

2025:PHHC:097951



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

325

CRA-D-305-DBA-2005

Date of decision: July 31, 2025

STATE OF HARYANA

...Appellant

Versus

AVTAR SINGH AND OTHERS

...Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

Present: Mr. Rajat Gautam, Addl. A.G., Haryana and
Mr. Rahul Mohan, Addl. A.G., Haryana.

Mr. Vivek Dahiya, *Amicus Curiae*
for the respondents.

MANJARI NEHRU KAUL, J.

1. The State of Haryana has preferred the present appeal challenging the judgment of acquittal dated 07.09.2004 passed by the learned Additional Sessions Judge (Adho) Fast Track Court-III, Faridabad in case FIR No.736 dated 29.08.2002 under Sections 341, 366, 376(2)(g) and 506 of the Indian Penal Code, 1860, registered at Police Station City Ballabgarh, District Faridabad, whereby the accused persons i.e. Avtar Singh, Sunder Singh, Partap Singh, Vikas Kumar and Priti Sharma were acquitted of charges framed against them.

2. Case has been called, however, none entered appearance on behalf of the respondents. Mr. Vivek Dahiya, Advocate (PH/3444/2019), Mobile No.96462-47465, who is present in the Court, is appointed as *Amicus Curiae* to assist this Court on behalf of the respondents.



3. The primary contention in the present appeal is that the learned trial Court erred in appreciating the ocular and corroborative evidence adduced during trial, and thereby arrived at a manifestly erroneous conclusion in acquitting the accused.

4. As per the FIR lodged on 29.08.2002 by the prosecutrix (PW1), she was allegedly abducted on 28.08.2002 at around 7 a.m. while on her way to college, by two boys on a scooter, one of whom was identified as accused-Vikas Kumar Singh. Accused-Vikas Kumar Singh, whom she recognized, allegedly sprayed a substance on her face, causing her to lose consciousness. The prosecutrix claimed that after she lost consciousness, she was taken by accused-Vikas Kumar Singh and the other unknown person on their scooter; when she regained consciousness, she found herself in an unfamiliar room, where she had been subjected to rape by Vikas Kumar Singh, while Avtar Singh clicked her photographs. She also alleged that while she was held in the room, a telephonic call was made by Priti Sharma to the other accused Sunder, which suggested their complicity since it was conveyed to Priti Sharma that the work had been done as per her instructions. Eventually, the prosecutrix was abandoned by the accused near a restaurant, from where she returned home with the help of some bystanders. She was also threatened with dire consequences if she disclosed the incident to anyone. On return, she revealed about the incident to her mother and brother. Based on the complaint FIR No.736 (Ex.P10) was registered, investigation followed, and all the accused were arrested and subsequently, the respondent-accused were



chargesheeted and sent up to face trial. Charges were framed against the accused under Sections 341, 366, 376(2)(g) and 506 and 120-B IPC, to which they pleaded not guilty and claimed false implication. In support of its case, the prosecution examined 16 witnesses including PW1 (prosecutrix), PW2 (Constable Hari Kishan), PW3 (Hari Om Vashisth), PW4 (SI Randhir Singh), PW5 (SI Krishan Kumar), PW6 (Dr. S.C. Bhagat), PW8 (mother of the prosecutrix), PW15 (Dr. Madhu Lata, who medico-legally examined the prosecutrix).

5. Medical and forensic evidence including the FSL report (Ex.P9) was also tendered. After closure of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., wherein they denied the allegations and claimed false implication at the instance of one Bir Singh. They examined DW1 (Sewa Ram Verma) and DW2 (Hari Singh) in their defence.

6. The learned State counsel vehemently contended that the prosecutrix, being the victim of a sexual assault, was a sterling witness, whose consistent and unwavering testimony supported the prosecution's version of events. Her identification of the accused, Vikas Kumar, and her detailed account of the sequence of events – including her abduction and subsequent sexual assault/rape – were both credible and compelling. It was, therefore, submitted that the learned trial Court erred in failing to place due reliance on her evidence.



7. Furthermore, the learned State counsel argued that the learned trial court incorrectly discredited the testimony of the prosecutrix by drawing erroneous conclusions from the medical evidence, solely on the basis that no external injuries or signs of resistance were found on her person. It was emphasized that the absence of injuries should not be considered fatal to the case of the prosecution, particularly in light of the fact that the prosecutrix became unconscious after a chemical substance was sprayed on her, rendering her incapable of resistance.

8. Additionally, it was asserted that the testimony of PW8-Kamlesh Devi, the mother of the prosecutrix, corroborated the prosecution's version but was similarly disregarded by the learned trial Court without sufficient justification.

9. The learned State counsel also highlighted that while the prosecutrix was confined with the accused in an unfamiliar room, where the crime was committed, she overheard accused Preeti in conversation with her co-accused, during which the co-accused informed Preeti that they had acted in accordance with her instructions. This, it was submitted, clearly indicated that accused Preeti was complicit and an active accomplice in the commission of the offence.

10. While it was acknowledged by the learned State counsel that the Forensic Science Laboratory (FSL) Report returned negative results, and that PW15-Dr. Madhu Lata, testified during trial that no visible external injuries were present on the prosecutrix, however, during her cross-



examination, this witness did not rule out the possibility of sexual assault. Moreover, a tear was observed on the front portion of the shirt of the prosecutrix, which, according to the learned State counsel, served as a clear indication of the force used against her.

11. Lastly, the learned State counsel emphasized the improbability that the prosecutrix would fabricate such grave allegations and willingly subject herself to the accompanying social stigma, unless the incident had, in fact, occurred.

12. *Per contra*, learned counsel appearing for the respondent-accused, while supporting the judgment of acquittal, submitted that the trial Court had passed a well-reasoned judgment based on a thorough appreciation of the evidence. The medical evidence completely contradicted the version of the prosecutrix. While drawing the attention of this Court to the medical opinion of PW15-Dr. Madhu Lata, it was categorically argued that she stated that there were no injuries – external or genital, on the person of the prosecutrix, nor any swelling, tenderness or discharge. Hence, it could be clearly inferred that a totally concocted version had been brought forth by the prosecutrix. It was also submitted that the prosecutrix was medico-legally examined on the following day of the alleged incident itself. If the incident had actually occurred as alleged, some signs of struggle or injury would ordinarily be expected. However, it was clearly not the case. Learned counsel also submitted that the entire case of the prosecution was riddled with gaping holes and the prosecutrix had, at every stage, tried to improve



upon her version by adding some accused or the other, which clearly raised doubts about the credibility of her narrative. Furthermore, the identity and role of a fifth accused also remained vague and unsupported; no vehicle, scooter or car used in the alleged abduction was recovered. A prayer was, therefore, made for dismissal of the instant appeal as the version of the prosecutrix that she was abducted in broad daylight on a public road on a scooter, after being sprayed with chemicals, defies logic and is inherently improbable.

13. We have heard learned counsel for the parties and perused the evidence on record.

14. We find the prosecution's version of events surrounding the alleged abduction and subsequent sexual assault of the prosecutrix to be fraught with inconsistencies and inherent improbabilities, which cast serious doubt on its overall credibility.

15. The prosecutrix claimed that she was abducted around 7 a.m. on 28.08.2002 while on her way to college, when an unidentified substance was sprayed on her by the two accused who came on a scooter, rendering her unconscious. It was then alleged by the prosecutrix that she was lifted onto a scooter by two of those accused, all of which purportedly occurred in broad daylight, on a public road. This narrative stretches the bounds of plausibility, particularly given the absence of any independent eyewitnesses, despite the incident allegedly taking place in open public view.



16. Further, it was also alleged that other accused persons were following the scooter in a car. If a car was indeed available, it defies logic and common sense why the prosecutrix – an unconscious individual – would be transported on a scooter, an exposed and unstable mode of transport, rather than in the relative concealment and security of a car. This discrepancy undermines the coherence and natural flow of the prosecution's version.

17. Further, the allegation that the prosecutrix was subsequently confined in an unfamiliar room, where multiple accused were present and a phone call was made to accused Preeti, is equally vague. No specific location or address of this room has been identified by the prosecutrix, nor did the police make any effort to trace or verify such a location through investigation.

18. It is noteworthy that the prosecutrix was an adult woman of mature understanding. She did not claim to have been blindfolded or otherwise incapacitated after the alleged sexual assault. According to her own account, she was later taken and left at a restaurant by the accused. Under these circumstances, it is difficult to accept that she would have no knowledge or recollection of the location, where the incident allegedly occurred, or at the very least, an approximate idea of the area. The failure of the investigating agency to identify or examine the place of occurrence, or to collect any corroborative evidence from the vicinity, significantly weakens the case of the prosecution.



19. Moreover, no witness from the restaurant or its surroundings – where the prosecutrix claims she was abandoned, and from where she presumably sought help – was examined to support her version. The absence of any independent, corroborative testimony in this regard is a serious lacuna.

20. Taken as a whole, these glaring omissions and inconsistencies render the narrative of the prosecution doubtful and untrustworthy. The version presented lacks the clarity, consistency, and corroboration necessary to inspire judicial confidence.

21. The most critical dent in the case of the prosecution arises from the deposition of PW15-Dr. Madhu Lata, who examined the prosecutrix within 24 hours of the alleged incident. Her deposition makes it abundantly clear that there were no external injuries, bruises or lacerations on the person of the prosecutrix; there were no signs of struggle; no swelling, tenderness or signs of forced intercourse were found; her genitals were uninjured and clean; her clothes did not bear blood stains or other forensic indicators of an assault, much less sexual; and lastly and most significantly, the clothes of the prosecutrix, which were sent to the Forensic Science Laboratory, tested negative as no traces of semen were found on them. This categorical absence of corroborative medical evidence fatally undermines the narrative of the prosecutrix. Therefore, in the absence of injuries on the person of the prosecutrix, who undisputedly was promptly and immediately subjected to a



medico legal examination, raises doubt about the veracity of the version given.

22. A further critical flaw in the case of the prosecution is the progressive evolution and inconsistency in the statements of the prosecutrix. Initially, she alleged that there were two persons, who came on a scooter, sprayed some substance on her, and thereafter, took her on a scooter to a room, where she was subjected to rape. However, subsequently, four other persons including Priti (although she was not stated to be present in the room, where the prosecutrix was raped) were added. No specific role was, however, assigned to them. This unexplained escalation in the list of accused between the initial complaint and the deposition casts a deep shadow on the credibility of the allegations. This improvement remains unsatisfactorily explained and erodes the very substratum of the case of the prosecution.

23. As a sequel to the above discussion, the instant appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 31, 2025
Jaspreet Kaur

(H.S. GREWAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*