

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:040742-DB



CRA-AD-157-2023 (O&M)

Date of Decision: 24.03.2025.

RXXXX

....Appellant.

Versus

State of Haryana and another

...Respondents.

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

.....

Present: Mr. Kapil Rana, Advocate
for the appellant.

Mr. Neeraj Madan, Sr. DAG, Punjab.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 10.01.2023, passed by learned Additional District and Sessions Judge, Fast Track Special Court, Kurukshetra, vide which accused/ respondent No.2-Sonu @ Aditya has been acquitted of offences punishable under Sections 366, 376 (2) (n) and 509 IPC.

2. The factual scenario, as highlighted by the prosecution, is that complaint dated 03.01.2022 was moved by the complainant/ prosecutrix (particulars of prosecutrix are not disclosed to hide her identity) alleging therein that on 18.10.2020 she got engaged with accused Sonu son of Shiv Kumar. Thereafter, he called her to meet him. He took her to a hotel, situated at front of 3rd Gate, Kurushketra University, where he forcibly

established physical relations with her. He also gave her pill to avoid pregnancy. Thereafter, he called her twice in a hotel at Kurukshetra and committed wrong acts with her forcibly. When she asked him to solemnize marriage with her, he refused to do so. Then, she disclosed these facts to her family members. Thereafter, her family members as well as family members of accused decided to solemnize their marriage in August, 2021, after the marriage of sister of accused Sonu. The marriage of his sister was solemnized in the month of November, 2021. Her family members again asked the accused and his family members regarding solemnization of their marriage, however, he refused to do so. Accused also started defaming her in her relatives by levelling allegations against her character. It was alleged that accused committed wrong acts with her on the pretext of solemnizing marriage with her. For the first time, he had taken her to a hotel on 2nd February and then had again taken her to hotels in the months of March and May 2021. On the basis of aforesaid complaint, FIR under Sections 376, 366, 509 IPC was registered against the accused.

3. During the investigation, statement of complainant/ prosecutrix under Section 164 Cr.P.C. was got recorded by learned Illaqa Magistrate. Prosecutrix was medico-legally examined. Rough site-plan of place of occurrence was prepared. Photographs of engagement ceremony of complainant/ prosecutrix with the accused were taken into police possession. Accused was arrested on 04.01.2022 and after suffering disclosure statement, he got demarcated the places of occurrence. Medical examination of accused was also conducted. Records of concerned hotels were taken into police possession. After completion of investigation, challan under Section 173 Cr.P.C. was presented in the Court for trial of

accused.

4. After finding a prima facie case against the accused, he was charge-sheeted for commission of offences punishable under Sections 366, 376 (2) (n) and 509 IPC, to which he did not plead guilty and claimed trial.

5. A glance at the prosecution evidence reveals that in order to prove its case, prosecution has examined as many as eight witnesses. Prosecutrix herself stepped into witness box as PW1, 'S' brother of complainant/ prosecutrix, was examined as PW2, PW3-Vijay, Owner of Hotel Pride, PW4-ASI Sudeep, Draftsman, PW5-Dr. Dinesh Sharda, Medical Officer, PW6-Manoj Gupta, Owner of Hotel Gold Inn, PW7-Dr. Uma Khurania, Medical Officer and PW8-ASI Kiran, Investigating Officer, were also examined by the prosecution, to prove its case.

6. After closing of the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He pleaded innocence and false implication. However, no evidence was led by the accused in his defence and only documents Ex.D1 to Ex.D3 were tendered into the defence evidence.

7. After considering the evidence on record, learned trial Court acquitted accused Sonu @ Aditya of the offences for which he had been charge-sheeted, vide judgment dated 10.01.2023.

8. Aggrieved of the said decision, present appeal has been filed by the appellant/ complainant challenging acquittal of accused/ respondent No.2.

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

(1) This fact was introduced by the complainant/ prosecutrix

for the first time when she appeared in the Court as PW1, that she was being forced by the accused to meet him and she was resisting the same, whereas this fact was not mentioned in her complaint Ex.P1.

(2) No explanation was given by the complainant/prosecutrix that why she did not disclose the abovesaid facts to her family members.

(3) It was not explained that if prosecutrix was reluctant to meet accused then why she kept on meeting him at different places.

(4) At some places, prosecutrix stated that accused forced himself upon her, while at some places her stand was that he established physical relations with her on the promise of marriage.

(5) As per Ex.D2, previous application moved by the complainant/ prosecutrix about 10 months ago, her engagement was solemnized with the accused and when they talked about performing her marriage with him, he and his family members refused and broke the engagement and in this application, there was no mention that accused had forcibly committed wrong acts with her.

(6) Complainant/ prosecutrix was a major girl of 23 years, who had been earlier engaged with the accused. Their marriage could not be solemnized due to some reason and then she moved the complaint against him after a long gap, which shows that she was a consenting party.

9. Learned counsel for the complainant/ prosecutrix has assailed the impugned judgment by vehemently contending that the complainant/ prosecutrix deposed in detail as per the prosecution version while stepping into the witness box as PW1. Accused, who had been engaged with the complainant/ prosecutrix, made physical relations with her on the pretext of false promise of marriage. He further contended that the check-in details of hotel brought on record also proved that the accused took her in various hotels and made physical relations with her and did not intend to marry her. He urged that the medical evidence also corroborates the prosecution version that the complainant/ prosecutrix was being sexually exploited by the accused. He argued that the testimony of the complainant/ prosecutrix is trustworthy and coupled with testimony of other prosecution witnesses, the prosecution has successfully proved its case against the accused. It is, thus, prayed that the impugned judgment be set aside and accused be convicted for the offences charged with and be punished as per law.

10. We have heard learned counsel for the appellant 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 findings of acquittal recorded by learned trial Court require any interference by this Court.

12. It is a settled position of law that the Appellate Court is to interfere with the order of acquittal only when there is perversity of facts and law. Reference in this regard can be made to judgments of Hon'ble Supreme Court in '**Mahamadkhan Nathekan vs. State of Gujarat' 2014 (14) SCC 589** and **Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252.**

13. The entire case of the prosecution hinges on the sole testimony of the prosecutrix. Law in this respect is well settled 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.

14. 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."

15. 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.”

16. In the light of the aforesaid judgments, now it is to be analyzed that whether testimony of prosecutrix is of sterling quality on the sole basis of which conviction of accused can be based.

17. Admittedly, the complainant/ prosecutrix was a major girl of 23 years, whose engagement had been solemnized with the accused on 18.10.2020 with the consent of all the family members. FIR in the present case was registered on the basis of complaint Ex.P1 moved by the complainant/ prosecutrix before the police, wherein she had stated that accused called her on 07.02.2021 and took her to Hotel Pride, situated at 3rd Gate, Kurukshetra University and forcibly established physical relations with her. He also gave her a pill to avoid the pregnancy. Whereas in her statement recorded under Section 164 Cr.P.C., she stated that her engagement had taken place with the accused on 18.10.2020 and he forcibly maintained physical relations with her. This fact was disclosed by the prosecutrix for the first time while appearing as PW1 that she was being forced by the accused to meet him which was being resisted by her. However, it has not been explained that if she was being forced by the accused to meet him and he was forcibly maintaining physical relations with her, then why this fact was not disclosed by her to her family members.

Again it has not been explained that if the complainant/ prosecutrix was being forced by the accused to have physical relations then why she kept on meeting the accused without bringing it to the knowledge of her family members. On the one hand, she stated that she was reluctant to meet him and on the other hand, this is the admitted fact that she had been meeting him at different places. This fact is also to be taken note of that the hotel where the prosecutrix claimed to have been taken by the accused is situated in thickly populated area and otherwise also if she was not feeling comfortable in his company, she could have left the place.

18. In her statement recorded under Section 164 Cr.P.C. and her statement suffered in the Court, she has given different reasons for her physical relations with the accused. In her statement recorded under Section 164 Cr.P.C. (Ex.P2) she stated that accused forcibly established physical relations with her, whereas while appearing as PW1, she stated that when accused asked her that what was her problem, as their marriage was going to be solemnized, they established physical relations and thus element of force is missing in her this statement.

19. She also stated that she was allured by the accused under the promise of marriage. This fact cannot be brushed aside that she was major girl of 23 years of age, well educated and was in the position to understand the import of her act and as such she consensually entered into sexual relations with the accused. Again her plea of being allured by the accused under false promise of marriage is contradictory of her earlier stand when she stated that accused forced himself upon her, which makes her testimony doubtful and not trustworthy. She is silent in her complaint Ex.P1 that accused forcibly gave her pills to avoid pregnancy. It does not appeal to the

prudent mind that if she was being treated like that by the accused she did not bother to inform her family members regarding the same and when accused was her prospective groom.

20. While appearing as PW1 she stated that her marriage with accused was fixed for 12.03.2021. She also stated that she met the accused for the last time on 14.05.2021. It has not been explained that why after passing of proposed date of marriage i.e. 12.03.2021, she again met the accused on 14.05.2021, despite the fact that her marriage was not solemnized with the accused on 12.03.2021 and it is also not the case of the prosecution that accused was blackmailing her. It has also not been disclosed that why the marriage could not be solemnized on 12.03.2021.

21. PW2 'S' brother of prosecutrix stated that the incident took place with the complainant/ prosecutrix on 07.02.2021, 21.03.2021 and on 21.05.2021, when she met the accused in the hotel. He also stated that prosecutrix had informed him about all these facts on 14.05.2021. It has not been explained when family members came to know about the wrong acts committed by the accused with the prosecutrix on 14.05.2021, then why even thereafter, the prosecutrix met the accused on 21.05.2021.

22. Ex.D2, previous copy of application dated 02.08.2021 moved by the complainant/ prosecutrix before the police has been produced on record in defence evidence, wherein it was alleged that the prosecutrix was engaged with accused about 10 months ago and when her family members talked about performing of their marriage, they refused for the same and broke the engagement. Application Ex.D2 is completely silent regarding forcibly committing of wrong acts by the accused with the prosecutrix. If the accused had forcibly sexually exploited her, then it is not explained that

why this fact did not find mention in her previous application Ex.D2.

23. PW8-ASI Kiran, Investigating Officer, stated in her cross-examination that none of the parties had stated that the accused had refused to solemnize the marriage with the prosecutrix. In that eventuality, this plea of the prosecutrix that he had made physical relations with her under the false pretext of marriage, pales into insignificance. Nothing has been brought on record to suggest accused had made a false promise of marriage from the very inception. Engagement of accused and prosecutrix had already taken place and they kept on meeting after that. It appears that subsequently when accused did not marry her or some dispute arose between the two then she got registered the present case against the accused.

24. Trial Court has rightly observed that from the attending circumstances it can be inferred that the prosecutrix was a consenting party to the entire act and she was never forced by the accused to establish physical relations on the false promise of marriage as alleged. Owner of Hotel Gold Inn proved that the prosecutrix and accused has visited his hotel on 14.05.2021 and also proved ID proof Ex.P19 i.e. copy of Aadhar Card of prosecutrix. He has categorically stated in his cross-examination that the girl accompanying the boy did not move any complaint to him or hotel staff, which goes a long way to show that she was a consenting party. She had been going to different places with the accused and when due to some reason their marriage could not be solemnized and things did not turn up as per her wishes, she got the present case registered against the accused.

25. There is also delay in lodging of the FIR in this case. FIR in this case was registered on 03.01.2022, whereas as per prosecutrix first incident took place with her on 07.02.2021. Thereafter also, she met the

accused twice and was allegedly sexually assaulted by the accused during these meetings. Even after solemnization of marriage of sister of accused on 14.11.2021, when her marriage with accused was not solemnized, the prosecutrix kept mum and did not immediately inform the police. Thus, delay in reporting the matter to the police has remained unexplained. The delay in moving the complaint before the police and her long silence also prove that she was a consenting party.

26. 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.

27. 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 with and he has been rightly acquitted by learned trial Court.

28. 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 Nathekhan vs. State of Gujarat' 2014 (14) SCC 589.

29. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 10.01.2023

calling for any interference.

30. No other argument was raised.

31. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 10.01.2023 passed by learned trial Court being upheld.

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

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

24.03.2025.

Komal

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