



CRA-S-1921-SB-2004 (O&M) and connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRA-S-1921-SB-2004 (O&M)
Reserved on: 02.05.2025
Pronounced on: 28.05.2025

Jasvir Singh and another ...Appellant(s)

Versus

State of Punjab ...Respondent(s)

2. CRA-S-1869-SB-2004 (O&M)

Ravi ...Appellant(s)

Versus

State of Punjab ...Respondent(s)

3. CRA-S-1860-SB-2004 (O&M)

Sawarn Singh @ Bobby ...Appellant(s)

Versus

State of Punjab ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. K.S. Dadwal, Advocate,
 Mr. Naresh Kumar, Advocate,
 Mr. Jagdeep Singh, Advocate and
 Mr. Arshdeep Singh Brar, Advocate
 for the appellant(s) in CRA-S-1921-SB-2004.

Mr. Sakal Sikri, Advocate for the appellant(s)
 in CRA-S-1860-SB-2004.

None for the appellant in CRA-S-1869-SB-2004.

Ms. Guramrit Kaur, DAG, Punjab.

KIRTI SINGH, J.

This common judgment of mine shall decide the
 aforementioned appeals, as they stem from the same FIR No.54, dated

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20.03.2003, under Sections 341, 376, 506 and 34 IPC, registered at Police Station Sadar Ropar. For the sake of brevity the facts are being extracted from CRA-S-1921-SB-2004.

2. Instant appeal has been preferred against the judgment of conviction and order of sentence dated 10.09.2004 passed by the learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court, Rupnagar, whereby the appellants were held guilty for commission of offence punishable under Sections 366, 376 and 34 IPC and sentenced to undergo imprisonment along with fine as under:-

Sentence under Section	Sentenced to RI	Fine	In default of payment of fine
366 IPC	RI for 03 years	Rs.1000 each/-	RI for 03 months
376 IPC	RI for 10 years	Rs.2,000/-	RI for 01 year

Learned Trial Court has ordered that both the sentences shall run concurrently.

Factual Matrix

3. The brief facts of the case, as revealed from the record, are that on 28.02.2003, the prosecutrix along with her sister-in-law (her brother's wife) went to the Ropar market to purchase some household items. As they turned towards a small bridge near the Ropar Head Works while they were returning to their residence in Village Katli on foot, a white Ambassador car approached and stopped in front of them. Bobby, son of Gurdial Singh, resident of Village Bahadurpur, was driving the said car, and Ravi was seated beside him. Ravi then forcibly grabbed the prosecutrix by the arm and forced her to sit inside the car. When her



sister-in-law tried to intervene, the accused threatened to crush her with the car, compelling her to retreat. Subsequently, Ravi gagged the mouth of the prosecutrix, and the car was driven towards the forest area near Nurpur Bedi. While driving, Bobby made a call from his mobile phone to two other individuals, informing them that the prosecutrix was being taken to the forest. Thereafter, Bobby and Ravi took turns raping the prosecutrix. The two individuals called by Bobby arrived on a scooter and also took turns raping the prosecutrix. In her statement, the complainant further mentioned that after committing the act, Bobby and Ravi abandoned her on the bank of the Sutlej River at around 8–9 p.m. Her husband, who had been searching for her, reached the spot on his bicycle, and the prosecutrix narrated the entire incident to him. He also saw Ravi and Bobby in the car. Out of fear and shame, the prosecutrix did not disclose the incident to anyone immediately. However, later, she met Manjeet Kaur, President of Mahila Mandal, Ropar, and the matter was reported to the police. Her statement was recorded on 20.03.2003, and an FIR was registered at Police Station Sadar Ropar.

Investigation Proceedings

4. After registration of the case, the matter was investigated by the police officials and at one stage the accused persons were found innocent and the matter was closed. However, the complainant thereafter filed an application before the SSP Ropar along with an affidavit against accused and the matter was again reinvestigated. After completion of investigation, challan against the appellants-accused was presented in the

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Court. The copies of the relevant documents were supplied to the accused as provided under Section 207 Cr.P.C.

Trial Proceedings

5. As the offences were exclusively triable by the Sessions Court, the learned Chief Judicial Magistrate Ropar committed the case to Sessions Court for trial vide commitment order dated 04.02.2004. After the commitment of the case, the accused were heard on charges and charges under Sections 341, 34, 366, 376 and 506 IPC were framed against the appellants. The charges were read over and explained to the accused/appellants, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined 10 witnesses i.e. PW1-complainant/prosecutrix, PW2-Dr. Sangeeta Aggarwal, PW3- Sunita Rani, PW4-Tapinder Dutt Sharma, PW5- Constable Satwant Singh, PW6- SI Manveer Singh, PW7- Sh. Jatinder Nath, PW8- Manjeet Kaur, PW9- HC Balbir Kumar and PW10 ASI Harbans Singh, besides producing documentary evidence. Statements of the appellant-accused under Section 313 Cr.P.C. were also recorded and they pleaded not guilty.

Submissions by learned counsel for the appellant(s)

7. Learned counsel for the appellants has vehemently argued that, upon perusal of the FIR annexed, it is crystal clear that the names of two of the appellants i.e. Jasvir Singh and Paramjeet Singh were not mentioned in the FIR. Neither was there any description of the unnamed accused, nor was any identification parade conducted that could have established the identity or presence of the appellants. In an initial inquiry



conducted by the DSP, Ropar, the version of the prosecutrix was found to be false, and a cancellation report was recommended on 21.09.2023. However, based on a complaint subsequently filed by the complainant, the matter was reinvestigated, and a challan was presented before the Court.

8. It has further been argued that during the trial, no incriminating evidence was brought on record by the prosecution against the appellants. The prosecutrix herself submitted an application to the police on 09.04.2003, exonerating both the appellants and the other co-accused. Moreover, the prosecutrix in her cross examination as PW-1 did not support the case of the prosecution and categorically stated that the individuals who committed rape upon her were different from the accused persons present in Court, and that she had not filed any complaint against the persons present in court. Not only that, even the husband and sister-in-law of the prosecutrix were declared as hostile, and other material witnesses failed to support the prosecution's version of events. It has also been contended that the ocular evidence did not find support in the medical evidence. Dr. Sangeeta Aggarwal (PW-2), who medico-legally examined Anita Rani on 20.03.2003, found no external injuries on her body, except for teeth marks on her left breast. During cross-examination, the doctor stated that at the time of examination, the prosecutrix was undergoing her menstruation cycle. Further, there were material discrepancies in the statements of the prosecutrix as she before the investigating agency stated that when she was dropped off by the accused persons, she met her husband who had come searching for her on his



bicycle and she disclosed the entire incident to him whereas in her deposition as a prosecution witness she stated that after the alleged incident happened, she did not meet anybody and straight away went home where her husband was present. It is thus submitted that the appellants deserve to be acquitted.

Submissions made by learned State counsel.

9. Learned State counsel submits that the impugned judgment of conviction is based upon proper appreciation of evidence and the prosecution has proved its case against the accused/appellants by leading cogent and convincing evidence. She further submits that there is no infirmity in the judgment passed by the learned Trial Court and the court has rightly sentenced the appellants.

Analysis

10. Heard the rival submissions made by the learned counsel for the respective parties and perused the record with their able assistance.

11. Learned counsel for the appellants has emphasized on the delay in lodging the FIR. A perusal of the record indicates that the incident occurred on 28.02.2003, whereas the FIR was registered after a delay of 20 days, i.e., on 20.03.2003. The learned Trial Court rightly observed that, given the nature of the offence involving the modesty of a woman, families are often hesitant to approach the police promptly due to social stigma and concerns about their honour. The ground of delay by itself is not sufficient to dent the case against the appellants. The other



evidence brought on record must be cautiously scrutinized on their own merits.

12. The most material witness is the prosecutrix herself and as such her statement is of paramount importance. The relevant part of the cross examination of PW1-prosecutrix is read as under:-

“ I was not identifying the accused at that time by face. The accused present in the Court are not the person who committed rape upon me and abducted me. Police has not got identified the accused from me. I got recorded name of the accused as suggested by the police. I had not given any complaint against the accused present today in the Court. I identify the accused today present in the Court and amongst them none has forcibly abducted me nor committed rape upon me. The person those who had committed rape upon me were different who are not present in the Court and the police had not arrested them. It is correct that the accused today present in the Court never met me nor they ever threatened me, or the present accused ever stopped me on the way. Whatever I had stated in the examination-in-chief was recorded at the instance of police.

Re-examination by the Ld. Addl. P.P.

It is incorrect that I changed my statement due to the compromise with the accused. It is correct that I have given earlier one affidavit in favour of accused. It is incorrect that Manjit Kaur recorded in my application as well as in affidavit whatever was stated by me to her (At this stage, Addl. P.P. for the State requested to declare the witness as hostile and allowed him to cross-examine the witness). Heard. The request is dis-allowed as the witness has supported the prosecution story in her examination-in chief and no fact was suppressed and thus, there is no ground to declare the witness as hostile after her cross-examination by the Ld. Defence counsel. The witness can be cross-examined by the Addl. P.P. if she was declared hostile during her examination-in-chief).

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13. There are material contradictions in the statements of the prosecutrix. She stepped into the witness box as PW-1 and corroborated the stance in the FIR. However, in the FIR, the prosecutrix stated that after committing rape upon her, the accused persons dropped her at Head Works, Ropar at about 8-9 PM whereas in the statement before the trial Court, she stated that she was dropped at 10/11 P.M. Furthermore, in the FIR, it was stated by the prosecutrix that after committing rape, the accused persons dropped her at Head Works, Ropar where her husband met her and she narrated the entire incident to him whereas in her statement before the trial Court as a prosecution witness, she stated that when the accused persons dropped her after committing rape upon her, nobody met her and she had gone to her house by foot, where her husband was present. It was also stated that she did not inform him of the incident that had taken place. The trial Court has gravely erred in ignoring the aforesaid material contradictions made by the prosecutrix in her statement before the police and in the statement recorded before the trial Court as PW-1. This Court does not dispute the settled proposition of law that minor contradictions and inconsistencies, which do not go to the root of the prosecution version, need to be ignored. But in this case, it is not possible for this Court to adopt such an approach because there is a major contradiction in the prosecution story. Further, though PW-1/prosecutrix in her examination-in-chief supported the prosecution version but in her cross-examination, she retracted from her earlier stance and said that accused persons present in the Court were not the ones who committed rape upon her and that she had named the accused persons in the FIR on



the suggestion of the investigating agency. In a case where a woman is sexually assaulted, the most material witness is the prosecutrix herself and as such, her statement is of the paramount importance and the same must inspire confidence, which is not so in the present case, given that the credibility of the prosecutrix stands shaken due to the various inconsistencies and discrepancies in her statements. In ***Kameshwar Singh v. State of Bihar***, (2018) 6 SCC 433, Hon'ble Supreme Court has observed as under:-

“22.....Hardly, one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is the duty of the Court to scrutinise the evidence carefully and, in terms of felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. Efforts should be made to find the truth. This is the very object for which Courts are created. To search it out, the Court has to disperse the suspicious cloud and dust out the smear of dust, as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So, it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court, within permissible limits to find out the truth. It means, on one hand that no innocent man should be punished, but on the other hand to see no person committing an offence should go scot free. If in spite of such effort suspicion is not dissolved, it remains



writ at large, benefit of doubt has to be credited to the accused. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the evidence.”

14. It would also be apposite to examine the medical evidence on record. The relevant extract of the evidence of PW-2 Dr. Sangeeta Aggarwal is reproduced as below:-

“On 20.03.2003, I was working as E.M.O. on that day on the application of IO Mark-A, SMO CH Ropar marked medico legal examination of Axxxx to me vide order Ex.PD. I identify and signatures of Dr. Amarjit Singh the then SMO, C.H. Ropar.

On 20.03.2003 I conducted medico legal examination of Axxxx wife of xxxx aged 28 years R/o Village Katli, Tehsil and District Ropar. The patient gives alleged history of being given a lift by four persons on 28.02.2003 in the evening and taken to Nurple Bedi and assaulted sexually. The patient was had tubectomy done four years ago. The previous L.M.P. was on 7.2.2003 and her last L.M.P. was 20.3.2003. The patient was conscious well oriented talking relevantly. Clothes changed since the incident. Externally there were teeth marks on left breasts on under side seen. No other external marks on injury.

On pelvic examination, no injury to perineum was seen. Hymen ruptured, admits two fingers easily. Uterus anteverted multi parous size. Fornices clear-Bleeding per vaginum was present cervical (Test tube A) Vaginal or posterior for mix swab(c) and pubic hair with vulval swab (b) were taken. All these were sent to Chemical Examiner



Patiala enclosed in a cardboard box with ten seals and sample seal and letter to Chemical Examiner sent in an envelop with five seals. I have brought the original M.L.R. register with me and Ex.PF is the true carbon copy of the M.L.R. of patent xxxx and the same is in my hand and bears my signatures. After received report of the C.E. Ex.PG, I have my opinion in this case which is Ex.PH, on the request of IO mark-B on 3.1.2004.

Xxxxxx by Shri Shekhar Shula, Adv and Shri D.S. Deol, Adv.

It is correct that as per the version given by xxxxxxxx she is a married woman and having children. It is correct that xxxxxxxx did not give the name of accused at the time of her examination by me. It is correct that that the time of examination of xxxxxxxx she was undergoing menstruation period. It is correct that in the M.L.R. I have not obtained the signatures or thumb impression of xxxxxxxx. The possibility of teeth marks on the left breast of xxxxxxxx due to sucking of child cannot be ruled out. If a woman is drugged or under the influence of other intoxication and after that she was forcibly raped in a hard surface then the injuries may not come on her body. It is correct that there are chances of suffering injuries on the body of a woman if she is not under the influence of intoxicants during her rape in a hard surface. The injury by teeth on the left breast of xxxxxxxx could not be ascertained at the time of her examination and due to this reason I have not mentioned the duration of injuries in the M.L.R. I have not given any opinion qua the forcible rape of xxxxxxxx. I have given opinion qua the sexual intercourse with xxxxxxxx. The period elapsed between the medical examination and sexual intercourse cannot be determined and due to this reason I have not mentioned the same in the



M.L.R. I have directly sent the swabs to the office of Forensic Science Lab, Patiala through a messenger.

Sd/-

15. Thus the said material witness in this case stated on oath that on 20.03.2003, she had conducted medico-legal examination of the prosecutrix. Clothes of the prosecutrix were changed since the incident and teeth marks on left breast were seen, however, there were no other external marks of injuries. In her cross-examination, she stated that at the time of her examination, the prosecutrix was going through her menstrual cycle and the possibility of teeth marks on the left breast of prosecutrix being due to breastfeeding a child cannot be ruled out, as the prosecutrix was a married woman having children. The doctor did not give any opinion qua the sexual assault committed upon the prosecutrix and her opinion was qua sexual intercourse. The learned trial Court while convicting the accused persons has heavily relied upon the testimony of aforesaid witness while observing that as per chemical examiner report which is Ex.PG, spermatozoa seen on the content of Ex.III and on the basis of this report, Dr. Sangeeta Aggarwal gave her opinion that the possibility of sexual intercourse cannot be ruled out and the absence of injuries on the person of victim is not fatal. However, it has completely brushed aside the fact that medical examination of the prosecutrix was done after 20 days of the incident and by that time, she had changed/washed her clothes. Furthermore, a perusal of Ex.PG, which is report of the chemical examiner, reveals that cervical swab, pubic hair with vulval swab and swab from posterior fornix were taken and



spermatozoa were seen only on the contents of exhibit III i.e. swab from posterior fornix and not on the other two samples. She was a married woman and therefore, the possibility of sexual intercourse with her husband cannot be ruled out. There is no medical evidence is available on record to show that DNA of spermatozoa was matched to DNA of any of the accused. It is also admitted fact that DNA test on any of accused persons was not conducted qua which it was expressed by the Hon'ble Supreme Court in ***Krishan Kumar Malik Vs. State of Haryana (2011) 7 SCC 130*** that, "45. Prior to 2006, even without the aforesaid specific provision in the Criminal Procedure Code prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus, they must face the consequence."

16. Still further, the learned trial Court has misread the statements of PW-3 and PW-4 i.e. sister-in-law and husband of the prosecutrix respectively. PW-3, Sunita Rani in her statement had stated that at about 8 PM some persons came in a vehicle with muffled faces and abducted her sister-in-law but she nowhere stated names of persons, who abducted her sister-in-law whereas the husband of the prosecutrix in his cross-examination stated that his sister in law had informed him that Bobby son of Gurdial Singh was driving and Ravi was sitting on the back seat of the ambassador car which was used for the abduction of the prosecutrix. There are inconsistencies in the statement of PW-3 qua the time when the prosecutrix arrived home on the night of the incident. It is



settled law that the testimonies of the hostile witnesses may be used to corroborate the allegations levelled against the accused persons but in such cases extreme care and caution must be exercised, which prima facie does not seem to have done by the learned Trial Court in the present case while convicting the appellants. Thus, the learned trial Court totally ignored the aforesaid major and material contradiction in the statements of PW-3 and PW-4 and wrongly relied upon testimonies of aforesaid witnesses while convicting the appellants-accused herein.

17. It is trite law that case of prosecution has to stand on its own legs and it must prove its case beyond shadow of reasonable doubt. In view of the material contradictions noted hereinabove, the whole prosecution story rests on quicksand, as the prosecution has failed to establish its case beyond shadow of reasonable doubt. It is a well-settled principle of law that if two views are possible, one in favour of the accused and the other adversely against him/her, the view favouring the accused must be accepted.

Conclusion

18. As an upshot of above, the impugned judgment of conviction and order of sentence dated 10.09.2004 are set aside. The appellants are acquitted of the charges framed against them by giving them the benefit of doubt. The fine amount, if any, deposited by them, be refunded to them in accordance with law. Their personal and surety bonds stand discharged.

19. Resultantly, all the appeals are allowed.



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20. Pending misc. application(s), if any, also stand disposed of.
21. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(KIRTI SINGH)
JUDGE

28.05.2025

<i>Kapil</i>	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No