

**CRA-D-472-DBA-2004****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-472-DBA-2004
Date of decision : 04.04.2025****STATE OF HARYANA****... Appellant****Versus****CHHATTAR PAL****...Respondents****CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL****HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Mr. R.S. Arya, Addl. A.G., Haryana
for the appellant.Mr. Shiv Kumar, Advocate with
Mr. Sahil Chowdhary, Advocate
for the respondent.**********JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of acquittal dated 12.09.2003 passed by the Addl. Sessions Judge, Faridabad.

2. The FIR was registered on 07.03.2000, the judgment of acquittal passed by the Addl. Sessions Judge, Faridabad is dated 12.09.2003, the appeal was filed on 11.12.2003 and the matter is being taken up for hearing now after a period of more than 25 years of the registration of the FIR.

3. The prosecution case is that on 05.03.2000 at about 2.00 P.M. Malho wife of Tej Pal, resident of Immamuddenpur had gone to the forest. When she was cutting wood, the accused came from behind caught hold of her, gagged her mouth and committed forcible sexual intercourse with her. The alarm raised by Malho attracted Desh Raj son of Sullar and Ram Singh son of Sri Chand, both residents of Chandpur, to the spot. When the accused



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saw them coming, he fled away. The matter was reported to Police Post Chandpur but, instead of taking action, the police scolded Malho. Resultantly, she moved a complaint before the Superintendent of Police on 07.03.2000. The complaint was forwarded to the S.H.O. Police Station Chhainsa whereupon the case was formally registered. Medico-legal examination of Malho was got conducted. The accused was arrested on 09.03.2000. He was also got medico-legally examined.

4. On completion of investigation, the charge-sheet was submitted. On commitment, there being prima facie case, charge under Section 376 of IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined PW1 Dr. Vina Rastogi, who medico-legally examined the prosecutrix; PW2 Dr. Kamal Satyarthi, who medico-legally examined the accused; PW3 Ranbir Patwari who prepared the scaled map of the place of occurrence; PW4 Keshav Ram Sub Inspector, who sought medical opinion as to whether the accused was competent to commit sexual intercourse or not; PW5 Mallo, the prosecutrix herself; PW6 Ram Chander, an eye witness; PW7 Ramwati, the mother-in-law of prosecutrix; PW8 Rajinder Singh constable, in whose presence the vaginal swabs were taken in possession by police and PW9 S.I. Vishnu Dutt, the Investigating Officer.

6. The gist of the prosecution evidence is as under:-



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Dr. Vina Rastogi the then Medical Officer Incharge CHC Kurali medico-legally examined the prosecutrix aged 23 years and found the following injuries:-

“1. No stain mark on clothes. However, the clothes worn by the victim were preserved in packets containing six seals for handing over to police.

2. Secondary sex character were well developed. There was no violence mark over wrist, Breast, back, front face, thigh or any other part of the body. There was no difficulty in walking or pain in micturition/defecation. Gait of victim was normal.

3. No mark of injury abrasion on vulva, thighs no bleeding per vagina. No dried blood over vulva pubic hair not matted. Pubic hair cut and sealed in a bottle containing one seal.

-Vagina admits two fingers. Non tender.

-Hymen ruptured (Rudimentary) cervi, multiparous,

-Examinee was habitual of regular intercourse.

-Two swabs were taken from vagina and sealed in a bottle containing one seal.

However nothing was found to suggest that the rape was not performed under strict definition of later.

Hence in my opinion possibility of rape cannot be ruled out.”

She produced the photocopy of the MLR Ex.PC. In cross-examination, she stated that it was correct that no injury was found on the person of the prosecutrix at the time of examination. She also stated that it was not necessary that scratches or abrasions were to be found on the person of the prosecutrix if sexual intercourse was committed on a hard surface.

Dr. Kamal Satyarthi, Medical Officer, CHC, Kurali was examined as PW2. He stated that on 09.03.2000, he medico-legally examined Chhattar S/o Atri aged 24 years and found the following injuries:-



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“1. Healing lacerated wound 1.5 c.m. x 0.5. cm skin deep in size of irregularly star shape just about the outer endleft eyebrow.

2. Healing abrasion 3 cm x 1 cm situated on the back of the right shoulder.

3. Multiple stretch marks 1 cm x 0.5 cm to 10 cm X 0.5 cm irregularly linear with parraller marking on both sides and having nail marks on the ends. Running in various direction all over the back.

4. Abrasion 5 x 3 cm in size irregular in shape with red margins situated on the front of the left knee.

5. Abrasion 3 cm x 3 cm in size irregular in shape with red margins situated on the front of the right knee.

6. Abrasion 2 cm x 1 cm in size irregular with nail marks situated on the front of the left forearm just about the wrist. All the injuries were simple in nature, and caused by blunt objects.

In my opinion there was no evidence that the Examinee was not able to perform sexual intercourse. All the injuries on his person were more than 24 hours duration less than 7 days duration. Ex.PD is the carbon of original M.L.R. which bears my signature.”

In cross-examination, he stated that it was not possible that all the injuries could be caused by a fall on a hard surface but stated that it was correct that all the injuries could be caused in a scuffle.

Ranbir Patwari was examined as PW3. He stated that on 25.03.2000 he prepared the scaled map with correct marginal notes of the place of the occurrence on the instruction of the Investigating Officer and Ex.PE was the same.

Keshav Ram the then Chowki Incharge Chandpur was examined as PW4. He stated that he had sought the opinion of the doctor regarding

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whether the accused was competent to perform sexual intercourse or not and had also got prepared the site plan from the Patwari.

Mallo W/o Tejpal, the complainant/prosecutrix was examined as PW5. She stated that on 05.03.2000 while she was cutting woods in the jungle at about 02.00 PM, the accused came there, caught her and put his hand on her mouth and committed rape upon her without her consent. On crying for help, Desh Raj and Ram Singh came to the spot who were grazing animals in the fields. On seeing the above persons the accused managed to escape. She narrated the episode to mother-in-law Ramwati. Thereafter, she along with her mother-in-law went to the P.P. Chandpur and recorded her statement but no action was taken by P.P. Chandpur after which she moved an application to SSP Faridabad and the case was registered on the said application. She along with her mother-in-law had gone to the police. The police had recovered broken bangles from the place of occurrence which were taken into possession. She had got her medical examination done. She identified Chhattar Pal accused present in the Court as the person who had committed rape upon her. In cross-examination, she stated that there were several bushes in the jungle. The accused had caught her from behind. She narrated the occurrence to her mother-in-law on the same evening. She was cross-examined with respect to her previous statement wherein this fact had not been recorded. She stated that she along with her husband and her mother-in-law had gone to the SSP office for lodging the complaint. She admitted that she was illiterate and could not read or write. The application Ex.PJ was written by her mother-in-law and her husband. She did not know

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where the application had been got written/typed but stated that it was typed on the same day when they had gone to the office of the SSP, Faridabad. The application had been given to P.P. Chandpur by her mother-in-law. The same had been got written by her mother-in-law but she (prosecutrix) did not know what was written or the person who wrote it. The application Ex.PJ was not read over by the scribe of the same. She did not remember the date of giving the application to SSP, Faridabad or the date of her medical examination. She denied the suggestion that there was enmity between her family and that of the accused and that she was deposing falsely due to this enmity. She admitted that the accused had already opened the zip of his pant before committing rape upon her. He was wearing an underwear. She was wearing a petticoat and he lifted the petticoat and committed the offence. Her blouse was torn. She could not tell the colour of the blouse and the petticoat. No other garments were removed by the accused except his pant. She did not receive any injury at the time of the occurrence. The accused received an injury on his hand at the time of committing rape.

Ram Chander was examined as PW6. He stated that he was grazing animals in the fields along with Desh Raj when at 02.00 PM on 05.03.2000 he heard a noise. They rushed to the place of occurrence and found Chhattar Pal and Mallo grappling with each other. On seeing them the accused ran away from the place of occurrence. He had also received injuries and blood was oozing, broken bangles were lying on the spot. The prosecutrix put away her wood and went to the village. In cross-examination, he stated that they were standing at a distance of 20/25 steps from the place

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of occurrence. He admitted that he knew the accused but denied the suggestion that any complaint was lodged against him. He however stated that the accused had lodged a complaint against his brother. He had given money to the accused and the accused gave money on a loan. He had lodged a complaint against the accused and his brother. Desh Raj was the brother of the mother-in-law of the prosecutrix.

Ramwati, mother-in-law of the prosecutrix was examined as PW7. She stated that on 05.03.2000 her daughter-in-law told her that Chhattar Pal had committed the offence while she was cutting the wood in the forest and that Desh Raj and Ram Singh were also present there. Later, pieces of broken bangles were taken into possession. In cross-examination, she stated that her daughter-in-law had told about the occurrence on the same day in the evening after which she along with her daughter-in-law had gone to Chandpur and narrated the episode to the police. When confronted with her earlier statement it was found that the factum of the prosecutrix telling her of the occurrence had not been narrated by her in the earlier statement. She had given an application in writing at the Police Chowki. The statement was recorded by the police on 05.03.2000. However, no action was taken by the Police Post, Chandpur and then they moved an application to the SSP, Faridabad. Her statement was recorded on 07.03.2000. She denied the suggestions that Desh Raj was her brother.

Rajinder Singh, Constable was examined as PW8. He stated that the doctor had handed over one parcel containing six seals and one swab bottle which were taken into possession by him.

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SI Vishnu Dutt then posted as SHO P.S. Chhainsa was examined as PW9. He narrated the different facets of investigation conducted by him. In cross-examination, he stated that the FIR was registered at 07.20 AM whereas the Ruqa was sent to the Police Station at 06.00 PM. He stated that he had never sent back the complainants from the Police Post on 05.03.2000. He had not received any complaint from the side of PW7-Ramwati against the accused.

7. The statement of the accused was recorded under Section 313 of Cr.P.C. wherein his attention was invited to the incriminating material against him. He pleaded innocence claiming that he had been falsely implicated.

8. The gist of the defence evidence is as under:-

Subhash was examined as DW1. He stated that the relations between the accused party and the complainant party was not good and they had enmity with each other. A criminal case was pending in the Court against the complainant party. The father of the accused was a complainant in that case. On 05.03.2000 an application/complaint had been moved against the accused in PP Chandpur by the complainant/Ramwati regarding a quarrel with the accused and Smt. Malho. This application was found to be false. During inquiry, it was found that Chhattar Pal had not caused any injury to Malho. But the injuries found on the person was self-inflicted and Malho had pushed Chhattar Pal because of which Chhattar Pal had received scratches.

Dolat Ram, an additional Ahlmad in the Court of JMJC, Faridabad was examined as DW2. He brought summon file No.203 dated 23.08.1998 under Section 323/325/34 IPC P.S. Chhainsa fixed for 27.10.2003



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for prosecution evidence. As per the record Khatri S/o Bhawani was the complainant in the case. Ram Singh S/o Sri Chand, Jeetan S/o Sri Chand, Bhim Singh S/o Sri Chand and Hazari S/o Bhawani were accused in that case.

Asger Khan was examined as DW3. He stated that he was also grazing his buffaloes in the jungle but did not see any such occurrence. He admitted as correct that a criminal case was pending against Ram Singh on the complaint of Atri Singh father of the accused and there was rivalry between the complainant party and the accused.

9. Based on the evidence led, accused/respondent was acquitted by the Court of Addl. Sessions Judge, Faridabad vide judgment dated 12.09.2003.

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

11. The learned counsel for the appellant-State contends that the judgment of acquittal is based on conjectures and surmises. The statements of the prosecution witnesses have not been properly appreciated. No woman would level such like allegations without there being truth in the same. The Trial Court had not appreciated the fact that broken pieces of bangles had been taken into possession from the place of occurrence. Six injuries had been found on the person of the accused which stand unexplained. Semen was also found on the clothes of the prosecutrix which is sufficient corroborative evidence to establish the guilt of the accused. Undue importance has been given to the delay in the registration of the FIR. In fact,



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the prosecutrix had approached the police on the date of occurrence itself but it was the police officials who refused to register an FIR and took action only at the instance of the SSP, Faridabad before whom the prosecutrix had made a complaint on 07.03.2000. He thus contends that the impugned judgment was liable to be set aside.

12. On the other hand, the learned counsel for the respondent contends that there is a delay of 2 days in the registration of the FIR. The occurrence took place on 05.03.2000 but the FIR came to be registered only on 07.03.2000. This delay is fatal to the prosecution case. The medical evidence does not support the prosecution case. The prosecutrix suffered no injury whatsoever on her person or on her private parts. It has been established that Ram Chander (PW6) was inimical to the accused party as he was an accused in a case registered at the instance of Atri father of the accused. He thus, contends that no fault could be found with the judgment of acquittal and the present appeal was liable to be dismissed.

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

14. The statement of the prosecutrix that the accused committed forcible sexual intercourse with her cannot be accepted. Her statement does not get corroboration from the medical or other evidence. As per her version, she was cutting wood with a gadasa. The area had bush growth. The surface was uneven. Even if it was accepted that the accused had come from behind stealthily, caught hold of the prosecutrix, shut her mouth with one hand and, committed intercourse, the prosecutrix being a married woman must have



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struggled and would have certainly received some injuries. However, according to Dr. Vina Rastogi (PW1), there was no injury over any part of her body.

15. As mentioned above, despite allegations of rape on uneven surface, the prosecutrix did not suffer any injury. Surprisingly, the accused did including those on his upper body which as per the prosecutrix remained covered as only the pant and underwear was removed by the accused. This creates a doubt in the prosecution case particularly in the context of no semen being detected anywhere except on the patticott and the same was not subjected to DNA analysis.

16. As per the report of the FSL, semen was found on the petticoat but not on pubic hair and vaginal swabs. In **Ujjagar Singh Versus State of Punjab, 2008(1) RCR (Criminal) 305**, the Hon'ble Supreme Court held as under:-

“8. We have heard the learned counsel for the parties and gone through the record. We first take up for consideration the question of the conviction under Section 376 of the Indian Penal Code. We find from the medical evidence and from the chemical examiner's reports that the vaginal swab and clothes taken from the dead body did indicate the presence of semen. There is however absolutely no evidence to suggest (even assuming that the intercourse had been committed by the appellant) that he had done so without Mukhtiar Kaur's consent or against her will. Some suspicions of rape could perhaps have been raised had some tell tale injuries been detected on Mukhtiar Kaur's person but we find that the two injuries other than the gun shot wounds i.e. injury No. 3 being on the left pinna and No. 4 an abrasion near the right eye do not indicate any attempt to rape or the commission of rape. It is



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also significant that the investigators had made no attempt whatsoever to have the appellant medically examined to ascertain his capacity to perform sexual intercourse. The learned State counsel relying on the statement of PW14 Inspector Harjinder Pal Singh has however submitted that the examination had not been possible as the appellant had received a very serious gun shot injury and was hanging between life and death. We agree with the submission of the learned counsel that an examination could not have been carried out immediately but we see no justification in the omission of the prosecution to have him examined after he had recovered his health and been discharged from hospital. We are further of the opinion that even assuming for a moment that sexual intercourse between the two had indeed taken place it cannot be said from the evidence before us that it was without the consent or against the wishes of Mukhtiar Kaur. We, therefore, find that Ujjagar Singh's conviction under Section 376 of the Indian Penal Code cannot be sustained.”

(Emphasis supplied)

In **Sadashiv Ramrao Hadbe Versus State of Maharashtra & another, 2006(10) SCC 92**, the Hon’ble Supreme Court held as under:-

“13. It is true that the petticoat and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove that the case, as alleged by the prosecution. The Sessions Court as well as the High Court had not taken into consideration the absence of spermatozoa in the vaginal swab of the prosecutrix. It may also be noticed in the FI Statement. In this case the prosecutrix had not given the full description of the incident allegedly taken place but when she was examined in court she had improved her version.”

(Emphasis supplied)

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17. A perusal of the aforementioned judgments would show that mere presence of semen on the clothes cannot conclusively establish commission of rape which must be established on the basis of other evidence led.

18. According to PW6-Ram Chander, he was accompanied by Desh Ram when both of them, after hearing the noise, rushed towards the place of occurrence. This Desh Raj according to him was none else but, the brother of the mother-in-law of the prosecutrix. PW7-Ramwati mother-in-law of the prosecutrix, however, denied this fact. Surprisingly, the prosecution gave up Desh Raj on the ground that he was an unnecessary witness. Apparently, this was done so as to shield him from being cross-examined on the point of his relationship with PW7-Ramwati. This goes to show that PW Desh Raj was a close relative of the mother-in-law of the prosecutrix. If he and Ram Chander had seen the accused grappling with the prosecutrix from a distance of hardly 20/25 steps, they both ought to have caught hold of the accused. Even otherwise, it does not appear probable that the accused would commit the offence when these two PWs were only 20/25 feet away from him and the prosecutrix. Further, neither of those PWs either accompanied the prosecutrix to her house or to the police which makes their presence quite doubtful..

19. In so far as PW6 Ram Chander is concerned the defence version is that he, being inimical towards the accused, is an interested witness. To buttress this contention, the defence examined Criminal Ahlmad in the Court of Ms. Shashi Chauhan, Judicial Magistrate 1st Class, Faridabad, who stated that in F.I.R. No. 203 dated 23.8.1998, under sections 323,325 read with

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Section 34 of Indian Penal Code, police Station Chhainsa, lodged at the instance of the father of the accused, PW-6 Ram Chander is one of the accused. When PW Ram Chander appeared in the witness box, he was confronted with the fact that a criminal case lodged at the instance of the accused party was pending against him. He denied this, stating that the case was against his brother. Infact, it is PW6-Ram Chander also who is one of the accused in that case. Hence, it is apparent that PW6-Ram Chander made a false statement in Court. Therefore, his statement has to be taken with a pinch of salt. Infact, his presence on the place of occurrence at the relevant time is improbable. Be that as it may, his deposition is only to the effect that he saw the accused and the prosecutrix grappling with each other and not that he had seen the accused committing rape upon her.

20. The case property viz. pieces of broken bangles, petticoat and the blouse of the prosecutrix have not been produced before the court. This is a material lacuna. According to prosecutrix her blouse had got torn during this scuffle. Admittedly, the blouse was sent to F.S.L. and neither in the seizure memo of the police nor in the report of the F.S.L. is there any indication that the blouse was torn. Therefore, vital link evidence is missing.

21. As regards delay in lodging the F.I.R. if the prosecutrix is to be believed the occurrence took place on 05.03.2000 at about 2.00 P.M. The F.I.R. was lodged on 07.03.2000, meaning thereby that there has been delay of two days. According to the prosecutrix, on 05.03.2000 itself, she along with her mother-in-law to whom she had told about the occurrence went to Police Post Chandpur and submitted a complaint but the police officials

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would not listen to her. Similarly, in her statement on oath PW7-Ramwati stated that the prosecutrix had disclosed the facts to her on 05.03.2000 itself but she was confronted with her statement under Section 161 Cr.P.C. (Ex.DA) that the incident had been narrated to her only on 07.03.2000. She also stated in her cross-examination that her statement was recorded on 05.03.2000 as well. The complaint Ex.PJ is to the effect that the matter was reported to police post Chandpur on the date of occurrence itself but no action was taken by the police. There is no evidence on record to establish that the complainant and her mother-in-law had gone to Police Post Chandpur on 05.03.2000 itself as no such statement/complaint has been brought on record. Since the complaint was being lodged on 07.03.2000 it appears that a false story was concocted that on 05.03.2000 they had visited police post Chandpur but no action had been taken. Even if police post Chandpur had refused to register an F.I.R. on 05.03.2000, there was no reason as to why the complaint did not approach the Superintendent of Police on the following day i.e. 06.03.2000. The fact remains that till 07.03.2000 the prosecutrix kept quiet. This delay in the facts and circumstances of the case casts a serious doubt on the prosecution case the benefit of which must accrue to the accused.

22. Further, the complaint Ex.PJ was purported to have been moved by the complainant. It is on the basis of this complaint that the F.I.R. was registered. The prosecutrix admits that she does not know where the complaint was got typed/written. She claims that the same was got typed by her mother-in-law, but, the contents were never read over or explained to her.



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In these circumstances, Ex.PJ cannot be said to be the version of the prosecutrix beyond doubt.

23. 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.”

24. 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 Addl. Sessions Judge, Faridabad. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

04.04.2025

JITESH

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