination-in-chief, the prosecutrix stated that the accused took her to

hotels at Mukerian, Dasuya and Jalandhar for staying over night and he developed physical relations with her in the said hotels despite her protest. However, in her examination-in-chief, she stated that on 29.11.2016, she married the accused at Mukerian at Gurudwara Sahib Hind Di Chadar. Since as per the version of the prosecutrix, the accused had developed physical relations with her in hotels despite her protest, however despite that she performed marriage with accused on 29.11.2016. The prosecutrix also deposed about the occurrence of the year 2016 when accused had given her severe beatings. She further stated that in the middle months of 2016, he had dropped her at her residence at Mukerian, but he did not come inside and left her there without meeting anybody. If this occurrence occurred in the middle months of 2016, then her solemnizing marriage with accused on 29.11.2016 i.e. after the said occurrence becomes doubtful. She also set up a new story by stating during her further examination in chief itself that after receiving a call of the friend of the accused, namely, Rakesh Yadav with respect to a serious accident of the accused, she reached Gurugram and she was shocked to see that the accused had not met with an accident. His family members started blaming her that she was aware about the marriage but still she married the accused and that had brought a stigma to their family and ruined their family routine and they asked her to sign some blank documents i.e. divorce papers but she had refused to sign the blank documents. Thereafter, accused through his friends and other people started blackmailing her from different numbers and demanded divorce from her. However, in the application Ex.PW1/A, these facts are not found to be mentioned. It has

only been mentioned therein that the accused was threatening her for developing physical relations forcibly and for giving him a divorce, failing which he would kill her and defame her by making viral her nude photos and videos on social media.

In the light of the aforesaid versions of the prosecutrix in application Ex.PW1/A, on the basis of which, the criminal law was set into motion against the accused and her examination in chief as PW1, her version narrated by her in statement under Section 164 Cr.PC Ex.PW1/B is also necessary to be perused. She stated that her marriage with the accused was performed on 29.11.2016 and the accused took her to Gurgaon in a separate flat which was taken on rent. His parents were residing in Gurgaon at some other place. However the behaviour of accused started changing towards her and he started quarreling with her on trivial matter and he used to beat her. He developed physical relations with her against her consent. Here she stated that the accused developed physical relations with her against her consent, but in the application Ex.PW1/A, she nowhere stated that the said relationship was against her consent. The behaviour of accused during night time was different and during day time, he used to treat her with love. The friends of accused, namely, Rakesh Yadav, Rocky, Bajinder and one Rahul used to ask her to prepare different items. Since she did not know how to prepare the said items, he used to beat her in the presence of his friends and he used to slap her and kick her. His friends also used to misbehave with her and touch her inappropriately and passed loud comments. When the matter crossed all the limits, she asked the accused either she should be taken to his

parents or to his sister at Mukerian. After 3-4 months of marriage, he left her at the house of her sister. Since then she was residing with her sister. He used to come at the house of her sister and misbehaved with her, abused her and gave beatings to her and he forcibly developed physical relation with her against her consent. She asked the accused to take her to his parents, but he stated that his parents were annoyed and that he would take her to his parents house when they agreed to their marriage. Thereafter, her sister asked the accused not to come to her house if he was unable to take the prosecutrix to his house. He made a phone call and told her that if she did not come to meet him at Dasuya, he would crash his vehicle. So she went to meet him at some hotel. Every time, he developed physical relations with her forcibly. She was unable to understand his nature. Thereafter, he started calling her at Jalandhar and she used to go to meet her there. Thereafter, he took her to Gurgaon and there was a weight lifting competition. He took her to some hotel in Gurgaon and on her asking, he took her to his parents, where he introduced her as his gym colleague but she told that she was the wife of Deepak and he had performed marriage with her. Upon this, his mother started quarreling with her and abused her and turned her out of the house and closed the door. Thereafter, 2-3 times, she tried to make his parents understand, but they did not agree to their marriage. One day, her brother-in-law uploaded their marriage photos on facebook along with his phone number. After some time, father of the first wife of the accused made a phone call to her brother-in-law and he told him that Deepak had performed marriage with the prosecutrix. The father of first wife Rubby

Verma i.e. Gopal Verma informed that Deepak was already married and his daughter Rubby Verma was married with him and they had two daughters. Upon this, her brother-in-law told him that they did not know this fact that the accused was already married and he had stated that he was unmarried. She further stated that she made several phone calls to the accused for taking her to his parents, but he stated that he could not take her to his house. He became infuriated and asked her to give him a divorce, but she refused. Upon this, he threatened to kill her. He also uploaded some wrong messages and abusive language on her instagram account. He made her life hell. She made a phone call requesting him not to do so, but he stated that if she did give him divorce, he would do so.

14. Other than the above discrepancies in the statement of the prosecutrix, her cross examination is also very important. She stated that Deepak accused was residing at Sukhrali (Gurgaon) with his family members and she came to know about the family members of Deepak when he took her to his house during the body building competition. However, in this regard she did not say anything about these facts in her application Ex.PW1/A moved to SSP Hoshiarpur for taking legal action against the accused. So far as her version with respect to the performing of a ring ceremony with the accused at the gym owned by her brother-in-law, namely, Rajan Nanda is concerned, the prosecutrix stated that photographs of ring ceremony were clicked and she had handed over the same to the Investigating Officer. But the Investigating Officer/Inspector Amarjit Kaur PW5 did not state anything in this regard that the prosecutrix had handed

over to her the photographs of her ring ceremony with accused. A perusal of the record also shows that there is no such photographs on the file to prove this fact that a ring ceremony was ever performed between the accused and the prosecutrix. No witness in this regard has been examined by the prosecution. Further, the prosecutrix could not tell the name of the owner of flat/rented house at Gurugram where they resided after marriage. Though, she has stated that accused used to give her beatings at Gurugram, but admittedly, she did not get herself medically examined in this regard. She further admitted that when her brother in law uploaded the photographs of her marriage with accused, she was residing with accused at Gurugram and the said photographs were uploaded in February/March 2019. She further stated that after the disclosure of the fact of the earlier marriage of the accused, they still used to meet. It is doubtful that as per the prosecutrix, her marriage with the accused took place in the year 2016, but the photographs of marriage were uploaded in 2019 i.e. after such a long time. Further it is admitted fact by PW1 prosecutrix that after her marriage with accused, she did not update her aadhar card in the name of her husband and she did not obtain marriage certificate from Sewa Kendar. Though, during the examination-in-chief, she stated that the first wife of the accused i.e. Rubby Verma had called her, but she did not remember the number of the said Rubby Verma. She could not tell the numbers from which the accused was allegedly blackmailing her.

15. Therefore, all the three versions of prosecutrix i.e. statement/application Ex.PW1/A, statement under Section 164 Cr.PC

Ex.PW1/B and statement in court as PW1 prosecutrix are found to be contradictory to each other and while deposing in court during examination-in-chief, she made material improvements, as detailed above. No doubt, a statement before police is corroborative and not a substantive piece of evidence, but when a very specific stand is taken therein, which is substantially different than that in deposition and there is material improvement, there has to be a good explanation for the same otherwise the prosecution version becomes suspect. From the facts stated by her during her deposition in court, it can be inferred that she was aware about the accused before marriage viz-a-viz his background and everything happened with her own consent. A doubt is also created in the version of prosecutrix due to the fact that as per her story, after their marriage on 29.11.2026, the accused changed his behaviour towards her and he used to beat and abuse her. However, she remained quiet for a long time and did not move any complaint against him except the present one i.e. on 09.12.2019. This fact stands admitted by Investigating Officer/Inspector Amarjit Kaur PW5 during her cross examination that as per her information, the prosecutrix had not moved any complaint prior to 2019. The prosecutrix, during her cross examination also admitted that she did not complain to the police authorities about her rape prior to the present application. She also admitted that she did not get herself medically examined regarding the said rape before the registration of present FIR. Moreover, as per medical history Ex.PW4/A as well as Ex.PW4/C, narrated by prosecutrix to PW4 Dr. Mandeep Kaur, though she had refused for her internal medical examination, but she stated

that there had been pre-marital sexual relations with her husband without her consent. Thus, the prosecutrix is not a witness of sterling quality and her version puts the case of the prosecution under a cloud of doubt. In the case of ***Suraj Mal Vs State (Delhi Administration) AIR 1979, SC 1408***, it was observed by the Hon'ble Supreme Court that “*where witnesses make two inconsistent statements in their evidence, either at one stage or two stages, the testimonies of such witnesses became unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witness. It would only show that witness was not speaking a truth*”. Further, on the point of sterling witness, the Hon’ble Supreme Court of India has held in ***Rai Sandeep @ Deepu vs State of NCT of Delhi 2012(4) RCR (Criminal) 11***, in para 15 of the judgment that, “*the sterling witness should be of a very high quality and caliber, whose version should, therefore, be unassailable. 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 and the witness should be in 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 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. The entire version of prosecutrix is highly doubtful, inconsistent and contradictory and hence, does not inspire any confidence.

16. So far as the factum of marriage of the prosecutrix with the accused on 29.11.2026, is concerned, no concrete evidence has come on record in this regard. No original certificate of marriage has come on record and only photocopy of the same was produced. The Granthi of the Gurdwara who is stated to have performed the marriage ceremony had also not been examined by the prosecution. He was the best witness to depose the factum of marriage between the couple. One Narinder Singh Cheema, Manager of Gurdwara Hind Di Chadar, Mukerian was also cited as a witness to prove the record of the Gurdwara in respect to the marriage of couple, but the said witness was also not examined. He was given up by the Addl. PP. Likewise, the first wife of the accused, namely, Rubby Verma was not examined in this case and she was also given up by the Addl. PP. The Addl. PP for the State gave the reason for giving up the said witnesses stating that the marriage of the accused with Rubby Verma had been proved by way of documentary evidence in the form of a reply filed by the accused in the petition under

Section 125 Cr.PC in which the accused admitted his earlier marriage with Rubby Verma. Therefore, the said prosecution witnesses were given up being unnecessary. However, the evidence of these witnesses was necessary to prove the factum of the first marriage of the accused, keeping in view the fact that the entire case of the prosecution is on the fact that the accused had performed a second marriage with the prosecutrix by concealing the factum of his earlier marriage in a deceitful manner. Therefore, the non-examination of these prosecution witnesses also create a doubt on the prosecution case. Even otherwise, a perusal of the reply to application under Section 125 Cr.PC Ex.PX shows that accused stated therein that the petitioner i.e. prosecutrix was not his legally wedded wife and he was already married to Rubby Verma and he was having two children and this fact was in the notice and knowledge of the prosecutrix prior to year 2016.

17. So far as the evidence of PW2 Rajan Nanda, who is none else but the brother in law (sister's husband) of prosecutrix PW1, is concerned, his evidence is also doubtful. During the examination in chief, this witness stated that in the year 2015, he along with the prosecutrix went to Gurgaon to participate in the Body Building Tournament and in that tournament, he appeared as a Judge. Accused had met them during the said competition and the prosecutrix and accused got to know each other and they decided to marry each other. However, PW1 prosecutrix did not utter even a single word that this witness Rajan Nanda, her brother-in-law had accompanied her to the said tournament/competition, rather as per version of prosecutrix

PW1, she along with her student had participated in the competition at

Gurgaon. Further this witness stated that he along with his wife, children, father in law had participated in the marriage of prosecutrix with accused on 29.11.2016 and he had the photographs of said marriage and he uploaded the said photographs on facebook. However, he did not state as to when he had uploaded the said photographs on facebook. It is highly improbable that the marriage had taken place in the year 2016, but the photographs of the marriage were uploaded by this witness in the year 2019 as per version of prosecutrix. Even otherwise, no proof is placed on file in respect to uploading of marriage photographs on facebook by this witness. Another factor which raises a doubt in the deposition of this witness is that he disclosed the name of the father-in-law of the accused i.e. father of Rubby Verma, the first wife of accused as Govind Verma. It is pertinent to mention here that Govind Verma is the father's name of the accused and the actual name of father of Rubby Verma is Ram Gopal Verma. He also could not tell the contact number of the said Gobind Verma from which he had called him regarding the factum of the earlier marriage of accused. Further, though PW2 Rajan Nanda deposed about the earlier marriage of accused with Rubby Verma, but during the cross examination, he admitted this fact that he did not possess any kind of proof regarding earlier marriage of accused. He could not say if the prosecutrix lived with the accused as per her Will or not. It is also surprising that after coming to know of the factum of the earlier marriage of the accused, this witness being brother-in-law (husband of sister) of the prosecutrix, did not bother to verify the fact of the earlier marriage. This witness did not utter anything qua the ring ceremony

performed between the accused and the prosecutrix, despite the fact that it is the categoric version of PW1 prosecutrix that the said ring ceremony was attended by her brother in law (i.e. Rajan Nanda), her sister and their children. Hence, he did not state anything incriminating against the accused except the uploading of photographs on facebook, but no period is mentioned when he uploaded the same on facebook. So the evidence of this witness is also not reliable, more particularly, keeping in view the fact that evidence of the star witness i.e. PW1 prosecutrix is found to be not reliable and trustworthy to convict the accused in this case.

18. There is also the evidence of PW5 Inspector Amarjit Kaur, Investigating Officer that the prosecutrix had mentioned the occurrence relating to the year 2016 to 2019, but she had not moved any complaint prior to 2019. She admitted this fact that as per her investigation, both the prosecutrix and accused remained together for three months. No independent person was joined for the purpose of supporting the claim of the prosecutrix. During her investigation, it had come to the fore that the accused was already married and even during his bail application, the accused had mentioned so. So, it can be gathered from this part of the cross-examination of the witness that accused had not concealed his earlier marriage. It is also an admitted fact that the prosecutrix refused her internal medical examination. Therefore, no vaginal swabs, slides were taken to confirm the factum of her rape. Hence, there is no medical evidence qua rape and beatings given to the prosecutrix.

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 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.”

20. 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 dated 13.03.2024 passed by the Additional Sessions Judge, Fast Track Special Court, Hoshiarpur, whereby the respondent No.2-Deepak Kumar Verma has been acquitted. Therefore, the present appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

November 18, 2024
sukhpreet