



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-622-2024 (O&M)

RESERVED ON:- 22nd January 2025

PRONOUNCED ON: 14th February 2025

RINKU

.....APPELLANT

vs.

STATE OF HARYANA

.....RESPONDENT

CRA-D-1306-2023 (O&M)

RESERVED ON:- 27th January 2025

PRONOUNCED ON:- 14th February 2025

NEERAJ

...APPELLANT

vs.

STATE OF HARYANA

...RESPONDENT

CRA-D-778-2024 (O&M)

RESERVED ON:- 27th January 2025

PRONOUNCED ON:- 14th February 2025

RAJU

...APPELLANT

vs.

STATE OF HARYANA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Soeb Khan, Advocate,
for the appellant (in CRA-D-622-2024).

Mr. Vishal Sharda, Advocate,
for the appellant (in CRA-D-1306-2023) and
for the complainant in CRA-D-778-2024).

Mr. Ritesh Tomar, Advocate,
for the appellant (in CRA-D-778-2024) and
for the complainant (in CRA-D-1306-2023).

Mr. Vikrant Pamboo, Sr. D.A.G., Haryana.

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HARPREET KAUR JEEWAN, J.

1. The present appeals have been filed by the appellants-accused assailing the judgment of conviction dated 14.09.2023 and order of sentence dated 18.09.2023, passed by the Additional Sessions Judge, Faridabad, in FIR No.471 dated 24.12.2021, under Sections 376-D, 365, 506 IPC, registered at Police Station Saran, Faridabad, whereby, the appellants have been convicted under Sections 365, 376-D and 506 read with Section 34 IPC. However, the appellants have been sentenced as under:-

Appellant-Raju

Sr. No.	Offence Punishable under Sections	Sentence and Fine	In default
1.	365/34 IPC	Rigorous imprisonment for seven years and fine to the tune of Rs. 20,000/-	Rigorous imprisonment for one year.
2.	376-D/34 IPC	Rigorous imprisonment for twenty years and fine to the tune of Rs. 20,000/-	Rigorous imprisonment for one year.
3.	506/34 IPC	Rigorous imprisonment for seven years and fine to the tune of Rs. 20,000/-	Rigorous imprisonment for One year.

Appellants Rinku and Neeraj

Sr. No.	Offence Punishable under Sections	Sentence and Fine	In default
1.	376-D/34 IPC	Rigorous imprisonment for twenty years and fine to the tune of Rs. 20,000/-	Rigorous imprisonment for one year each.
2.	506/34 IPC	Rigorous imprisonment for seven years and fine to the tune of Rs. 20,000/-	Rigorous imprisonment for one year each.



1.1 The appellants-Rinku and Neeraj have not been sentenced under Section 365 IPC, despite the fact that their conviction order has been recorded under Section 365 IPC as well.

2. Since all the three appeals bearing Nos.CRA-D-622-2024, CRA-D-1306-2023 and CRA-D-778-2024, are arising out of the same FIR, as such, these cases are taken up together and being disposed of by a common judgment.

3. As per the prosecution version, on 22.12.2021, at about 6:00 PM, the prosecutrix "XX", while travelling from District Palwal to Ballabgarh, District Faridabad, in an auto-rickshaw, met the appellant-Raju, who forcibly took the prosecutrix to his room at Village Saran. Appellants-Rinku and Neeraj were already present in the said room. All the appellants committed rape upon the prosecutrix turn by turn and thereafter, the prosecutrix was allowed to leave. However, she was threatened to be killed in case the said facts were disclosed to anyone. The prosecutrix went to Police Station, Saran, Faridabad, where her statement was recorded by a Legal Aid Counsel and FIR was got registered.

3.1 The prosecutrix was got medico-legally examined from B.K. Hospital, Faridabad. The samples of the prosecutrix were taken and sealed by the Medical Officer. Statement of the prosecutrix was also got recorded under Section 164 Cr.P.C. The appellants were arrested during the investigation. Their medico-legal examination was also conducted and their samples taken during their examination were also sealed and sent for chemical examination to the Regional Forensic Science Laboratory, Bhondsi, Gurugram. Upon completion of investigation, final report/challan

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under Section 173 Cr.P.C. was presented before the Area Magistrate.

3.2 The Area Magistrate supplied to the appellants, copies of the challan and other connected documents and thereafter committed the case to the Court of Sessions.

3.3 The trial Court framed charges against the appellants, finding a *prima facie* case under Sections 365, 376-D and 506 IPC. All the appellants pleaded not guilty and claimed trial.

3.4 The prosecution in order to substantiate its case, examined as many as 16 prosecution witnesses i.e. PW1 Sarwan Kumar, Draftsman, PW-2 Constable Manoj Kumar, PW-3 Ms. Ranjeeta Patel, Legal Aid Counsel, PW-4 the prosecutrix herself, PW-5 EHC Rajesh Kumar, Malkhana Mohari, PW-6 Constable Arvind, PW-7 Constable Rakesh, PW-8 Lady ASI Jagwati, PW-9 one Cheti Lal, PW-10 Ms. Manisha, Senior Scientific Officer, PW-11 Inspector Rajesh Kumar, PW-12 Maan Singh, husband of the prosecutrix, PW-13 Dr. Anil Kumar, Senior Scientific Assistant (Biology), PW-14 Dr. Sonu Kashyap, Medical Officer, PW-15 Dr. Rajni Chauhan, Medical Officer and PW-16 Sh. Amit Kumar, Criminal Ahlmad.

3.5 On completion of evidence of the prosecution, statements of all the accused, as required under the provisions of Sections 313 Cr.P.C., were recorded, wherein, they denied all the allegations against them and pleaded their false implication.

3.6 In their defence, no one was examined by the appellants.



3.7 The trial Court found the evidence produced by the prosecution 'as reliable' while convicting and sentencing all the appellants as noticed above.

3.8 The findings recorded by the trial Court have been challenged by all the appellants by way of filing the instant appeals.

4. Learned counsel for all the appellants made similar submissions while contending that neither the prosecutrix, appearing as PW-4, nor her husband-Maan Singh, appearing as PW-12, have supported the prosecution case. The trial Court has not properly appreciated the testimony of the prosecutrix and merely by relying upon the FSL report and observing that blood and human semen was detected on the underwear of the prosecutrix, conviction has been recorded, though, the DNA did not match.

5. The learned State counsel, referring to the reasons recorded by the trial Court, opposed the present appeals, submitting that it is not possible that the prosecutrix would give consent to three persons for commission of such an act. The FIR was registered at the instance of the prosecutrix. She had consented for her medical examination and even the samples were drawn with her consent. The accused were arrested on the same day. The place of commission of the crime was also identified by the prosecutrix herself. In such circumstances, the conviction has been rightly recorded.

6. We have considered the aforesaid submissions and perused the records.

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7. The appellants have been convicted for offences punishable under Sections 365, 376-D, 506 read with Section 34 IPC.

8. Section 365 IPC provides punishment for the offence of kidnapping/abduction. The offence of “Abduction” has been defined under Section 362 IPC as under:-

“Whosoever, by force compels or by any deceitful means, induces any person to go from any place, is said to abduct that person”.

9. As per the facts on record, the prosecutrix was major as she had disclosed her age as 27 years in her statement recorded under Section 164 Cr.P.C. The story propounded by the prosecutrix is highly improbable. As per the said version of the prosecutrix in her initial statement recorded on 24.12.2021 (Ex.P2/PW-3), she was travelling in an auto-rickshaw and when she got down at YMCA Chowk, she met a person namely Raju, who forcibly took her in his room. No description has been given as to how the prosecutrix was forcibly taken by a single accused. As per the prosecution version, the other accused persons were not present at the time of the alleged abduction. The prosecutrix, when appeared as PW-4 during the trial, has not stated that she was abducted by the accused. In such circumstances, the conviction of the appellants under Section 365, read with Section 34 IPC, is factually and legally not sustainable.



10. **Conviction of the appellants under Section 376-D read with Section 34 IPC**

We have examined the correctness of the findings recorded by the trial Court holding all the appellants guilty for the offence of commission of gang-rape and convicting them under Section 376-D read with Section 34 IPC. The prosecutrix (PW-4), in her statement recorded during the trial, has categorically stated that nothing wrong has been done with her by the accused and everything was done with her consent. Irrespective of the afore statement, the appellants were held guilty of the offence of gang-rape by the trial Court by recording the following reasons:-

- (a) Lodging of the complaint of gang-rape (Ex.P2) at the instance of the prosecutrix was prompt.
- (b) The statement of the prosecutrix, recorded by the Legal Aid Counsel while reporting the matter to the Police (Ex.P2/PW-4) as well as the statement of the husband of the prosecutrix recorded under Section 161 Cr.P.C., discloses about commission of rape by three persons.
- (c) Medico-legal examination of the prosecutrix was conducted on the same day i.e. on 24.12.2021.
- (d) The prosecutrix disclosed about the commission of gang rape by three persons in her statement recorded under Section 164 Cr.P.C.

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- (e) As per the opinion given by Dr. Rajni Chauhan, Medical Officer (PW-15), possibility of sexual intercourse cannot be ruled out.
- (f) As per the FSL report, blood traces were found on the underwear of the prosecutrix, which proves that the prosecutrix (PW-4) had suffered a painful sexual intercourse, which could not, by any stretch of imagination, be deemed or believed to be consensual.
- (g) The prosecutrix (PW-4) and her husband (PW-12) have concealed the true and relevant facts from the Court with *mala fide* intention and ulterior motive in order to save the accused from legal punishment.

11. For proper appreciation of the submissions made on behalf of the learned counsel for the parties, the relevant provisions of Section 375 IPC, defining rape, are reproduced as under:-

“375. Rape.- A man is said to commit "rape" if he-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or



(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Explanation 1- For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

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Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

12. Gang-rape has been defined under Section 376-D IPC as –
“the commission of rape by one or more persons constituting a group or acting in furtherance of a common intention”.

13. The provisions of Section 114-A of the Indian Evidence Act, 1872, are also relevant, which are reproduced as under:-

“114A. Presumption as to absence of consent in certain prosecution for rape.

In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation. - In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.] [Substituted by Criminal Law (Amendment) Act, 2013]

xxxxxxx”



14. As per the ocular evidence on record, when the prosecutrix appeared as PW-4, she stated that she is a married lady and nothing wrong has been done with her by the accused namely Raju, Rinku and Neeraj on 22.12.2021 at 6:00 PM. She further stated that whatever has been done by the accused with her, it was done with her consent. The prosecutrix has testified that she was medico-legally examined on 24.12.2021. However, she was declared hostile and clarified that her statement recorded under Section 164 Cr.P.C. (Ex.P4/PW-4), was given by her under the pressure of her family members and Police officials.

15. Dr. Rajni Chauhan, Medical Officer (PW-15), who has medico-legally examined the prosecutrix, has admitted in her cross-examination that no mark of external or internal injury was seen on the body of the prosecutrix.

16. The husband of the prosecutrix appeared as PW-12 and testified that his wife is working in a Spa Centre situated at Palwal. On 22.12.2021, at around 6:00 PM, his wife came in an auto-rikshaw from Palwal to Ballabgarh. Except this, he has no knowledge regarding this case. Though, the husband of the prosecutrix (PW-12) was declared hostile, however, he did not state anything incriminating in his cross-examination.

17. As per the report dated 12.01.2022, received from the Regional Forensic Science Laboratory, Bhondsi (Gurugram), Haryana (Ex.PX), blood was detected on Exhibit-2 (underwear stated to be of the prosecutrix). However, blood could not be detected on vaginal swabs of the prosecutrix and on other exhibits. As per the said report, human semen was

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also detected on the underwear stated to be of the victim (Exhibit-2) and on the underwear stated to be of the accused (Exhibit-9).

18. As per the DNA examination report dated 31.01.2023, received from the Forensic Science Laboratory, Madhuban, Karnal, Haryana, DNA comparison was done with the underwear stated to be of the prosecutrix, hair strand recovered from the spot and the blood samples of all the accused. As per the conclusion, the DNA profile obtained from the blood sample of the accused could not be counted in the DNA profile obtained from the underwear stated to be of the accused. Hence, it was concluded that they are of different biological origin. It has also been concluded that the DNA profile could not be obtained from the hair strands allegedly recovered from the crime scene.

19. From the evidence on record, following facts have emerged:-

- (i) The prosecutrix is a married woman and she is living with her husband.
- (ii) The prosecutrix has stated that everything was done with her consent and nothing wrong was done with her by any of the accused.
- (iii) The husband of the prosecutrix has stated that he has no knowledge about this case, except that his wife (prosecutrix) is working in a Spa Centre and on 22.12.2021, she travelled on an auto-rickshaw from Palwal to Ballabgarh.



(iv) No injury has been found on the person of the prosecutrix during her medical examination.

20. As per the FSL report dated 12.01.2022 (Ex.PX), blood stain as well as human semen was detected on the underwear of the prosecutrix. However, as per the FSL report dated 31.01.2023, received from the Forensic Science Laboratory, Madhuban, Karnal, upon DNA comparison, the DNA profile obtained from the underwear of the victim did not match with the DNA profile of any of the accused.

21. The Hon'ble Apex Court, in the case titled "*Naim Ahamed vs. State (NCT of Delhi*"; (2023) 1 S.C.R. 1061, observed that the basic principles of criminal jurisprudence warrant that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence, however, considering the ethos and culture of the Indian society and considering the rising graph of the commission of the social crime - "Rape", the Courts have been permitted to raise a legal presumption, as contained in Section 114-A of the Indian Evidence Act. However, the Hon'ble Apex Court also observed that while discussing the catena of judgments dealing with the different dimensions and angles of the word "Consent" in the context of Section 90 and Section 375 of the Indian Evidence Act, the Hon'ble Apex Court observed that the Courts have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused. The observations by the Hon'ble Apex Court are as under:-

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10. It would be germane to note that the basic principles of criminal jurisprudence warrant that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence, however, considering the ethos and culture of the Indian Society, and considering the rising graph of the commission of the social crime - 'Rape', the courts have been permitted to raise a legal presumption as contained in Section 114A of the Indian Evidence Act. As per Section 114A, a presumption could be raised as to the absence of consent in certain cases pertaining to Rape. As per the said provision, if sexual intercourse by the accused is proved and the question arises as to whether it was without the consent of the woman alleged to have been raped, and if she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

11. It cannot be gainsaid that a consent given by a person would not be a consent as intended by any Section of the Indian Penal Code, if such consent was given by the person under the fear of injury, or under a misconception of fact as contemplated in Section 90 IPC. Further, Section 375 also describes certain acts which if committed by the accused under the circumstances mentioned therein, as the commission of 'Rape', even though committed with the consent of the prosecutrix. In our opinion, the expression “misconception of fact” contained in Section 90 IPC is also required to be appreciated in the light of the Clauses - contained in Section 375 IPC, more particularly the Clauses - Thirdly, Fourthly and Fifthly thereof, when the accused is charged for the offence of 'rape'. The circumstances described in the said three Clauses are wider than the expression "misconception of fact", as contemplated in Section 90 of IPC. Section 375 describes



seven circumstances under which the 'rape' could be said to have been committed. As per the Clause - Thirdly, a rape could be said to have been committed, even with her consent, when the consent of the prosecutrix is obtained by putting her or any person in whom she is interested in fear of death or of hurt. As per the Clause - Fourthly, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; and as per the Clause - Fifthly, with her consent when at the time of giving the consent, the prosecutrix by reason of unsoundness of mind or intoxication or the administration of stupefying or unwholesome substance by the accused or through another, she is unable to understand the nature and consequences of that to which she gives consent. Thus, apart from the prosecutrix being under the misconception of fact as contemplated in Section 90, her consent would be treated as 'no consent' if she had given her consent under any of the circumstances mentioned in Section 375 of IPC.

12. The exposition of law in this regard is discernible in various decisions of this Court, however the application of such law or of such decisions would depend upon the proved facts in each case, known as legal evidence. The ratio laid down in the judgements or the law declared by this Court do provide the guidelines to the judicial mind of the courts to decide the cases on hand, but the courts while applying the law also have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused.

XXXXXXXXXX”

(emphasis supplied)

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22. In light of the facts and circumstances of this case and in view of the ratio of the above decision, we are of the considered opinion that there is no incriminating evidence against the appellants constituting the offence of rape, as defined under Section 365 IPC or gang-rape, as defined under Section 376-D IPC. The prosecutrix is major. She was working in a Spa Centre and she used to travel while commuting from home to her workplace. The story propounded by her in the FIR, that when she got down from the auto-rickshaw, she was forcibly taken away/abducted by one of the accused, is highly improbable. The said circumstances give clear-cut indication that the prosecutrix had herself gone with the appellant-Raju. Since the prosecution story is highly improbable and further it has been shattered completely during trial, as such, the trial Court has erred in presuming that the prosecutrix was a victim of gang-rape and she has been won over due to extraneous reasons.

23. Neither there is any ocular incriminating evidence nor is there any medical evidence against the appellants. The observations made by the trial Court in Para No.48, that there was no medical evidence against the accused, are also material. The relevant paragraphs read as under:-

“48. From the medical evidence (FSL Report-Ex.PX), as discussed above, it was noted that ‘Blood’ and ‘Human Semen’ was detected, on exhibit-2 (Underwear of the victim/PW-4). There was no scientific evidence, available however, to hold an opinion that the human semen on the under wear of PW4 was of any of the accused. The stands of hair recovered from the alleged scene of crime as per the Crime Scene Report Ex.P24/PW8 were



also, found to be of none of the accused, vide DNA Report mentioned above.”

24. Despite making aforesaid observations, the trial Court has merely relied upon the presence of blood on the underwear of the prosecutrix. The observations made by the trial Court that the presence of blood on the underwear of the prosecutrix proved that she was subjected to sexual intercourse forcibly by more than one person, is merely a baseless presumption. The prosecutrix was major. She was married and living with her husband. Presence of blood on the underwear of the prosecutrix, that too during her medical examination, which took place after two days of the occurrence, can be for any reason. It is also important to note that the occurrence took place on 22.12.2021, whereas, the medical examination of the prosecutrix was got conducted on 24.12.2021, as per the MLR (Ex.P-29). No presumption can be raised on the basis of the presence of blood on the underwear of the prosecutrix that she was subjected to gang-rape by the appellants, when there is absence of ocular version and connecting medical evidence.

25. In view of the categorical statement of the prosecutrix (PW-4) that whatever was done by the accused was with her consent and also considering the fact that she is major and working, there is no evidence that the prosecutrix was subjected to any coercion or undue influence while she made the aforesaid statement during the trial. As such, invoking the provisions of Section 114-A of the Evidence Act to hold that the prosecutrix was not a consenting party, is not called for.

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26. In view of the aforesaid reasons, the findings recorded by the trial Court, holding the appellants guilty under Section 376-D read with Section 34 IPC, are legally not sustainable. It is a case of no evidence against the appellants. Merely on the ground that the FIR was got registered; medical examination of the prosecutrix, who was a married lady, was got conducted and a blood stain was found on her inner clothes, cannot be made a ground to hold that the appellants are guilty of gang-rape, especially, in view of the fact that the prosecutrix has herself stated that she had gone with the appellant with her consent and everything was done with her consent. Apart from this, the story of the prosecutrix is found highly improbable and does not connect the appellants with any scientific evidence.

27. In view of the evidence on record and keeping in view the provisions of Section 506 IPC, we are of the considered opinion that the prosecution has failed to prove that the appellants have threatened the prosecutrix with any injury to her person, reputation or property, as such, the offence of “Criminal Intimidation” as defined under Section 503, punishable under Section 506 IPC, is also not proved against the appellants.

28. Consequent to the above discussion, we are of the considered opinion that the conviction of the appellants recorded under Section 365, 376-D and 506 read with Section 34 IPC, is liable to be set aside. Consequently, the present appeals are allowed. The judgment of conviction dated 14.09.2023 and order of sentence dated 18.09.2023, passed by the



learned Additional Sessions Judge, Faridabad, are set aside. The appellants are ordered to be released from custody, if there is no other case pending against them.

29. Pending miscellaneous applications, if any, shall stand disposed of.

30. A photocopy of this order be placed on the files of connected cases.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

14th February 2025
simran

Whether Speaking : Yes/No
Whether Reportable : Yes/No