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(279)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-338-2023 (O&M)

Date of Decision: 12.11.2024

PXXXX

... Appellant

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Navjot Singh, Advocate
for the appellant as Legal Aid Counsel.

Mr. Ravish Kaushik, Addl. AG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 27.03.2023 passed by the Additional Sessions Judge (Special Court), Kaithal.

2. The FIR was registered on 08.01.2019, the judgment of acquittal passed by the Addl. Session Judge (Special Court), Kaithal is dated 27.03.2023, the appeal was filed on 24.06.2023 and the matter is being taken up for hearing now after 05 years of the registration of the FIR.

3. The case of the prosecution as unfolded by complainant 'P' (prosecutrix), a resident of village 'XXXXXX', District Kaithal (name/Identity withheld for the purpose of secrecy), in her application/complaint dated 31.12.2018 (Ex.P-4) is as under:-



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"She (complainant) is resident of xxxx Gate, xxx Mohalla, Tehsil and District Kaithal. When her rishta (relationship) was fixed with Sonu, then, Sonu and his father Jaipal Sharma, visited her house and her mother had given jewellery about 6 tolas gold, silver 1 kg, 1 kara silver, on which name of Sonu was written, two bed sheets, one pent coat and some clothes to Sonu as son-in-law. Thereafter, accused Sonu Sharma started visiting their house and under the pretext of engagement/fixed rishta, accused Sonu raped her and due to her wrong acts, she become pregnant. When she was having three months pregnancy, Sonu Sharma had pressurized her to terminate her pregnancy and administered her some warm/hot tablets/pills, due to which her pregnancy was got terminated and she suffered physical harm. She is having recording with her. Accused Sonu Sharma had put pressure upon her under the pretext of fixation of rishta and sexually exploited her and her father Jaipal Sharma was knowing all these facts. In connivance with each other, Jaipal Sharma had solemnized the marriage of his son Sonu, in another place and this fact came into her knowledge on 15.12.2018. When her mother questioned Jaipal Sharma, he threatened them that they are persons of higher approach and whatever she wants, she can do, and the administration cannot harm them"

4. On the basis of the aforesaid application Ex.P-4, formal F.I.R. Ex.P-21 bearing No.05 dated 08.01.2019 was registered at Police Station Women, District Kaithal. The matter was investigated by L/Sub-Inspector Birmati. During investigation, site plan of the place of occurrence was prepared. The statements of the witnesses were recorded under Section 161 of the Criminal Procedure Code, 1973. Statement of prosecutrix-victim was recorded under Section 164 of Cr.P.C. Accused-Neeraj alias Sonu Sharma

was arrested and after completion of the investigation, accused Neeraj alias Sonu Sharma was challaned in due course to face trial.

5. On finding a prima-facie case, punishable under Section 376 (2) (n) of the Indian Penal Code, 1860 against accused-Neeraj alias Sonu Sharma, he was charge-sheeted thereunder, vide order dated 23.01.2020 passed by the Court, to which he pleaded not guilty and claimed trial.

6. To substantiate its case, the prosecution examined fourteen witnesses, on record.

LIST OF PROSECUTION WITNESSES

RANK	NAME	NATURE OF EVIDENCE
PW1	Dr. Briti Garg, Medical Officer	Medical evidence
PW2	‘K’-mother of prosecutrix	Relative witness
PW3	‘P’	Complainant-prosecutrix
PW4	Dr. Dipesh Goyal, Medical Officer, PHC Neonola, District Ambala	Medical witness
PW5	Lady Constable Suman Rani	Police witness
PW6	L/Head Constable Mukesh Chopra	Police witness
PW7	L/Head Constable Renu	Police witness
PW8	Head Constable Usha Rani	Police witness
PW9	E/Head Constable Usha Rani	Police witness
PW10	Assistant-Sub-Inspector Kuldeep Kaur	Police witness
PW11	Assistant-Sub-Inspector Surender	Police witness

	Kumar	
PW12	Sub-Inspector Rekha Rani	Police witness
PW13	Inspector Darshna Devi	Police witness
PW14	Assistant Sub-Inspector Sunita	Police witness

Thereafter, the prosecution evidence was closed by the Public Prosecutor for the State.

7. The prosecution also relied upon the following statements:-

LIST OF PROSECUTION EXHIBITS

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	Affidavit of Dr. Briti Garg, Medical Officer PHC, Pundri
2	Exhibit P-2/PW1	Carbon copy of MLR bearing No.BG/179/18 dated 09.01.2019 of complainant-prosecutrix-P
3	Exhibit P-3/PW1	Computerized copy of MLR bearing No.BG/179/18 dated 09.01.2019 of complainant-prosecutrix-P
4	Exhibit P-3/PW2	Memo regarding handing over the custody of prosecutrix-P to her mother
5	Exhibit P-4/PW3	Application/complaint dated 31.12.2018 moved by complainant to SHO, Police Station Women, District Kaithal.



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6	Exhibit P-5/PW3	Rough site plan of place of occurrence
7	Exhibit P-6/PW3	Memo regarding taking parcels containing clothes etc. of prosecutrix, into police possession after medico-legal examination of prosecutrix
8	Exhibit P-7/PW3	Statement dated 09.01.2019 of prosecutrix recorded under Section 164 of the Code of Criminal Procedure, 1973
9	Exhibit P-8 (tendered in statement dated 18.10.2022 of learned state counsel)	FSL report bearing Report/Opinion FSL (H) No.19/B-571 dated 29.01.2019
10	Exhibit P-9 (tendered in statement dated 18.10.2022 of learned state counsel)	DNA report bearing Report No.FSL(H)19/DNA-3695, DNA-501/19 dated 17.07.2019
11	Exhibit P-10/PW4	Affidavit of Dr. Dipesh Goyal, PHC Neonola
12	Exhibit P-11/PW4	Application dated 05.06.2019 moved to Medical Officer, Government Hospital, Kaithal by police, for conducting medico-legal examination of accused Neeraj alias Sonu Sharma
13	Exhibit P-12/PW4	Carbon copy of MLR bearing No.DG/70/19 dated 05.06.2019 of accused Neeraj alias Sonu Sharma
14	Exhibit P-13/PW6	Affidavit of L/HC Mukesh Chopra



15	Exhibit P-14/PW7	Affidavit of L/HC Renu
16	Exhibit P-15/PW8	Affidavit of L/HC Usha Rani
17	Exhibit P-16/PW9	Affidavit of L/EHC Usha Rani
18	Exhibit P-17/PW10	Arrest form
19	Exhibit P-18/PW10	Disclosure statement dated 05.06.2019 of accused Neeraj alias Sonu Sharma
20	Exhibit P-19/PW10	Memo regarding taking parcels containing clothes, pubic hair, blood sample, penile swab etc. of accused, into police possession, after his medico-legal examination.
21	Exhibit P-20/PW10	Demarcation memo prepared at the instance of accused Neeraj alias Sonu Sharma.
22	Exhibit P-21/PW13	First Information Report bearing No.005 dated 08.01.2019
23	Exhibit P-22/PW13	Endorsement underneath application/complaint.
24	Exhibit P-23/PW13	Application dated 09.01.2019 moved before Medical Officer, Government Hospital, Kaithal for conducting medico-legal examination of prosecutrix
25	Exhibit P-24/PW13	Application dated 09.01.2019, moved before learned Magistrate, Kaithal for regarding statement of prosecutrix under Section 164

		Cr.P.C.
26	Exhibit P-25/PW13	Scaled site plan of place of occurrence

LIST OF MATERIAL OBJECTS

Sr.	Material Object Number	Description
1	Exhibit MO/1/PW1	Lady shirt of prosecutrix
2	Exhibit MO/2/PW1	Salwar of prosecutrix
3	Exhibit MO/3/PW4	Underwear of accused
4	Exhibit MO/4/PW4	Lower of accused
5	Exhibit MO/5/PW4	T-shirt of accused
6	Exhibit MO/6/PW4	Baniyan of accused
7	Exhibit MO/7/PW4	Swab of accused
8	Exhibit MO/8/PW4	Pubic hair of accused

8. Accused Neeraj alias Sonu Sharma was examined on 04.03.2023 under Section 313 of the Code of Criminal Procedure, 1973 and the entire incriminating evidence was put to him.

Accused Neeraj alias Sonu Sharma took a defence that he was innocent; He had not committed any offence whatsoever; The allegations levelled by prosecutrix and her mother against him, were totally false and baseless. He had never committed rape on the prosecutrix on the pretext of solemnizing marriage with her or otherwise; No engagement was ever performed between him and the prosecutrix; No articles were ever entrusted to him by the side of the prosecutrix; No belongings relating to the prosecutrix were ever stolen or misused by him; The allegations of conception and termination of pregnancy were totally false and concocted; In fact,

the prosecutrix used to make physical relation with him on her own and thereafter, on the threat of lodging a criminal case, she used to blackmail him; Prior to the present case, the prosecutrix had also got lodged a criminal case against one Kuldeep, who later on, was acquitted; Due to such activities, the brother of prosecutrix had also left the house and started living separately and when the brother of prosecutrix and neighbours tried to prevent them, then, the mother of prosecutrix got lodged a false case against her son Devraj etc; In the same manner, the prosecutrix on her own developed physical relation with him and then demanded an amount of Rs.10 Lac and when he refused to fulfill her demand then, she lodged the present case against him on false allegations."

9. In defence, one witness namely Constable Sohan was examined, on record.

LIST OF DEFENCE WITNESS

RANK	NAME	NATURE OF EVIDENCE
DW1	Constable Sohan	Police Witness

The defence also relied upon the following documents:-

LIST OF DEFENCE EXHIBITS:

Sr. No.	Exhibit Number	Description
1	Exhibit D1/DW1	First Information Report bearing No.534 dated 02.12.2017, registered at Police Station City, Kaithal
2	Exhibit D2/DW2	First Information Report bearing No.529 dated 29.11.2017, registered at Police Station City,

		Kaithal
3	Exhibit D3/DW1	First Information Report bearing No.178 dated 29.03.2018, registered at Police Station City, Kaithal
4	Exhibit D4/DW1	Certified copy of Judgment dated 20.09.2019, passed in FIR No.534 dated 02.12.2017 by Shri Hukam Singh, the then learned Additional Sessions Judge, Kaithal

Thereafter, the defence evidence was closed by accused-Neeraj alias Sonu Sharma by making a separate statement in this regard on 20.03.2023.

10. The evidence of some relevant prosecution witnesses is as under:-

PW1 Dr. Briti Garg: She tendered in evidence her duly sworn affidavit Ex.P1, to the effect that on 09.01.20219, she had medico-legally examined victim-P, daughter of 'BK', aged 23 years, female, resident of Kaithal at 12.06 p.m. and prepared MLR bearing No.BG/179/18; as per her (victim), there was a history of sexual assault on 12.06.2018 approx. at 11.00 a.m. by Sonu (relative) at her home; patient gave the history of multiple sexual intercourse episodes on different days from 29.07.2017; first history of sexual intercourse with him was on 29.07.2019. On examination, no mark of injury seen on any part of body. She has brought original MLR register in the Court. Ex.P2 is the correct carbon copy of MLR of prosecutrix. Computerized copy of the same is Ex.P3, which is also prepared and signed by her.



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She has seen Lady shirt Ex.MO/1 and salwar Ex.MO/2, produced in the Court. These are the same, which were handed over to the police in a sealed parcel. After examination of victim, she opined that the possibility of sexual intercourse upon victim cannot be ruled out.

In her cross-examination, she stated that in her affidavit Ex.P1, due to typographical mistake she has given the first history of sexual intercourse as 29.07.2019 but actually, it is 29.07.2017. She cannot comment that victim was habitual to sexual intercourse. Per vaginal examination of victim, she has opined that the possibility of sexual intercourse upon her cannot be ruled out.

PW2 "K": She is mother of complainant/prosecutrix, who narrated the prosecution version on record.

PW3 'P': She is the complainant-prosecutrix in this case. She reported the matter to police vide her application Ex.P4, on the basis of which, FIR bearing No. 5 dated 08.01.2019 was registered at Women Police Station, District Kaithal. She deposed against the accused Neeraj alias Sonu Sharma.

PW4 Dr. Dipesh Goyal, Medical Officer, CHC Neonola, Ambala: He tendered in evidence his duly sworn affidavit Ex. P10, to the effect that he has medico-legally examined Neeraj son of Jaipal, 32 years/m, resident of Boha Mansa on 05.06.2019 at 12.47 p.m. in casualty of GH Kaithal. He had prepared MLR Ex.P12 which bears his signature. After examination of the accused Neeraj, he had handed over the parcel of clothes, underwear, pubic hair, blood sample and swab of accused along-with sample seal to Kuldeep Kaur ASI. He has seen underwear Ex.MO/3, lower Ex.MO/4, T-shirt Ex.MO/5, Baniyan Ex.MO/6, swab Ex.MO/7 and pubic hair Ex.MO/8, in the Court. These are the same, which were handed over to the police by him after examination of accused Neeraj.

In his cross-examination, he denied the suggestions that he has tendered a false affidavit or that he has deposed falsely.



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The remaining prosecution witnesses testified as to the different aspects of the investigation.

11. The evidence of the defence is as under:-

DW1 Constable Sohan: He stated that he had brought the original record of FIR No.534 dated 02.12.2017, FIR No.529 of 2017 and FIR No.178 of 2018, registered at Police Station City, District Kaithal and true photocopies of same are Ex.D1, Ex.D2 and Ex.D3, respectively. As per record, FIR No.178 of 2018, registered at Police Station City, Kaithal was cancelled after due investigation, whereas, accused Kuldeep named in FIR No.534 of 2017 was acquitted by the Hon'ble Court. In case bearing FIR No.529 of 2017, registered against accused 'P' daughter of 'BK', 'K' widow of 'BK', final report under Section 173 Cr.P.C. had been submitted and trial was pending.

12. Based on the evidence led, accused/respondent No.1 was acquitted by the Court of Additional Sessions Judge (Special Court), Kaithal vide judgment dated 27.03.2023.

13. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

14. The learned counsel for the appellant/complainant contends that the judgment of acquittal is based on conjectures and surmises. The medical evidence was totally in consonance with the ocular account. Minor discrepancies and contradictions in the deposition of the prosecution witnesses had given undue weightage. In fact, the prosecution witnesses had supported the case of the prosecution in material particulars. He, therefore, contends that the judgment of acquittal of accused/respondent no.1 be set



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aside and the accused be convicted of the offence for which he has been charge-sheeted.

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

16. We have heard the learned counsel for the parties and gone through the record.

17. On the basis of application/complaint dated 08.01.2019 Ex.P- 4, the aforesaid FIR Ex.P21 bearing No.05 dated 08.01.2019 was registered against accused Neeraj alias Sonu Sharma and his father namely Jaipal, for the commission of offences punishable under Sections 313, 376, 452 of the Indian Penal Code, 1860, at Police Station Women, District Kaithal.

During investigation, Jaipal named as an accused was found innocent by the investigating agency and after completion of investigation proceedings, final report under Section 173 of Cr.P.C. was submitted under Section 376 of the Indian Penal Code, 1860, only, against accused Neeraj alias Sonu Sharma.

18. Coming to the deposition dated 18.10.2022 of PW3, it is to be noted here that the prosecutrix namely 'P' testified that on 29th July 2017 accused Neeraj alias Sonu Sharma committed rape on her under the pretext of marriage, in her house, situated at xxxx, Kaithal and in the month of December 2017, she conceived and he got her pregnancy terminated by giving hot pills to her. He used to commit rape upon her, under the pretext of



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marriage and in February 2018, her engagement was fixed with accused Neeraj alias Sonu Sharma and father of accused Sonu had come to their house with a proposal of her marriage with Sonu and her mother had given 6 tola gold ornaments and approximately 1 Kg. Silver ornaments to the accused at the time of engagement. However, the accused had performed marriage with someone else. After registration of the FIR, accused Neeraj alias Sonu Sharma had extended a threat to her to compromise the matter and an FIR under Section 506 of the Indian Penal Code, 1860 had been registered against him at Police Station City, Kaithal. The answers given by her at the time of her cross-examination held at the instance of defence are as under:-

She had got lodged a criminal case against Kuldeep son of Ishwar Chand, resident of village Songri on 2.12.2017 at Police Station City, Kaithal. Kuldeep had not made any physical relations with her at any point of time. The facts of the case FIR No.534 dated 2.12.2017 registered at Police Station City, Kaithal were not true. She was got medico-legally examined in the said criminal case lodged against Kuldeep. She had also handed over her wearing clothes to the doctor at the time of her medical examination.

Accused Sonu Sharma had maintained physical relations with her upto November 2018. She had kept her wearing clothes at her house since the time of her last physical relations with accused Sonu, which were handed over to the doctor at the time of her medico-legal examination. She could not tell the exact number of incident(s) of sexual relations with accused from 29th July 2017 to November 2018.

She could not tell the specific date, time and month of those incidents. She added that the dates were stored in her mobile phone.



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She had not got lodged any complaint against the accused regarding any such incident prior to the registration of the present case.

They had not invited any person at the time of her engagement. The accused had destroyed the videography and photographs of engagement from her mobile.

Accused Sonu Sharma had himself prepared the photos and videography at the time of engagement. The accused had stolen all her academic documents, gold ornaments weighing 6 Tola, silver ornaments weighing 1 Kg. and sale deed of their house which were kept in a bag.

The above articles were stolen by the accused in the month of March 2018. They had not moved any complaint against the accused regarding theft of the gold and silver ornaments. The accused had also withdrawn an amount of Rs.90,000/- with the help of an ATM Card from the account of her mother. She did not know whether the accused had committed theft of their buffaloes. This fact might have been in the knowledge of her mother. Besides, she and her mother, no other family member was residing at her house after the death of her father.

She denied the suggestions that she used to make intimate relations with the persons on her own with an intent to grab money or that she had also made intimate relation with one Kuldeep son of Ishwar Chand, resident of village Songri or that when, she could not succeed to grab money from him, then she got lodged a false case against Kuldeep or that in the present case also she demanded an amount of Rs.10 Lac. and when the accused Sonu Sharma refused to fulfill her demand then she got lodged the present case against him on false allegations or that no engagement as stated by her in her examination with accused had ever been performed or that the accused had not committed any theft at her house as stated by her above or that the accused had not made any sexual relation with her against her wish or on the pretext of marriage or that she had deposed falsely.



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19. Further, 'K' is the mother of the complainant-who was examined as PW2. As per her, firstly accused Neeraj alias Sonu visited her house on 29.07.2017 and made forcible physical relations with her daughter by administering intoxicating pills to her and her daughter and thereafter, he continuously raped her and she conceived and had a 2 ½ months pregnancy, which was also got terminated, against her wishes by giving tablets. In the month of February 2018, he got engaged with her daughter and she had given six tola gold, 1 Kg. Silver ornaments, one karra of Silver and suits to accused Neeraj alias Sonu Sharma in the presence of his father. Later on, they came to know that despite having physical relations with her daughter against her will and alluring her for marriage, he got married with another girl. Thereafter, they got registered the present case in the year 2019. The counselling & medico-legal examination of her daughter was conducted. She had given slips of the maternity Hospital to the police and her statement was also recorded by the police in this regard.

Her cross-examination held at the instance of defence is as under:-

"She know the accused Neeraj alias Sonu Sharma since long but she could not tell the exact month and year. Om Prakash was her real brother. Daughter of Om Prakash was married with the real brother of accused Neeraj alias Sonu Shrama. She did not know when daughter of Om Parkash got married. The daughter of Om Prakash had two children. Her first child was a daughter, who was married. The daughter of Om Prakash had introduced the accused to them. She had told that the accused was an astrologer. The accused Neeraj alias Sonu Sharma had come to



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their house on 29th July 2017. The accused had been visiting there continuously till the registration of the present case.

Her residential house was situated within the abadi area of City Kaithal and the same was surrounded by the residential house of different persons. She was residing in the said house since the day of her marriage. She had one son namely 'D' who was married. Her husband had expired in the year 2010. Her son was married during the life time of her husband. After the death of her husband, her son 'D' had started residing separately from them and lived in a rented house. Presently, her son along with his family was residing in Sangrur (Punjab) for the last 4-5 years. Her son had two sons and one daughter. They had disowned her son 'D' because he was addict. Till date, they had no visiting terms with her son 'D'. She was not on visiting term with her brother Om Parkash.

She knew Kuldeep son of Ishwar Chand, resident of village Songri about two years before the registration of the present case. On 28.11.2017, Kuldeep had got lodged a criminal case bearing FIR No.529/2017 registered at Police Station City, Kaithal. On 2.12.2017, her daughter had also got lodged a criminal case bearing FIR No.534/2017 registered at Police Station City, Kaithal against Kuldeep. There was a proposal of marriage between her daughter and Kuldeep. She and her daughter were facing trial in a case which was got registered by Kuldeep. Kuldeep was acquitted in the said criminal case which was got lodged at the instance of her daughter. She had also got lodged a criminal case bearing FIR No.178/2018 registered at Police Station City, Kaithal against her son 'D', 'A', 'G' and 'P'. The said case was cancelled by the police.

She could not tell the distance between her house from Police Station City, Kaithal. Police Station City, Kaithal was within the abadi area of City, Kaithal. They had been visiting Police Station City, Kaithal number of times in connection with the above criminal cases.



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The ceremony of engagement of her daughter with accused Neeraj alias Sonu Sharma was performed in the month of February, 2018. Accused Neeraj alias Sonu Sharma gave intoxication to her daughter and made physical relations. They had not got lodged any complaint against the accused regarding the incident of 29th July 2017. The incident dated 29th July 2017 had come to their knowledge after a gap of two months. They had also not got lodged any complaint after knowing the said facts. They had not invited any relatives, friends or the person from neighbourhood at the time of the engagement. They had two mobile phones in their house. Both mobile phones were kept at her residence. She added that the accused usually used the mobile phone of her daughter while staying at her house. Photographs of the engagement ceremony was in the mobile phone of her daughter, which was dismantled by the accused Neeraj alias Sonu Sharma. They had not got lodged any complaint with the police regarding the dismantling of the mobile phone. They had given only silver ornaments at the time of the engagement but the accused had stolen their ornaments of gold, two buffaloes, sale deed of her house, cash amount of Rs.90,000/- as well as academic certificates of her daughter. They had not lodged any complaint against the accused regarding stealing the said articles. She did not know if the above facts were got recorded in the complaint moved by her daughter or not.

She denied the suggestions that her daughter used to make relations with the innocent person and thereafter, on the threat of lodging a criminal case they used to blackmail the person or that her daughter had also made physical relation with Kuldeep on her own and thereafter, when they could not succeed to extort money from him then, they got lodged a false case against Kuldeep or that her daughter had also got developed relations with the accused on her own and then demanded an amount of Rs.10 Lac or that when their demand could not be fulfilled then they got lodged the present case against the accused on false allegations



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or that due to our such activities, her son had also left the house and started living separately from them or that due to their activities, her parental family had also disowned them or that the accused Neeraj alias Sonu Shrama never committed any rape with her daughter or that no engagement between her daughter and accused was ever performed or that the accused never stole their articles or that her daughter never got pregnant or terminated the pregnancy as stated by her in her examination-in-chief or that she had deposed falsely."

20. In a case involving a charge of rape, the evidence of the prosecutrix is most vital. If it is found credible and if it inspires total confidence, it can be relied upon even without corroboration. The Court may, however, if it is hesitant to place implicit reliance on it, look into other corroborating evidence to lend assurance to it. However, where the evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix is found making deliberate improvements on material aspects and there are no injuries on her person, no reliance can be placed upon her evidence. While rape causes the greatest distress and humiliation to the victim but at the same time, a false accusation of rape can cause equal humiliation and damage to the accused. Therefore, an accused must also be protected against the possibility of false implication.

21. From the deposition(s) of material witnesses (prosecutrix and her mother), as detailed above, quite apparently it is not a case, where the prosecutrix-PW3 had been forcibly taken away from the custody of her lawful guardians and raped at some unknown place. She was at her home and residing along with her mother PW2. Accused Neeraj alias Sonu Sharma was



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known to her. He was a visitor to their house, being a relative. Therefore, it is improbable that on 29.07.2017, he entered the house and gave intoxicating pills to the mother and prosecutrix and raped the complainant-prosecutrix-PW3, who was in an unconscious state. No specific date, time and year of the alleged sexual assault had been disclosed either in complaint Ex.P4 or in her first statement dated 09.01.2019 Ex.P7, made under Section 164 of The Code of Criminal Procedure, 1973. However, the date of the first sexual intercourse as 29.07.2017 had been given before the Medical Officer, Government Hospital, Kaithal. Strangely enough, an FIR bearing No.534/2017 Ex.D1, was registered against one Kuldeep son of Ishwar Chand on 02.12.2017, at Police Station City, Kaithal, on the basis of a complaint made by the present complainant-PW3, in which, she alleged that since 5/6 months, he (Kuldeep) had raped her 14-15 times and had also outraged her modesty. The contents of the FIR Ex.D1 are as under:-

"I 'P' D/O LATE SH. 'BK', Caste Brahmin am R/O xxx, Mohalla Kaithal and my DATE OF BIRTH is 06-09-95 or 96. There were talks of my marriage with Kuldeep son of Ishwar Chand, resident of Sangri, caste Brahmin, Police Station Rajound, District Kaithal. That Kuldeep raped me 14-15 times forcefully against my will for about 6 months. When I protested, then he threatened me to kill me and my mother 'K', so I did not tell this to anyone out of fear. On 28.07.2017 around 5 pm, Kuldeep and Pramod son of Satbir, Caste Brahmin, Kaithal, who is Kuldeep's cousin, also molested me. On 28.11.2017, I and my mother 'K' were present at our house at around 5.00 pm, then Kuldeep came near our house. Kuldeep was standing outside Ankesh's house and my mother and I were standing near the scooty in the street to go to the market. Kuldeep



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gave me a wrong gesture, which my mother saw and my mother slapped Kuldeep 2-4 times. On 29.11.2017 at around 11.00 PM Ankesh S/o Roshan Lal Baniya entered the house by breaking our door and due to which we awoke. That Ankesh put his hands on my chest and then tried to rape my mother 'K'. When we made noise then they ran away. Till now we were sitting at home because of our respect. But we could not tolerate this torture. Today I have come to the police station with my mother 'K'. Strict legal action should be taken against Kuldeep, Pramod, Ankesh. Ankesh and Gaurav who used bad words and abused and threatened to kill us and Ankesh and Gaurav have tried to kill us earlier also. We are in danger of our lives and our life and liberty may kindly be protected."

22. From a perusal of the FIR, it can be safely inferred that at the same time i.e. on 29.07.2017 and from the period July 2017 to June 2018 (last date of assault as disclosed in the MLR), the complainant was also in touch with Kuldeep son Ishwar Singh, who has now been acquitted, in case FIR No. 534 dated 02.12.2017 (Ex.D1) at Police Station City, Kaithal lodged by the complainant, vide judgment dated 20.03.2019 Ex.D4 passed by the Court of the Additional Sessions Judge, Kaithal.

In her testimony, in the present case as PW3, she in her cross-examination replied that she had got lodged a criminal case against Kuldeep son of Ishwar Chand, resident of village Songri on 02.12.2017 at Police Station City, Kaithal. However, Kuldeep had not made any physical relations with her at any point of time. She, however alleged in FIR No. 534 dated 02.12.2017 that Kuldeep had raped her 14/15 times in the last six months.



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Therefore, quite apparently, the prosecutrix has given conflicting versions regarding her allegations against Kuldeep as well.

23. In **Rai Sandeep @ Deepu vs. State of NCT of Delhi, (2012) 8 SCC 21**, the Supreme Court commented about the quality of the sole testimony of the prosecutrix which could be made a basis to convict the accused. It held as under:-

"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 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."

24. In the instant case, the version of the prosecution as well as the conduct of the victim-prosecutrix, is highly doubtful. First of all, neither in the complaint Ex.P4 nor in her first version dated 09.01.2019 Ex.P7 recorded under Section 164 of the Code of Criminal Procedure, 1973, by the Judicial Magistrate First Class, Kaithal, she disclosed that she was raped by accused Neeraj alias Sonu Sharma on 29.07.2017, who got her as well as her mother intoxicated by administering pills and made forced physical relations with her at their house. It was for the first time, at the time of her medical examination on 09.01.2019, she disclosed the history of multiple sexual intercourse from 29.07.2017 and the last episode being on 12.06.2018. In Ex.P7, she narrated that after settlement of the Rishta in the year 2018, the accused developed physical relations with her and she conceived and had a three month pregnancy which was got terminated by the accused by giving a medicine. It is against the deposition of the victim as PW3, before the Court, where, she

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stated about the first forced sexual relation in the year 2017, regarding which neither she nor her mother had complained anywhere. The mother-PW2 knowing that she was also administered tablets and her daughter had been ravished on 29.07.2017 did not make a complaint to anyone either in the family of the accused or to the police. There is no cogent medical evidence either of the prosecutrix being pregnant because of the alleged act of the accused or its termination.

25. PW10 Assistant Sub-Inspector Kuldeep Kaur in her cross-examination, stated that she had verified the allegations of miscarriage from the Maternity Home near Hind Cinema, Kaithal but no clinching evidence regarding the miscarriage was found from the concerned Maternity Home. Therefore, Section 313 of IPC was not added in the present case.

On the one side hand, the prosecutrix claimed in Ex.P4 (complaint) that in February 2018, her Rishta was fixed and under that pretext, he raped her, whereas, in her evidence, she deposed that she was raped in the year 2017, in her house and had pregnancy in December 2017. However, from 29.07.2017, till February 2018 (alleged month of settlement of her rishta), no complaint of rape was given by her against the accused.

26. There is no evidence that both (complainant and accused) had ever been engaged in February 2018. No photograph or videography of the engagement ceremony is on record. Not a single person of the family had witnessed the engagement ceremony of the accused and the complainant-prosecutrix.

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Concededly, PW-10 Assistant Sub-Inspector Kuldeep Kaur neither joined the younger brother of the prosecutrix nor any neighbour in her investigation at the time of her visit, in order to verify the alleged fixation of the rishta or performing of any engagement ceremony of the prosecutrix and accused Neeraj alias Sonu Sharma, in the present case.

27. Admittedly, the prosecutrix knew accused Neeraj alias Sonu Sharma since they were closely related. He visited the house on 29.07.2017 and he had been continuously visiting her house till the registration of the present case. Apparently, the prosecutrix and accused knew each other since long. The first occurrence took place on 29.07.2017, in the house of the complainant and this date has not been given in her complaint-application Ex.P4. The prosecutrix did not state therein that the accused had sex with her against her wishes, while she was in an intoxicated or unconscious state and that he had given pills to her and her mother, in consonance with the testimony of her mother. The mother did not explain, where she was on 29.07.2017 and how and in what manner did the accused enter their house and give intoxicating pills to her and her daughter and why she did not tell anyone or lodge a complaint against him and when her daughter disclosed to her about the alleged act of the accused. She did not state as to what action she had taken and why she allowed him to enter her house later on, to meet her daughter without any acknowledged relationship. She did not disclose where she had got her daughter medically examined or the name of the doctor, who gave her treatment. Once she know that the accused had raped her daughter she did not disclose as to why she got her engaged with the

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accused in the month of February, 2018 and that too only in the presence of his father Jaipal Sharma. None of her family members had witnessed this ceremony. She clearly stated that she did not invite any relatives, friends or persons from the neighbourhood at the time of the engagement. Photographs of the engagement ceremony were stated to be in the mobile phone of her daughter which was dismantled by the accused. However, there is no proof in this regard. Concededly, when the accused had performed marriage, only then, they got lodged the present FIR against him.

28. The mother admitted that on 28.11.2017, after four months of the alleged occurrence dated 29.07.2017, one Kuldeep son of Ishwar Chand, a resident of village Songri had got lodged a criminal case bearing FIR No.529/2017 Ex. D2 dated 29.11.2017, at Police Station City, Kaithal against them (her & her daughter) and on 02.12.2017, her daughter 'P' (present complainant) had also got lodged a criminal case bearing FIR No.534/2017 Ex.D1 against Kuldeep, at Police Station City, District Kaithal.

29. From the contents of that FIR, as detailed above, it can be safely inferred that after July 2017, there were talks of solemnization of marriage between Kuldeep and her daughter-prosecutrix and case FIR No.534/2017 was lodged against Kuldeep under Sections 354, 376, 506, 511 read with Section 34 of the Indian Penal Code, 1860, on 21.12.2017, by her daughter at Police Station City, District Kaithal, in which, he was acquitted vide judgment Ex.D4. Meanwhile, the first incident of sexual assault took place on 29.07.2017.

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Admittedly, neither the complainant nor her mother lodged any complaint regarding the incident dated 29.07.2017. As per the cross-examination of the mother-PW2, the incident came into their knowledge after a gap of two months. However, in her examination she stated that after administering pills to her and her daughter, the accused made forcibly relations with her daughter. If the version of PW2 is correct, it means that the daughter never complained to her for such a long period that any forced sexual relations had been maintained by the accused, in her absence in their house. Why she had not disclosed the incident of rape to anyone in the family or the police and kept mum, nervous unexplained. If the version of PW2 given in her examination in chief, is correct that the accused had raped her daughter by administering pills to her and her daughter, even then, she failed to explain that being a mother, why she had not taken any action against the accused or why she did not disclose about it, to the police.

30. At one stage, the mother-PW2 stated that six tolas gold, one Kg. Silver ornaments, one kara of Silver and suits were given to accused Neeraj in engagement while in the next breath, in cross-examination she stated that accused Sonu had stolen their ornaments of gold, two buffaloes, sale deed of her house, cash amount of Rs.90,000/- as well as academic certificate of her daughter from her house. No complaint was ever lodged by the complainant or her mother that accused Sonu alias Neeraj Sharma had stolen their ornaments of gold, two buffaloes, sale deed of their house, cash amount of Rs.90,000/- as well as academic certificates of her daughter.

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31. In her cross-examination, PW13 Sub- Inspector Darshana Devi stated that during her investigation, it had not emerged that accused Neeraj alias Sonu Sharma had committed any theft of buffaloes, golden ornaments, cash amount and academic testimonials of the prosecutrix from her residential house. The date of the last episode of sexual intercourse between the accused and prosecutrix could not be ascertained in her investigation and she had not collected any evidence with regard to any mobile calls between the prosecutrix and accused.

32. The cumulative effect of the testimony of the mother negates the story of rape on 29.07.2017 as projected by the prosecution and indicates that the prosecutrix developed relations on her own.

It is true that in the FIR Ex.P21 and later on in her statement dated 08.01.2019, Ex.P7, made before the Magistrate, Kaithal, under Section 164 of Cr.P.C. and finally in her deposition as PW3, she has stuck to the story of rape. However, the same is not probable nor proved beyond doubt and at no stage, has she given any credible explanation, either as to the delay of about more than one year in reporting the matter of rape on 29.07.2017 by the accused to her family members or to the police.

33. As far as the delay in lodging the FIR is concerned, particularly in a case of rape, it is not fatal or even significant in every case. It all depends on the nature and facts of the case. Delay, itself will not weaken the case of the prosecution, when, it is reasonable or where, it is suitably explained. However, in the case in hand, the FIR has evidently been lodged after one year and four months of the alleged incident(s), which is bereft of details. The



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testimony of the victim clearly goes to show that for more than one year the accused and the victim used to meet each other. Under such circumstances, it cannot be said that the accused had sex with the victim against her will.

34. The evidence which has been produced during the course of trial clearly goes to show that the victim, who is an adult and matured lady of 23 years at the time of the incident gave her consent freely and it is nothing but free consensual sex and there is no clear and reliable evidence to show that the accused on a false promise, induced the victim and had sex with her. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. She did not resist the overtures of the accused, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. The version of the prosecution case as narrated by victim suffers from lack of credibility. All the above discussed materials, when taken into consideration would show that it was a case of a consensual sex and not rape, as contemplated under Section 375 of the Indian Penal Code, 1860.

35. In *Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566*, the Supreme Court held:- 'It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.'



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

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

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

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

12.11.2024

JITESH

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