



CRA-D-581-2021(O&M)

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

528

CRA-D-581-2021(O&M)

Judgment reserved on: August 29, 2024

Judgment pronounced on: September 24th, 2024

Mahesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Arun K. Bakshi, Advocate (Legal Aid Counsel),
for the appellant.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana,
for the respondent-State of Haryana.

SANJAY VASHISTH, J.

Backdrop of the case:

1. Appellant-Mahesh Kumar, aged 24, son of Bhani Sahi, resident of Gunsihar, Police Station Kothkasim, District Alwar (Rajasthan), has filed the instant appeal challenging the judgment of conviction, dated 03.03.2020, and order of sentence, dated 05.03.2020, passed by learned Additional Sessions Judge, Rewari (for short, 'the Trial Court'), whereby, he has been



found guilty of committing offences under Section 376 and 379-A of the Indian Penal Code (for short, ‘IPC’). The offences under which appellant has been convicted and the period of sentence awarded is as under:

Offence under which convicted	Sentence/ imprisonment awarded	Fine imposed	Sentence/imprisonment in default of payment of fine
376 IPC	RI for 14 years	Rs.10,000/-	RI for two months
379A IPC	RI for 7 years	Rs.5,000/-	RI for one month

All the sentences have been ordered to run concurrently and the period already undergone by the convict during trial, is also to be set off towards the sentence of imprisonment. Apart from this, following the directions of Hon’ble Apex Court in Ankush Shivaji Rai Gaikwad v. State of Maharashtra, 2013(2) R.C.R. (Criminal) 1036, and, as per the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2017, compensation amount of Rs.5,00,000/- (Rupees five lacs) has also been recommended.

Factual matrix:

2. Facts leading to the registration of criminal case are that prosecutrix, aged 18½ years, being a student of BA 1st year, got registered FIR No. 201, dated 03.12.2019, under Section 376 IPC, Police Station Rewari Sadar, District Rewari. Said FIR was generated from GDR/DDR No. 22, dated 03.12.2019, at 20:40 hours. and she gave her first version.
3. The first version of the prosecutrix was recorded in writing by ASI Raj Singh (PW15) at 07:30 p.m., by reaching the house of the prosecutrix, where the prosecutrix gave the statement that:-



“.....she studies in BA 1st year in KLP College and today i.e. on 03.12.2019 at about 12:00 p.m., after taking Rs.100/- from her sister Moni, was going towards Budana Chowk to take transport where one person with black color motorcycle, wearing helmet met near Dhingra PG Budana Chowk. He was wearing jeans and black jacket. While stopping the motorcycle near her, he asked to accompany her to Rewari. On telling respondent that her bus is about to come, he said that he is also going to Rewari and thus, asked to sit along with him. On his asking, she sat on his motorcycle. On the way, motorcycle being roamed here and there from Ramgarh Chowk via Fidari rasta and took near Baba Bharti Dhaba, Bawal. On getting suspicion about the boy, she switched on the GPS on her mobile No. 8295649416 and then from the passerby, they asked the way for Rewari. Thereafter, the boy took her to a lonely place, where there were acacia trees and committed the forcible act with her. He also took the mobile from her and cash amount of Rs.150/-, which was lying in her purse and thereafter fled away leaving her alone from the spot. After taking lift from another motorcyclist, she was dropped at Kasola Chowk, where from she came to Bus Stand in an Auto and then called her friend (9306203106) from the phone of Auto Driver but the call was not picked up. On reaching KLP College by bus, she dialed a call to her friend, Manju, from the phone of gatekeeper of the college, who also did not pick up the call. Thereafter, she went to class room and took her English Examination and after completion of the examination dialed phone to her mother from the phone of some friend and asked her to reach Rewari. After some time, her brothers namely, Prem Sagar, Manoj and Rambir reached there on motorcycle. After reaching back home, she told the story to her mother and at about 6:00 p.m. police were informed and thereupon it reached her home.”

This is how, on reaching back to the Police Station the DDR was registered and thereupon formal FIR bearing No. 201, dated 03.12.2019, was lodged. Thereafter the investigation was conducted; accused was arrested and brought on the spot, at whose instance the site plan (Ex. P1) was prepared. After recording the necessary statements, the final report under Section 173 Cr.P.C/Challan was submitted to the Court. On

**CRA-D-581-2021(O&M)**

4

14.01.2020, finding a *prima facie* case against the appellant, he was charge-sheeted for the offences punishable under Sections 376 and 379-A of IPC.

Prosecution witnesses:

4. To establish and prove its case, prosecution examined total 23 witnesses and closed its evidence on 12.02.2020, after exhausting the list of witnesses. However, three prosecution witnesses, namely, Ms. Neha Gupta, Judicial Magistrate Ist Class, Manoj and Rambir, were not examined by the prosecution.

(i). **PW1 - HC Charan Singh**, who was posted as a draftsman at SP Office, Rewari, deposed that in compliance to the directions from SI/SHO Manoj Kumar on 20.12.2019, he accompanied him to the place of occurrence, i.e. in the area of Deodhai, HSIDC, Bawal, and inspected the spot and also prepared a scaled site plan (Ex. P1), on the demarcation of accused-Mahesh.

(ii). **PW2 - Victim, aged 18½ years**, deposed that her date of birth is 19.02.2001. Her father is serving in a private company and her mother works in a school. She has three sisters and one brother and she is the eldest of all. After passing 10+2 from Arts Stream, she was a student of BA 1st year and studying at Co-ed College, Rewari. On 03.12.2019 at 2:00 pm, she had to appear in the English Paper. She left her home at 12:00 noon to reach the College. On being asked by a motorcyclist (appellant) wearing a helmet, who offered to drop her at Rewari on his motorcycle. Initially she declined his request and on second time she accepted the request and took the rear

**CRA-D-581-2021(O&M)**

5

seat on the motorcycle. Thereafter, on opening the GPS on her mobile phone, she acknowledged that location was not of Rewari. This way, appellant took her to some aloof area in the bushes and committed rape upon her, while wearing a helmet. Accused opened the glass of the helmet and then she/prosecutrix attacked on his right eye with a stone. Her neck was pressed by the accused. Appellant took away her mobile and Rs.150/- from her purse and went away on the motorcycle after leaving her on the spot.

Further deposed that she took a lift from an uncle on a motorcycle, who dropped her at Kasola Chowk. From there she hired an auto, and the auto fare was paid by that uncle and then by making a request, she dialed her friend on her mobile, but the call was not picked up. Thereafter, she reached her college and appeared in the examination in mental stress as it was her first priority to appear in the exam. Thereafter, she narrated the complete incident to her friend, who further dialed her mother. Thereon, her brother and his friends reached the college, who took her to the house and there she narrated the whole incident to her mother at about 6:00 p.m. Whereupon police came to her house to whom she moved her written complaint (Ex. P2).

Further deposed that accused was wearing a black colour jacket, blue jeans, colour of bike was black and also deposed that she was medico legally examined vide MLR (Ex. P3). Her statement (Ex. P4) was also recorded before legal aid counsel.



On the next day i.e. 04.12.2019, police took her before the Magistrate, who got recorded her statement (Ex. P5). On 20.12.2019, police brought the accused/appellant in muffled face in her village and on removal of the cloth from his face, she identified the culprit, who had committed rape upon her on 03.12.2019. Injury mark was there on the right eye of the accused/appellant, who was wearing the same clothes i.e. black jacket, blue jeans and red-grey colour shoes. She identified the accused vide Memo Ex. P11. The articles of the accused were taken in possession vide Ex. P12. Accused/appellant present in the Court was also identified by the prosecutrix. She denied the suggestions given by the accused/appellant.

(iii). **PW3 - Ms. Anita Yadav, Advocate, District Legal Services Authority, Rewari**, deposed that on being called by the police, she reached at Police Station Sadar, Rewari, and recorded the statement of victim (Ex. P4), at about 9:00 p.m., on 03.12.2019 itself.

(iv). **PW4 - Mother of the prosecutrix** stated that her daughter is 18½ years and is a student in BA 1st year. She explained the complete incident which were narrated by her victim daughter till the time she met at home in the evening.

The said witness also stated about medico-legal examination of her daughter at Government Hospital, Rewari, on the same day and that the clothes of her victim daughter were taken into possession by the doctor.

She also identified purple underwear (Ex. MO6), dirty cardigan (Ex. MO7), skin brown-colour salwar (Ex. MO8), Dupatta golden colour

**CRA-D-581-2021(O&M)**

(Ex.MO9), blue coloured ladies suit embroidered (Ex. MO10) and dirty white colour sameej (Ex. MO11), belonging to her daughter.

In the cross-examination, she explained that after completion of the examination of her daughter, she (prosecutrix) had called on telephone at about 05:15 p.m. and that the colour of the string of salwar of her victim daughter was green and said string was lying on the spot of the occurrence. Further, explained that her daughter tied the salwar with chunni after the occurrence.

(v). **PW5 - Brother of the prosecutrix.** However, for the sake of brevity his statement is not required to be detailed much.

(vi). **PW6 - ASI Shish Ram** deposed that on 19.12.2019, he was a member of the investigating team led by SI/SHO Manoj Kumar. He proved the arrest memo of accused (Ex. P13), search memo (Ex. P14) and the disclosure statement of the accused (Ex. P15). He also proved the mobile make Oppo belonging to the victim, two sims of accused and one sim of victim of Airtel Company. He also proved the recovery of Motorcycle bearing No. RJ-40-SF-5055 from the accused.

(vii). **PW7 - Uncle of the prosecutrix,** who was a Postmaster in the village and treated as Uncle in the villagehood, deposed much about the fact that the accused was identified by the prosecutrix in his presence and at that time accused was wearing Black jacket, Blue jeans pant and Red shoes.



(viii). PW8 - Ms. Richa Mehta, Assistant Director, RFSL, Bhondsi,

proved the examination of the case property scientifically on the vaginal slides, vaginal swabs, underwear, salwar etc.

(ix). PW9 - Dr. Meenu Yadav, Government Hospital, Rewari,

deposed about conducting the medico-legal examination of the prosecutrix, aged 18 years, on 03.12.2019, around 01:30 p.m., as brought by ASI Archana. **The prosecutrix was accompanied by her mother.** She also explained that multiple scratch marks were present on the lower back, multiple linear abrasions on both feet and multiple small abrasions were present on the neck between the collarbones with the presence of redness. However, no other injury was visible on chest, face and arms. Hymen was found freshly toned. ***As per her medical opinion possibility of sexual assault cannot be ruled out.*** However, final opinion was deferred awaiting the receipt of the FSL Report. After seeing the FSL and DNA reports, as per her opinion she opined that ***there is evidence of sexual assault with the victim. The matching of DNA is also confirmed, a sign of sexual assault as per scientific evidence.***

(x). PW10 - Sarpanch of the village of victim/prosecutrix,

deposed about installation of CCTV cameras in the village at different points. On 03.12.2019, at about 06.00 p.m., he received a telephonic call regarding committing wrong act with the prosecutrix by a motorcyclist. On next day, i.e. 04.12.2019, this witness checked the CCTV footage of camera installed at the house of Rajender, situated at Bus Stand, and after seeing the



CCTV footage seen the accused going on black coloured bike make Splender, wearing black coloured jacket, blue jeans pants, red-grey coloured sports shoes and black coloured helmet of Studs with a logo of Bhagat Singh on the wiser of his bike, at 09.34.04 to 09.35.12. In another CCTV footage of other camera installed at Mahesh Service Station, the accused-Mahesh along with victim/prosecutrix were seen going towards Rewari on motorcycle at 12.31.57. After converting the CCTV footage in pen drive, the witness handed over the same to the police, which was taken into possession vide Memo. Ex. P19, which bears his signature and seal at point A. Pen drive is Ex. MO26.

During course of recording of statement of PW-10, the pen drive (Ex. MO26) was played and put to the witness, and on seeing the clips in folder Mahesh-ch-01 and ch02, he recognised the accused and victim in the said clips

(xi). PW11 - Dr. Rajeev, Medical Officer, Government Hospital, Rewari, examined the accused-Mahesh on 19.12.2019, who after his examination opined that there is nothing suggestive that the patient is incapable of performing sexual intercourse. Said witness also deposed that he handed over the original MLR alongwith blood sample of the accused in EDTA viol for DNA examination, in a sealed envelope and a forwarding letter to the Police. At last, on the basis of the FSL report (Ex. PY) and DNA report (Ex. PX), *he opined that there is evidence of sexual assault. The*



matching of DNA is a confirmed sign of sexual assault as per scientific evidence.

(xii). PW12 - ASI Om Parkash proved the Registration of the formal FIR (Ex. P22) and the endorsement over it (Ex. P23) and Ex. P2 and denied the suggestion of the registering of FIR as ante time and antedated.

(xiii). PW13 - HC Joginder Singh, MHC, proved depositing of the samples with him on 03.12.2019 and 19.12.2019 and also deposed about the handing over the same for its examination to Constable Raj Pal (PW21) on 17.12.2019 and 23.12.2019 respectively.

(xiv). PW14 - LHC Poonam has proved certain steps taken during the course of investigation and joined the same, being a member of the investigation team. She also proved two pieces of bricks (Ex.MO18 and MO19) and one piece of green colour string of salwar of the victim (Ex. MO20), which were taken in possession by the Investigating Officer on 04.12.2019.

(xv). PW15 - ASI Raj Singh deposed that on 03.12.2019, he alongwith LHC Poonam and Constable Parvin were on patrolling duty, on receiving the telephonic information from the Control Room, Rewari, reached the village of the victim and on moving the application (Ex. P2), he made an endorsement over it as Ex. P24.

(xvi). PW16 - ASI Archana deposed the joining of her with prosecutrix to Government Hospital, Rewari, on 03.12.2019 for medical examination of the prosecutrix and also moving of the application (Ex. P27),



under Section 164 Cr.P.C., to the Illaqa Magistrate, and then recording of the statement of the prosecutrix by the Magistrate.

During the cross-examination said witness admitted that at the time of taking the prosecutrix for recording her statement, under Section 164 Cr.P.C., her parents and uncle (*Tau*) were also with her.

(xvii). **PW17 - Constable Charang Singh**, proved the receiving of information regarding the mobile location of accused on 19.12.2019 at Bibi Rani and thereupon Investigating Officer arrested the accused-Mahesh from Village Bibi Rani, District Alwar, vide arrest memo (Ex. P13). Later on, said accused got his motorcycle, bearing No. RJ-40-SF-5055, recovered and made the disclosure statement.

(xviii). **PW18 - Constable Amit Kumar**, proved that on 20.12.2019 when accused was taken on the spot, the prosecutrix also reached there with her uncle (*Tau*) and identified the accused, vide memo Ex. P11.

(xix). **PW19 - EHC Suresh Kumar**, proved that on 23.12.2019 MHC handed over to him the blood sample and another sealed parcel received from RFSL, Bhondsi, for onward transmission to FSL, Madhuban, which was deposited with FSL, Madhuban, on the same day.

(xx). **PW20 - Rohit Kumar, Nodal Officer, Bharti Airtel Limited**, deposed that he provided the call detail records of cell/sim Nos. **8295649416, 9001494153, 7427068690**, for the period from 01.12.2019 to 19.12.2019. He also deposed that cell/sim No. **8295649416** is issued in the name of the victim/prosecutrix and its Call Detail Record (CDR) is **Ex. P34**.

**CRA-D-581-2021(O&M)**

12

Also proved the certificate issued by him under Section 65B of the Indian Evidence Act (Ex. P35).

Regarding cell/sim No. **9001494153**, he deposed the same being in the name of **Kamekash Arya r/o Khera Nihalpura, Jaipur**, and also proved its Call Detail Record (CDR) contained in **Ex. P39**.

Regarding cell/sim No. **7427068690**, this witness deposed that the same is issued in the name of **accused-Mahesh Kumar, resident of Gunsihar, Palpur, Kotkasim, Alwar, Rajasthan**, and its Call Detail Record (CDR) is **Ex. P41/A**. Also proved the certificate issued under Section 65B of the Indian Evidence Act.

After seeing the mobile make Oppo (Ex. MO21), he deposed that “This mobile is dual sim and it contain two IMEI No. 865639030554595 and 865639030554587.

Further stated that **as per call record Ex. P34**, the mobile sim of victim bearing No. **825649416** had been used in mobile bearing IMEI No. **865639030554590** w.e.f. **01.12.2019** to **03.12.2019**.

As per **Call Detail Record (Ex. P41/A)**, sim No. **7427068690**, which belong to **accused-Mahesh**, was used in mobile bearing IMEI No. **865639030554580** w.e.f. **12.10.2019** to **19.12.2019**.

As per **Call Detail Record (Ex. P39)**, sim No. **9001494153** was used in mobile bearing IMEI No. **865639030554590** w.e.f. **10.12.2019** to **17.12.2019**, and above-said sim No. **9001494153** was also used in mobile bearing IMEI No. **865639030554580** on **10.12.2019**.



(xxi). PW21 - Constable Rajpal, proved the delivery of the special report to the Illaqa Magistrate at 9:30 p.m., on 03.12.2019.

(xxii). PW22 - SI/SHO Manoj Kumar is the investigating officer, who proved the proceedings of the investigation conducted by him.

(xxiii). PW23 - Sidharth Kaushik, Assistant Director (S), DNA Division, FSL, Madhuban, proved the status of intact sealed parcels and same being tallied with the specimen seal. After examining the case property scientifically and the autosomal STR analysis indicates that the *DNA profile of seminal stains on the source of item No. 1(a) underwear, 1(b) Salwar, 1(c) Slides, 1(d) Cotton Swabs is matching with the DNA Profile of accused (source of item No.2). Thus, conclusively he proved his report Ex. PX.*

Statement under Section 313 Cr.P.C.:

5. After closing of the evidence, accused/appellant-Mahesh got recorded his **statement under Section 313 Cr.P.C.**, who took a simple plea of being innocent and having been falsely implicated in the case.

Though, in the answer to question No. 25, accused answered to lead the evidence in the affirmative, but no such evidence was led in the defence. Accused has not taken any specific defence at the time of making suggestion during cross-examination of the witnesses or while recording statement under Section 313 Cr.P.C. of the accused, as to why the present case has been registered against him.

**Arguments by Appellant:-**

6. Challenging the conviction, learned counsel for the appellant submitted that the prosecution failed in establishing any connectivity of the appellant with the alleged offence and if at all the physical relation between the prosecutrix and the appellant is said to be proved, same is consensual and not due to the applying of any force. Learned counsel for appellant argued that had there been any abnormal circumstance, the prosecutrix would not have appeared for her English examination at 2:00 p.m. on the same day. He also submitted that as per the version of the prosecutrix in FIR as well as in the Court, accused was wearing a helmet and in such a situation there is no point in believing that the identity of the accused is well established beyond doubt. Moreover there is no Test Identification Parade (TIP).

7. He further submitted that there are remote chances of believing the story put forth in the FIR because no young girl, especially in such cities, would willingly sit on a motorcycle with someone, whom she did not know. Learned counsel for the appellant also submitted that after the alleged incident also prosecutrix has taken lift from an unknown person on another motorcycle and said conduct is also not believable. If something serious had indeed happened with her, no prudent person would take a lift from any other unknown motorcyclist/vehicle. Even no details of the motorcycle of the accused and of the other motorcycle on which the lift was taken second time, have been given in the FIR or even in the statement before the Court.



8. While referring to the medical evidence of the prosecutrix, i.e. the statement of Dr. Meenu Yadav (PW9), learned counsel for the appellant argued that there is no serious injury appearing on the person of the prosecutrix, indicating any forcible act done against her wish on the day of the incident. He also submitted that the medical evidence is not completely helpful for maintaining the conviction of the appellant for a serious offence.

9. Faced with the other circumstances, such as matching of DNA Profile of the blood of the accused with the glass slides and cotton swabs, wherein human semen found on the articles are in complete conformity with the DNA Profile of the accused, learned counsel for the appellant submitted that, in fact, from such a piece of evidence also, it cannot be proved that any act amounting to rape has been committed. Because, in such circumstances when the oral version is doubtful, Court can draw its own conclusion by assuming it to be an act of consensus by both the sides.

10. Learned counsel for the appellant also submitted that there are material contradictions in the statements of the witnesses and in the absence of the corroborative piece of evidence leading to the conclusion that the offence has been committed beyond any doubt, appellant deserves a clear acquittal.

11. Lastly, learned counsel for the appellant argued that the parcels of the clothes of the prosecutrix were sent to the FSL at a delayed stage. There is no plausible explanation with the prosecution agency as to why the said parcels were retained by it without any substantial reason. Dr. Meena



Yadav (PW9) had prepared the parcels of the belongings of the prosecutrix on 03.12.2019 itself, which were deposited by ASI Raj Singh (PW15) with MHC Joginder Singh (PW13) on same day i.e. 03.12.2019. It is after about 14 days, i.e. on 17.12.2019, said parcels were sent to RFSL, Bhondsi through Constable Rajpal (PW21). Thus, pleads that there is no explanation as to for what purpose the parcels were retained by the MHC or the investigating agency for such a long period. It could not be said as a fair process if the DNA profile of the parcels of the prosecutrix had been prepared before the purported date of the arrest of the accused, i.e. 19.12.2019.

In support of his submissions, learned counsel for the appellant placed reliance upon the Division Bench judgment of this Court in the case of **Sumit v. State of Haryana, 2024 (1) R.C.R. (Criminal) 762 : Law Finder Doc Id # 2238528.**

Argument by Respondent-State of Haryana

12. On the other hand Ms. Tanisha Peshawaria, learned Deputy Advocate General, Haryana, representing the respondent State, submitted that sufficient material in the shape of substantive evidence has been brought on record by the prosecution and the complete chain of events is unbreakable and the events subsequent to the Registration of the FIR, corroborate the version of FIR.

13. In support of submission, it is argued that the medical evidence, i.e. the statement of Dr. Meenu Yadav, MOGH, Rewari (PW9), is sufficient



to corroborate the ocular version. Alleged incident took place at around 01:30 p.m., on 03.12.2019 and on the same day prosecutrix was medically examined in the Government Hospital, Rewari. The said witness also deposed in her statement that the scratch marks on lower back and multiple linear abrasions on both feet and multiple small abrasions were present on the neck with redness. PW-9 also stated that as per medical examination, the hymen was freshly torn with slide bruising of the margins. Learned State counsel, thus, submitted that this material piece of evidence is enough to conclude the application of force upon the prosecutrix.

14. After referring to the original version in FIR and then the statement of the prosecutrix (PW2) in the Court, alongwith the statement of Dr. Meenu Yadav (PW9), learned State counsel also referred to the FSL Report, dated 20.12.2019 (Ex. PY), and DNA Report, dated 31.12.2019 (Ex. PX), and submitted that the connectivity of the accused having contacted physically to the prosecutrix is well established through the scientific evidence also, as the DNA profile of the accused has matched with the clothes of the prosecutrix and the vaginal slides.

15. Learned State counsel also referred to the other evidence i.e. scientific and the recoveries effected from and at the instance of the accused. After arrest of the accused, the police vide recovery memo. (Ex.P17), recovered one silver white colour dual sim mobile set of the Make 'Oppo' (IMEI Nos. 865639030554595 and 865639030554587 (Ex. MO21), having two sims bearing Nos. 7427068690 (Ex. MO22) and 7427046909 (Ex.



MO23), belonging to the accused/appellant, and one sim No. 825649416, belonging to the prosecutrix, was also found from the cover of the mobile set of the Make-Oppo (Ex. MO21).

Learned State counsel further referred to the **Call Detail Records (CDRs) of sim No. 8295649416 (Ex. P34)[belonging to the prosecutrix]; sim No. 7427068690 (Ex.P41/A)[belonging to the accused-Mahesh]; and sim No. 9001494153 (Ex.P39)[belonging to Kamekash Arya of Jaipur]** through which arrest of the accused was made possible. For the said purpose, she referred to the statement of Rohit Kumar, Nodal Officer, Bharti Airtel Limited, who while appearing as PW-20, proved the Call Detail Records (Exs. P-34, P-39 and P-41/A) and the certificates issued by him under Section 65B of the Indian Evidence Act.

Main argument addressed by the learned State counsel is that from the call detail record of mobile/sim Nos. 825649416, 7427068690, 9001494153 and the IMEI numbers of the mobile sets in which the said sims were used prior and after the dates of incident, clearly establish and prove direct connectivity of the accused in the crime. As per CDR (Ex. P-34), mobile sim of the prosecutrix, bearing No. 8295649416, was used in mobile set bearing IMEI No. 865639030554590, w.e.f. 01.12.2019 to 03.12.2019 upto 13:19:53 hours, i.e. prior and upto the date of incident. As per version of the prosecutrix, her mobile set was taken away by the accused, after committing the offence of rape, i.e. on 03.12.2019. As per Call Detail Record (Ex. P39), mobile sim No. 9001494153, which is in the name of

**CRA-D-581-2021(O&M)**

19

Kamekash Arya of Jaipur, was used in the mobile set bearing IMEI No. 865639030554590 (belonging to the prosecutrix), w.e.f. 10.12.2019 to 17.12.2019, and sim No. 9001494153 was also used in mobile set bearing IMEI No. 865639030554580 (belonging to the accused) on 10.12.2019. This proves that mobile set of the prosecutrix having IMEI No. 865639030554590, was found to be in use after the date of incident. Thus, crime explained in the FIR by the prosecutrix gets substantiated with the link evidence i.e. use of mobile sim No. 9001494153 by the accused in the mobile set bearing IMEI No. 865639030554590, which was earlier in use with the prosecutrix. Learned State counsel further submits that apart the said mobile connectivity, the DNA profile of the accused also matched with the semen found on the clothes and vaginal swabs of the prosecutrix.

16. Lastly learned State counsel submitted that not only this, there is nothing brought on record by the accused as to why/for what reason he would be implicated in such a serious case falsely by the prosecutrix. There is no material/evidence led by the appellant in his defence to say that prior to the day of incident, there was any relation between the two or the acknowledgment with each other. Moreover, prosecutrix has identified the appellant, when he was arrested and brought before her by the police. Evidence to that regard is available in the statement of the uncle of the prosecutrix, who appeared as PW-7.



Thus, it is submitted that the allegations are completely proved from all angles and the case is worth for maintaining conviction and resultant sentence, without calling for any interference.

Findings & Conclusions

17. After hearing learned counsel for the parties in detail and reference of the material from the record by them, this Court has summarized the substantive evidence, requiring consideration and thereupon same is concluded in the upcoming paras of the judgment.

18. The prosecutrix had started from her house in the noon time to reach the college to appear in her BA 1st year English examination. It is on her way to bus stop, the accused, who was on a motorcycle and unknown to the prosecutrix, asked her to join him on the pretext of taking her to college, Rewari, which she refused. On insisting the second time, prosecutrix occupied the rear seat and on the way, due to suspicion she opened the GPS and found her location somewhere else. On objecting to the situation, accused took her to an abandoned place in the bushes and committed rape upon her against her wishes. It is further narrated by the prosecutrix that while leaving the spot on his motorcycle, accused left her all alone, by taking away the mobile phone of the prosecutrix and also the currency of Rs.150/- from her purse, perhaps to leave the prosecutrix in a helpless situation, so that she may not reach back towards city side.

19. As per the explanation given by her of reaching the city Rewari/College with the help of some other person, prosecutrix appeared in



the examination without expressing anything to anybody and immediately after the examination she made an attempt to contact her family members. Lastly, her brother and others reached the spot and took her to home, where she narrated the whole incident to her family members, who called the police at her home, whereupon the police recorded the complaint in writing. Immediately, thereafter, the prosecutrix was taken to the Government Hospital, Rewari, and at about 10:45 pm/11:00 p.m. on 03.12.2019, medico-legal examination of the prosecutrix was conducted by Dr. Meenu Yadav (PW9), who found following injuries on the person of the prosecutrix:

- (i) ***Multiple scratch marks on lower back;***
- (ii) ***Multiple linear abrasion on both feet;***
- (iii) ***Multiple small abrasions present on neck between both collar bones with redness present;***
- (iv) ***No other injury visible on chest, face and arm.***

20. On P/V examination, hymen was found to be freshly torn with slight bruising of the margins. Small abrasion was present on six o'clock position, with redness. On the basis of the said physical condition, Dr. Meenu Yadav (PW9) gave her *prima facie*/tentative opinion in the MLR itself by mentioning that:-

Possibility of sexual assault cannot be ruled out, however, final report is kept pending till receipt of the FSL report.

21. It is ASI Archana (PW16), who had taken the prosecutrix for medical examination to the Government Hospital, Rewari, and at that time



mother of the prosecutrix was also accompanying them. In her statement, Dr. Meenu Yadav (PW-9), also stated that certain parcels were also collected and were sealed for referring the same to the Laboratory.

22. It is an admitted fact that prosecutrix was major, as everywhere she got recorded her age as 18 years or more than that. It is also an admitted fact that prosecutrix was a student and had appeared in the examination of BA 1st year in English subject. Said examination was conducted from 2:00 p.m. to 5:00 p.m. Therefore, her leaving the house at 12:00 noon and giving of lift on the motorcycle by the accused after some time and committing of the forcible act upon her, resulting in the suffering of the injuries also, as described in the MLR, clearly suggests that in normal course, when a girl has to appear for the examination after two hours of the leaving of the house, in normal course she would not indulge herself consensually for any physical relations.

23. It is also not under dispute that the prosecutrix did not appear to take her examination at 2:00 p.m. and that just after the finishing of the examination the phone calls were made to the family members by the prosecutrix, where from the facts were revealed out by her to the mother and other family members resulting into the coming into action of the police, with no loss of time.

24. To disprove the factum of appearing of the prosecutrix in the examination, the appellant has neither taken any such plea; nor any record been summoned from the concerned college, therefore, taking a plea of

**CRA-D-581-2021(O&M)**

23

consensual relation between the two, is so imaginary and fictional that it does not appeal to the common sense. Even, while taking this plea appellant has neither suggested anywhere during the course of the recording of evidence nor brought any material on record to say that the relations between the two were even there prior to the date of incident. Nothing has been brought on record by leading evidence in the shape of the exchange of any writing from either side, mobile call record, SMSs and exchange of any talks/communication through any social media or even photographs etc. Therefore, taking a plea of consent on the basis of one-time incident only, that too the suffering of the injuries upon the prosecutrix, seems to be fictional and much beyond probabilities in the normal course.

Corroboration of medical evidence:

25. Plea of the accused of there being consensual relation with the prosecutrix is also in contrast to the medical evidence, wherein the presence of multiple scratch marks on the lower back, and multiple linear abrasions on both feet clearly suggest the act having been committed at some rough area in the fields. Obviously, suffering of scratch marks on the lower back and linear abrasions on both feet are the result of applying force upon the prosecutrix, while lying on some rough area or the bushes or hard plants. The presence of another injury on the neck portion between the collarbones that too with redness speaks volumes that the forcible act has been committed against the wish in recent past. There being no injury on the frontal part of the body may be the reason for not coming into contact with



rough area/ground. Recording of the tearing of the hymen freshly with slide bruising of the margins also suggests that the alleged act has been committed in the recent past.

Thus, while looking at the said aspect, the defence taken by the accused of the consensual relation with the prosecutrix is not established from any angle. Rather, the circumstances speak entirely against him and are much in support of the ocular version alleged in the FIR, which do not even name the accused. Thus, act of rape seems to be proved beyond doubt.

Corroboration by scientific evidence:

26. From the report dated 20.12.2019 (Ex. PY), prepared by the RFSL, Bhondsi (Gurugram), it is found that human semen was detected on ex.1(a)-Vaginal Slides, ex.1(b)-Vaginal Swabs, ex.1(c)-Underwear, ex.1(d)-Salwar. As per said report, the parcel containing the said items alongwith some other items, i.e. Dupatta, Shirt, undershirt and Cardigan, were received with the seal intact and same was tallied with the specimen seal also (Ex.MY). From the examination of Constable Rajpal (PW21), it is well established that the parcels were received through him in the laboratory in sealed condition as intact. However, no human semen was detected on ex.1(e)-Dupatta, ex.1(f)-Shirt, ex.1(f)-Shirt, ex.1(g)-undershirt and ex.1(h)-cardigan.

Thereupon said articles were forwarded to the Forensic Science Laboratory (FSL), Madhuban, for examining the DNA profile by comparing the DNA profile of the articles, where the human semen was found with the



blood samples of the accused, which was collected by the doctors at the time of the arrest of the accused on 19.12.2019.

27. From the statement of Dr. Rajeev (PW11), it is clear that on 19.12.2019, the accused was medico legally examined (Ex. P21) on the police request (Ex. P20) and after his examination blood sample in EDTA viol of the accused alongwith MLR was handed over to the police for its further transmission to the concerned laboratory for DNA examination. DNA report dated 31.12.2019 (Ex.PX), clearly suggests that the DNA profile of the accused matches with the articles of the prosecutrix, upon which the human semen was found. The conclusion recorded in the DNA profile report says that

“ the Autosomal STR Analysis indicates that DNA profile of seminal stains on source of Item No.1(A)-Underwear, Item No.1(B)-Salwar, Item Nno.1(C)-Slides, Item No.1(D)-Cotton Swabs is matching with the DNA profile of accused (source of item No.2)”.

From the evidence of any of the witness, having appeared to prove the medical evidence or giving of the opinion, nothing could be revealed out by the accused to suggest that no act of sexual assault was committed upon the prosecutrix.

28. For proving the scientific and technical part of the investigation, i.e. DNA profile report, Siddharth Kaushik, Assistant Director(S), DNA Division, FSL, Madhuban, appeared as PW23 and proved that the seal on the parcels was found intact and the same was tallied with the specimen seal also. He also deposed about the manner and method of



examination of the case property, adopted by him, and that the DNA Profile report (Ex. PS) bears his signature and official seal. In the cross-examination conducted by the accused, nothing has been suggested therein to the fact that the parcels were not found intact with the seal or were tampered with or the condition of the same was found suspicious. Thus, the only suggestion given by the accused i.e. “ ***it is incorrect to suggest that I had prepared wrong report.***” is not sufficient. It is nowhere suggested that how and in what manner the accused claims the said report (Ex. PX) to be wrong report.

From the aforementioned discussion of facts coupled with the medical evidence, the scientific evidence and also the defence taken by the accused of consensual relation, committal of offence of rape seems to be there beyond reasonable doubt.

Thus, it stands proved that the appellant committed sexual assault upon the prosecutrix on 03.12.2019 and in the said assault the injuries proved by the doctor, were also suffered by the prosecutrix.

29. From the cross-examination conducted by the accused/his counsel and the unexplained plea taken in the statement under Section 313 Cr.P.C, it is also an almost admitted position that accused has not even disputed the place of incident. There is not an iota of suggestion that the act of sexual assault/sexual intercourse was committed by him (accused) at any other place than the one alleged by the prosecutrix and the same being relied upon by the investigating agency also. Considering the said aspect, this Court is unable to believe the plea taken by the accused that the first-time



consensual relation is established and that too at such a place i.e. in the fields, and that too by a girl, who is a major and a student of BA 1st year.

30. Even otherwise also, time of the incident after leaving home, till appearing of her in the examination would not in any manner indicate that the prosecutrix would get herself indulged in such an activity with her choice first time that too just prior to appearing in the examination.

31. As per the version of the prosecutrix, after committing rape on her on 03.12.2019, accused had taken away Rs.150/- from her purse and also the mobile phone having sim No. 825649416. Said facts are found mentioned in the FIR version (Ex. P2). As per call detail record (Ex. P34) of the mobile number of the prosecutrix, i.e. sim No. **825649416 (MO24) of Bharti Airtel Limited** sim No. **825649416 (MO24)**, was active and used in mobile set bearing IMEI No. **865639030554590**, from 01.12.2019 to 03.12.2019 upto 13:19:53 hours. Sim No. **825649416** is never found in operation after the said date and time. However, the accused was found connected with the same mobile set bearing IMEI No. **865639030554590**, when he was found using another sim No. **9001494153** in his own mobile set bearing IMEI No. **865639030554580**, and also in the aforementioned mobile set bearing IMEI No. **865639030554590**, that too after the date of incident i.e. 03.12.2019. Moreover, at the time of recovery, vide recovery memo. Ex. P-17, sim No. **825649416** belonging to the prosecutrix was also recovered from the accused/appellant, i.e. from the cover of the mobile set Make-Oppo (Ex. MO21). The said recovery was effected from the tool box



of the motorcycle bearing registration No. RJ-40-SF-5055, belonging to the accused, which was parked in the room of his house. Thus, it is enough to believe that the mobile set of the prosecutrix was in possession of the accused after the date of incident.

32. For the purpose of establishing the connectivity more clear, relevant deposition of the witness, i.e. PW20 - Rohit Kumar, Nodal Officer, Bharti Airtel Limited, can be examined. This witness proved the Call Detail Records (CDRs) of **mobile sim Nos. 825649416 (Ex. P34), 9001494153 (Ex. P39), and 7427068690 (Ex. P41/A).**

From the statement of this witness and the Call Detail Record (Ex. P34), it is established that mobile/sim number of the prosecutrix is '**825649416**' and **IMEI number of her mobile set is '865639030554590'.**

As per Call Detail Record (Ex. P41/A), on 01.12.2019 at 10:52:52 hours, mobile sim No. **7427068690** of the accused was used in mobile set having **IMEI No. 911481101377300** and w.e.f. 12.12.2019 – 08:09:05 hours to 19.12.2019 upto 09:02:38 hours, his mobile sim was being used in mobile set having **IMEI No. 865639030554580.**

It is found and observed that there was another sim No. **9001494153** (issued in the name of Kamekash Arya of Jaipur). As per Call Detail Record (Ex. P39), w.e.f. 02.12.2019 - 09:44:18 hours to 10.12.2019 -17:51:03 hours, **sim No. 9001494153**, was used in mobile set having **IMEI No. 911481101377300**, i.e. in the same mobile set wherein **sim No.**



7427068690 of the accused was used w.e.f. **12.12.2019 – 08:09:05** hours to **19.12.2019** upto **09.02.38** hours.

Sim No. 9001494153 was also used in the **mobile set** having **IMEI No. 865639030554580** (which belong to the accused) for making ‘SMT’ calls from **18.01.05** hours to **18.01.24** hours on **10.12.2019**. Thereafter, **sim No. 9001494153** was continuously used in mobile set of the prosecutrix, having **IMEI No. 865639030554590**, from **10.12.2019 – 18:20:43** hours to **17.12.2019 – 19:03:59** hours. And, w.e.f. **18.12.2019 – 10.13.06** hours to **19.12.2019 – 19:27:07** hours, **sim No. 9001494153** was used in another mobile set having **IMEI No. 911481101377290**.

It may be a coincident that there is similarity in the digits of the IMEI numbers of the mobile set of the prosecutrix and that of the accused, i.e. **IMEI No. 865639030554590** and **IMEI No. 865639030554580** respectively, as there is only change in last two digits. However, it is well established from the above discussion that the accused was using **Sim No. 9001494153** both in his own mobile set and in the mobile set of the prosecutrix from time to time, after the date of incident i.e. **03.12.2019**. Thus, the version of the prosecutrix that after committing rape on her on **03.12.2019**, the accused took away her mobile set is also proved beyond any doubt.

33. There is another angle that the accused has been identified by the Sarpanch of the Village of Victim (PW10), who deposed that at different points CCTV Cameras have been installed in the entire village. He had



received telephonic information regarding motorcyclist taking the victim on his motorcycle and committing of rape upon her, who belongs to her village. On seeing the accused in CCTV footage alongwith the motorcycle and black coloured jacket, blue jeans pant, red grey coloured sports shoes and black coloured helmet of Studs, Sarpanch identified the accused.

The said witness made it clear during cross-examination that the visor of helmet was open and identified by saying that accused Mahesh is the same person, who was seen by him in the clip and earlier to the said incident, said boy was never seen in the Village. Thus, on the question of identification also, the statement of PW10-Sarpanch of the Village, which can be counted as independent evidence, is sufficient to establish the same.

34. The identification part can also be found corroborated by the statement of the prosecutrix, who during her deposition stated that –

“accused did not put off his helmet and he committed rape on me while wearing the helmet. I attacked on his helmet with a stone. Accused opened his glass of the helmet and then I attacked on his right eye with a stone. On my making noise, he pressed my neck. I made a request to him not to press my neck as I was not feeling easy but he did not leave me and remained pressing my neck. During the process of rescuing myself from the clutches of the accused, my mobile dropped there but accused took out my purse in which there was Rs.150/- and my mobile with him and he went away from that place on his motorcycle by leaving me there.”

This way this Court is satisfied that the identity of the accused is established with the statement of the prosecutrix herself (PW2) and identifying the accused with the CCTV footage by the Sarpanch of the village (PW10).



35. The argument addressed by learned counsel for the appellant that the parcels of the prosecutrix were sent for its examination at a much belated stage is not well founded. First of all facts of the cited judgment are entirely different and secondly accused has failed to establish as to how his rights get prejudiced with the delayed sampling. Once it is established that the parcels belonging to the prosecutrix were delivered and deposited with the Forensic Science Laboratory on 17.12.2019, and accused was arrested on 19.12.2019, with whose blood the DNA profile matches, the argument raised by the accused is not convincing.

Moreover, he has failed to create any doubt by showing that the parcels were ever tampered with or the seal was not found intact in any manner whether partially or fully. Once no discrepancy in the sealing of the parcels or receiving of the same as intact in the laboratory is well established, the judgment cited is not applicable to rescue the appellant.

36. From the facts and circumstances and the evidence available, this Court is surprised to find that the accused belongs to District Alwar, State of Rajasthan, and the prosecutrix belongs to District Rewari, State of Haryana. There is not an iota of evidence or even any explanation by the accused to substantiate his defence of consensual physical relation that how he came into contact with the prosecutrix and for what purpose he was there in Rewari (Haryana) on the day of incident.

It is nobody's case that accused had any connection in any manner with the area in question or even the State of Haryana. Thus, an act



CRA-D-581-2021(O&M)

32

of entering abruptly on the fateful day, i.e. 03.12.2019, in the area of place of incident and then being arrested at his native place, clearly shows that there is no point of consensual relation between the two or even any kind of prior meeting or relation of prosecutrix and accused prior to the date of incident.

37. As a sequel to above discussion, this Court finds it almost impossible to reach to the conclusion that the guilt of the accused is not proved beyond the shadow of reasonable doubt.

Thus, while confirming the findings and maintaining the judgment of conviction, dated 03.03.2020, and the order of sentence, dated 05.03.2020, passed by the learned Trial Court, the **present appeal is hereby dismissed.**

Seeing the conduct of the accused/appellant in its entirety and realizing the fact that there is an increasing trend of such like incidents in the society, and with a purpose of establishing some deterrence to the wrong doers, this Court is not even inclined to modify the sentences, already ordered by the learned Trial Court.

Pending criminal miscellaneous application(s), if any, shall stand disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

(SANJEEV PRAKASH SHARMA)
JUDGE

September 24th, 2024

Rashmi/Pkapoor

Whether speaking/reasoned? ✓ Yes/No

Whether reportable? ✓ Yes/No