

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:036534-DB



CRM-A-545-MA-2018 (O&M)
Date of Decision: 17.03.2025.

Shabnam

....Applicant.

Versus

State of Haryana and another

...Respondents.

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Ankit Kamboj, Advocate for
Mr. Munish Mittal, Advocate for the applicant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Rajesh Duhan, Advocate (Legal Aid Counsel)
for respondent No.2.

Sukhvinder Kaur, J.

1. Applicant/ complainant has preferred the instant application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment dated 30.08.2017, passed by learned Additional Sessions Judge-Cum-Special Court for the cases of Heinous Crime against Women, Karnal, vide which respondent No.2 has been acquitted of the charges under Sections 376 and 506 IPC.

2. The factual scenario, as highlighted by the prosecution, is that on 23.07.2015, a complaint was received by post in the Police Station addressed to C.M. Window, Karnal with request to initiate proceedings against Sunil Kumar son of Munni Ram, resident of Village Janesro, District Karnal. It was alleged by the complainant (name withheld to conceal her identity and to be referred as complainant/ prosecutrix

hereinafter) that she was resident of Karnal. The aforesaid Sunil, who was a goon had made her life a hell. Earlier also, she had moved a complaint dated 20.03.2015 at Police Station City, Karnal with the request to take action against him for committing offence punishable under Section 376 IPC, but to no avail. He used to roam around her house, using abusing language and it was his daily routine to threaten her with dire consequences, if she would not withdraw her earlier complaint dated 20.03.2015. He also used to threaten her to commit suicide and get her involved in false case for instigating him to commit suicide. On receipt of aforesaid complaint at the Police Station, statement of the complainant was recorded by the police. She stated that she was married to one Sonu in the year 2011. She had left him and shifted to Indri alongwith her children. She took a house on rent near Ram Leela ground and used to earn her livelihood by cooking food in houses of people. About four years back, services of complainant were hired by Sunil for cooking etc. as his sister had died. On '*tervi*' of his sister, when she was cooking food, Sunil interacted with her and she told her woes to him. He told her that he was Sarpanch of village and assured her that he would get her ration card prepared and would also manage to get allotted a plot in her name. She was allured by his offers. Thereafter, he started visiting the house of the complainant in Indri and she started reposing faith in him. About four years earlier, when her children had gone for tuition and she was alone at her house, Sunil came to her house and raped her. He threatened her not to disclose anything to anyone and undertook to bring up her children. Being under fear the prosecutrix started obeying him and he kept on visiting her at Indri for six months and kept on raping her. After six months of the occurrence, she shifted to Karnal in a rented accommodation.

Sunil also came to know about it and again started bothering her. He threatened her that he would get her daughter 'S' abducted and would consume poison and would accuse the prosecutrix for the same. Prosecutrix further stated that Sunil also obtained her signatures on number of papers on the pretext of getting some job arranged for her. On the basis of aforesaid complaint and statement of prosecutrix, the present FIR No.313 dated 23.07.2015 for commission of offences punishable under Sections 376 and 506 IPC was registered against accused Sunil. During the investigation, site plan of place of occurrence was prepared. The prosecutrix was medico legally examined and she was also subjected to counselling. Statement of prosecutrix was got recorded before Illaqa Magistrate under Section 164 Cr.P.C. As accused was granted interim anticipatory bail by this Court, he was joined in the investigation and was also subjected to medico legal examination. Site of crime was got demarcated. Interim order dated 2.09.2015 passed by this Court in CRM-M-32445-2015 was made absolute vide order dated 09.08.2016. Statement of the witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation final report under Section 173 Cr.P.C. was prepared and submitted in the Court for trial.

3. After finding a prima facie case against the accused, he was charge-sheeted for commission of offences punishable under Sections 376 and 506 IPC, to which he did not plead guilty and claimed trial.

4. A glance at the prosecution evidence reveals that in order to prove its case prosecution has examined PW-1 EASI Vir Shakti Singh, Draftsman, PW2-Constable Manoj Kumar, Complaint Branch, SP Office, Karnal, PW3-Constable Jagdish Parshad, MM P.S. Indri, PW4-Dr. Mala, Medical Officer, PHC, Kunjpura, PW5-Dr. Vikas Moudgil, Medical Officer,

CHC, Indri, PW6-Sub Inspector Geeta, HPA, Madhuban, Prosecutrix as PW7, PW8 'N' brother of prosecutrix, PW9-SI Ram Asre, Police Station Madhuban, PW10-EASI Naresh Kumar, PW11-Sub Inspector Parkash Kaur and PW12-ASI Rajwati, Investigating Officer.

5. Statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He pleaded innocence and false implication. He took the plea that the prosecutrix had borrowed money from him. Later on, she issued two cheques in his favour which were dishonoured and she filed complaint under Section 138 of the Negotiable Instruments Act, 1881. Due to the aforesaid reason, she got the present case registered against him. However, no oral evidence was led by the accused in defence, but he produced some documents in the defence evidence.

6. After considering the evidence on record, learned trial Court acquitted accused Sunil of the offences for which he had been charge sheeted, vide judgment dated 30.08.2017.

7. Aggrieved by the said decision, complainant/ prosecutrix has preferred the present application for seeking leave to appeal against the impugned judgment of acquittal of accused/ respondent No.2.

8. Learned trial Court acquitted the accused vide impugned judgment inter-alia on the following grounds:-

(1) From the testimony of the prosecutrix, it transpired that she was a consenting party in establishing the physical relations, if any, with the accused.

(2) The place and the date when the prosecutrix was allegedly raped by the accused for the first time could not be established on the file.

(3) As per testimony of prosecutrix her cousin Gulfam had been residing in the adjacent house to her at Indri and if had she been subjected to any forcible sexual assault by the accused, she must have raised hue and cry and would have narrated the occurrence either to her own brother or to her cousin Gulfam.

(4) Statement of brother of prosecutrix was contradictory to the testimony of the prosecutrix as he stated that the accused trapped her sister and established physical relations with her by inducing and assuring her that he would bear her household expenses and would get her purchase a house.

(5) The earlier complaint dated 20.03.2015 referred to in the complaint Ex.P2 allegedly moved by the prosecutrix to the police, was not produced on record.

(6) Prosecutrix admitted that criminal complaints on account of dishonouring of the cheques issued by her in favour of the accused, had been filed by the accused against her, which were earlier in date then the present complaint Ex.P2 filed by the prosecutrix. She did not file any complaint to the police regarding obtaining her signatures on five blank cheques by the accused.

(7) The prosecutrix denied having moved any such complaint alleging committing of sexual assault upon her, either by Kaka Pandit, Irshad and four others and Usman, while copies of said complaints were produced on record in the defence evidence.

(8) As per the medical evidence no external marks of injury were observed on person of prosecutrix.

9. Learned counsel for the applicant has assailed the impugned judgment by vehemently contending that the prosecution has duly proved its case against the accused. Learned trial Court failed to appreciate the evidence of PW4-Dr. Mala, Medical Officer, PHC, Kunjpura, District Karnal, who specifically stated that possibility of sexual assault could not be ruled out. Statement of prosecutrix while appearing as PW7 has also been wrongly ignored, wherein she deposed in verbatim regarding allegations as levelled in her complaint Ex.P2. He urged that testimony of prosecutrix could not be shattered despite her lengthy cross-examination. Her testimony also stood duly corroborated from testimony of her brother PW8 'N', with whom she shared her predicament. He argued that the plea of money transaction had been falsely taken by the accused and both the cases filed under Section 138 of the Negotiable Instruments Act, 1881 filed by the accused against the prosecutrix had already been dismissed by the trial Court. It was, thus, prayed that the application for seeking leave to appeal be allowed and the present appeal be accepted by setting aside the judgment dated 30.08.2017 and accused be convicted for the offences charged with and be punished as per law.

10. We have heard learned counsel for the applicant and have also gone through the record of the case.

11. The issue that arises for determination in the present case is that whether the finding of acquittal recorded by learned trial Court requires any interference by this Court.

12. It is trite law that in rape cases conviction can be based on the sole testimony of the prosecutrix without any corroboration, if it is found to be reliable, trustworthy, and of sterling quality.

13. Reference in this regard can be made to decision of Hon'ble Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi (2012) 8 SCC 21** wherein it has been held as under:

“15. 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 howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as 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.”

14. Gainful reference can also be made to the decision in **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon’ble the Supreme Court observed that testimony of a victim of rape has to be treated as if she is an injured witness but same cannot be presumed to be a gospel truth in all circumstances. It was observed as under:

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of

such a witness is always correct or without any embellishment or exaggeration.”

15. In this backdrop, when statement of the prosecutrix is analyzed and appreciated alongwith other evidence on record, then serious doubt is casted upon the prosecution version.

16. Admittedly, the prosecutrix is a mature married lady having two children, who after snapping ties with her husband started residing separately at Indri. Thus, she was not an immature lady of tender age and she could well understand the consequences of her physical relations with accused. It was for the prosecution to prove that there was absence of the consent of the prosecutrix.

17. From the evidence on record, it emerges that it has not been established by the prosecution that on which date and at which place prosecutrix was allegedly raped by the accused for the first time. Rather stand of prosecutrix is self contradictory. In her statement Ex.P11 recorded by the police she stated that when she was alone at home and her children had gone for tuition, then accused visited her house and committed rape upon her. Whereas in her statement Ex.P12 and Ex.P13 recorded by the Counsellor/ LAC and learned Magistrate as well as while appearing as PW7 in the Court, she stated that she had been taken from Indri to Karnal by the accused on his motorcycle on the pretext of getting a Ration Card issued to her and instead of taking her to any office at Karnal for the said purpose, he took her to a jungle and committed rape upon her there for the first time. It is again strange conduct of the prosecutrix that if she had been raped by the accused in the manner as alleged by her at her house even then she did not raise hue and cry and did not bother to narrate about the aforesaid occurrence either to her brother or to her cousin Gulfam, who as per her was

residing in the adjacent house to her.

18. PW8 'N' brother of prosecutrix gave a different version from the prosecutrix in his statement when he deposed that accused induced and trapped his sister and established physical relations with her by assuring her that he would bear her household expenses and would get her purchase a house and kept on making physical relations with her on the aforesaid inducement till long, but later on he refused to keep his promise.

19. The long period of physical relationship between the accused and the prosecutrix coupled with aforesaid testimony of her brother, go a long way in suggesting that the physical relations, if any, established between prosecutrix and accused were consensual.

20. In the defence, accused produced on record copies of complaints moved by the complainant against one Kaka Pandit as Ex.D10 against Irshad and four other as Mark-A, against Usman as Mark-B, though she denied having filed any such complaint of sexual assault against Kaka Pandit, Irshad etc. and Usman, during her cross-examination by defence counsel. In the complaint Ex.D10, it was mentioned that earlier to said complaint prosecutrix had moved a complaint to the police against Kaka Pandit Ex.D11, but no action was taken. In the present case also in the complaint Ex.P2 a reference was made to a earlier complaint dated 20.03.2015 which was allegedly moved to the police by the prosecutrix, which has not been produced on record. Trial Court has rightly observed that, it appears that the prosecutrix is habitual of giving such like complaints. In the instant case, had she ever moved any complaint dated 20.03.2015 against the accused to the police as alleged, then she must have produced a copy of the said complaint on record. When no such complaint

has been brought on record by her then it completely falsifies her said plea.

21. Admittedly, criminal complaints on account of dishonouring of cheques issued by the prosecutrix in favour of the accused, had been filed by accused against her. Prosecutrix stated that the aforesaid complaints had been filed by the accused after registration of the present FIR, but copies of aforesaid complaints as Ex.D5 and Ex.D7 have been produced on record, perusal of which reveal that the aforesaid complaints had been filed by the accused on 19.02.2015 and 23.02.2015 respectively, whereas present complaint is dated 21.05.2015. Trial Court has rightly taken note of the fact that prior to filing of the aforesaid complaints Ex.D5 and Ex.D7, accused, who was complainant in those complaints must have issued notice under Section 142 of the Negotiable Instruments Act, 1881 to the prosecutrix, so prosecutrix must have received notice of aforesaid complaints by the time she moved complaint Ex.P2 to the police. Prosecutrix also stated that accused had obtained her signatures on five blank cheques and she had moved a complaint to the police in this regard. Again no copy of any such complaint has been produced on record by the prosecutrix to strengthen her plea.

22. As per MLR Ex.P5 of the prosecutrix, who was subjected to medico legal examination on 04.08.2015, there were no external marks of injuries observed on her person by the Medical Officer, which again is not corroborating her oral version of rape.

23. So, in the backdrop of the facts and circumstances of the present case and discussion as above, testimony of prosecutrix cannot be accepted to be of sterling quality and her sole testimony is not sufficient to convict the accused.

24. After analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offence as charged. He has been rightly acquitted by learned trial Court.

25. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble Supreme Court in 'Mahamadkhan Nathekhani vs. State of Gujarat' 2014 (14) SCC 589.

26. Learned counsel for the applicant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 30.08.2017 calling for any interference.

27. No other argument was raised.

28. In view of the above, we find no reason to interfere with the well reasoned judgment of acquittal by the trial Court. Therefore, the application for seeking grant of leave to appeal stands dismissed.

29. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

17.03.2025.

Komal	Whether speaking/reasoned?	:	Yes/ No
	Whether reportable?	:	Yes/ No