

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:024609-DB



205

CRA-AD-315-2023 (O&M)
Date of decision: 19.02.2025.

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....Appellant.

Versus

State of U.T. Chandigarh and another

...Respondents.

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

.....

Present: Mr. G.S. Goraya, Advocate and
Mr. Anupinder Brar, Advocate
for the appellant.

Mr. Y.S. Rathore, Addl. P.P. U.T., Chandigarh with
Ms. Sudha Singh, Advocate and
Mr. Y.S. Rathore, Advocate for respondent No.1.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 11.04.2023, passed by Judge, Fast Track Special Court, Chandigarh, vide which respondent No.2-accused Kulwant Singh has been acquitted of the offences punishable under Sections 376(2) (f) and 376 (2) (n) IPC.

2. The factual scenario, as per prosecution version, this case was registered upon the complaint of prosecutrix alleging that she was married

to Tejinder Singh and was having three sisters-in-law. Her two sisters-in-law namely Rupinder Kaur and Sapinder Kaur were married, Rupinder Kaur was wife of accused, who expired on 15.10.2018. Her sister-in-law Sapinder Kaur was having a matrimonial dispute and was residing with her parents/ in-laws of prosecutrix. Her youngest sister-in-law Narinder Kaur was unmarried and was handicapped. It was alleged that accused and her sister-in-law Rupinder Kaur were having a daughter aged about 13 years. Rupinder Kaur remained ill and in October 2016, they came to know that Rupinder Kaur was suffering from Cancer. She alleged that her sister-in-law suffered from ailment of cancer due to her repeated abortions for want of male child. Family of accused was pressurizing Rupinder Kaur to give birth to a male child and were not providing proper treatment to her. The accused asked the prosecutrix to give birth to his male child through Test-tube technique, to which family of prosecutrix agreed. It was alleged that during her stay at house of accused, she was raped by accused. Thereafter, the accused threatened that if prosecutrix would not surrender herself, then he would not provide proper treatment to Rupinder Kaur as she was cancer patient. Several times the accused developed forcible sexual relations with the prosecutrix and consequently she became pregnant, however, her family members thought that the prosecutrix was pregnant as a result of Test-tube procedure. She used to visit a clinic at Mauli Jagran, for her pregnancy follow up, but her delivery took place at Abha Clinic, Sector 42, Chandigarh. On 21.8.2018, she delivered a male child. It was also alleged that accused obtained her signature on various documents as Rupinder Kaur by playing fraud upon her. The doctors at Abha Clinic asked for her Aadhar

Card for preparing the birth certificate of child and came to know that her original name was not Rupinder Kaur. On 15.10.2018, her sister-in-law Rupinder Kaur died. When family members were busy in performing last rites of wife of accused then also accused, at house of prosecutrix tried to develop forcible sexual relations with her to which she resisted and refused to surrender. Then, accused inappropriately touched her and threatened to get her family members killed. Finally, she filed the complaint, against him.

3. After registration of FIR, site plan of place of occurrence was prepared. Accused was arrested. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded. Prosecutrix and accused were medically examined. Blood samples of prosecutrix, her child and accused were drawn for forensic examination. Scaled site plan of place of occurrence was prepared. Statements of witnesses were recorded. After completion of investigation, challan was presented in the Court.

4. After having found a prima facie case, charges for offences punishable under Sections 376(2) (f) and 376 (2) (n) of IPC were framed against the accused, to which he pleaded not guilty and claimed trial.

5. As many as 13 witnesses were examined by the prosecution to prove its case against the accused. After closing of the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication by taking the plea that his wife Rupinder Kaur (since deceased) could not give birth to a child as she was suffering from cancer in Ovary. Rupinder Kaur told him that she could request her brother Tejinder Singh and his wife/ prosecutrix to make an effort for getting a male child for

them out of their physical relations. It was found that Tejinder Singh had certain issues regarding his semen and he could not be helpful in this regard. Then it was discussed that prosecutrix/ complainant could give birth to a child through Test-tube technique from semen of accused. Due to certain issues this planning also could not mature. Thereafter, with the due consent of prosecutrix, her husband Tejinder Singh, his wife Rupinder Kaur and his mother-in-law Nirmaljit Kaur, it was mutually decided that he along with prosecutrix would make an effort to give birth to a child by having physical relationship. He and prosecutrix had intercourse solely for the purpose of giving birth to the child and waited for the response and in the next month, pregnancy of prosecutrix was confirmed. He never raped the prosecutrix and he was not having any lust for her. This relationship was with her consent, solely for the purpose of begetting a child. Prosecutrix gave birth to a male child on 21.08.2018. Unfortunately, his wife Rupinder Kaur died on 15.10.2018, during her treatment for cancer. When he asked for the child, complainant and her in-laws put off the matter on the one pretext or the other, whereas the reality was that Tejinder Singh and his wife i.e. the prosecutrix, had given the child to his wife Rupinder Kaur in adoption through affidavit dated 23.08.2018 Ex.D1. As Rupinder Kaur was not in a position to take care of the child due to her ill health, so the appellant/ prosecutrix started residing at her-in-laws place and the complainant and her mother-in-law were taking care of the child. After death of Rupinder Kaur, the behaviour of his in-laws changed and they refused to give the child and the complainant and her husband started demanding Rs.5,00,000/- from him. In order to blackmail him, they lodged the present FIR against him

with coloured version of rape. The other reason for involving him was that the complainant party put pressure upon him to remarry with his sister-in-law Narinder Pal Kaur to which he refused. He never committed rape upon the complainant.

6. In the defence evidence accused brought on record affidavit Ex.D1 and apology Ex.D2.

7. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 11.04.2023.

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

9. Learned counsel for the appellant vehemently contended that the statement of prosecutrix is consistent throughout the case, which is also supported by medical evidence and CFSL report Ex.P2. He has further contended that accused Kulwant Singh had forced the appellant to indulge in the sexual relationship with him and raped her several times against her wishes, due to which she became pregnant from Kulwant Singh. Accused took the prosecutrix to the doctor and cleverly prepared a false record in the name of his wife Rupinder Kaur and later on, the doctor found that the lady who had delivered the child was not Rupinder Kaur, wife of accused. He argued that the uterus of Rupinder Kaur had to be removed as she was suffering from ovarian cancer. She was having only one girl child and accused Kulwant Singh put pressure on parental family of Rupinder Kaur

and forced the appellant to bear a male child through IVF and threatened that if she would not do it, then he would not provide proper treatment to Rupinder Kaur. The parental family of Rupinder Kaur had to bow before this unreasonable demand of accused Kulwant Singh. When the appellant visited the house of accused Kulwant Singh, then by taking advantage of the circumstances he forcibly raped her against her wishes and also threatened her not to disclose about it to anyone, otherwise he would kill her husband. The learned counsel contended that the trial Court erred in not believing the unshattered testimony of prosecutrix. Further, prosecutrix under pressure and in order to save the life of her sister-in-law agreed to bear child of accused Kulwant Singh through IVF and she never gave her consent for the physical intercourse, but accused made physical relations forcibly against her wishes. He contended that prosecution has successfully proved the charges against the accused and prayed that this appeal be accepted and judgment dated 11.04.2023 be set aside and accused be convicted for the offences as charged with and be punished accordingly.

10. A glance at the prosecution evidence reveals that in order to prove its case, prosecution examined PW1 ASI Dharam Raj, MMHC, who deposed regarding receiving of parcels on 15.11.2019 and sending the same in intact condition on 22.11.2019 to CFSL vide RC No.98/ 2019 through C-Jaideep. He also deposed regarding receiving of all sealed parcels along with sealed report from CFSL vide DDR No.45 and proved Ex.P1 the DDR of register No.19.

PW2-Prosecutrix has reiterated on oath all the averments as made in her complaint Ex.PW2/1. She also identified her signatures on OPD

Card Ex.PW2/5 and MLR Ex.PW2/4 and upon her statement recorded under Section 164 Cr.P.C. Ex.PW2/3.

PW3-ASI Yash Pal, Draftsman, prepared scaled site plan Ex.P1 on the basis of rough notes of place of occurrence taken on 14.12.2019.

PW4-Sh. Inderjeet Singh, learned Judicial Magistrate Ist Class, Chandigarh deposed regarding recording of statement of prosecutrix under Section 164 Cr.P.C. Ex.P9, on 09.11.2019 and thereafter, he passed order Ex.P4 on 09.11.2019. He also identified his signatures on the envelope Ex.PW2/2.

PW5-Dr. Apoorva Kulshreshtha, MO, GMSH-16, Chandigarh, medically examined prosecutrix and produced on record her MLR Ex.PW2/4. She stated that prosecutrix had refused for her internal examination. She handed over the samples of prosecutrix to the police.

PW6-Dr. Abha, Abha Clinic, Multispeciality Centre, 1017, Ground Floor, Sector 42-B, Chandigarh stated that she referred the prosecutrix to Adityaj Hospital, Phase-1, Mohali. On 21.08.2018, she visited Adityaj Hospital and was informed by staff that the relatives of prosecutrix were enquiring about the prosecutrix by calling her by some other name. She came to know that Rupinder Kuar was not her real name and they informed SHO, Phase-1, Mohali on 22.08.2018. Prosecutrix had brought her complete record in the name of Rupinder Kaur.

PW7-Dr. Rashmi Aggarwal Jain, Adityaj Hospital, deposed that on 21.08.2018 prosecutrix was admitted for Cesarean Section and she delivered male child on the same day. On 22.08.2018 from some of the relatives of patient, it was revealed that her real name was not Rupinder

Kaur and they informed the Police Station, Phase-1, Mohali on the same day. Tejinder Singh gave an affidavit dated 23.08.2018 and written apology on 22.08.2018 on their letter head for misbehaving with hospital staff.

PW8-Dr. Vivek Chopra, MO, GMSH-16, Chandigarh had drawn the blood samples of male baby of prosecutrix for DNA profiling and handed over the same to I.O. SI Kuldeep Singh vide memo dated 15.11.2019.

PW8 (wrongly numbered) Constable-Jaideep, took blood samples of prosecutrix, her son and of accused and deposited the same with CFSL and handed over receipt to Malkhana Munshi.

PW9-Lady Constable Suman Kumari, accompanied the Investigating Officer on 15.11.2019 and deposed regarding obtaining the blood samples of prosecutrix and her baby and handing over the same in a sealed parcel with MLR, to the Investigating Officer vide memo Ex.PW9/1.

PW10-SI Sarabjit Kaur, Investigating Officer, deposed regarding investigation proceedings conducted by her during the course of the investigation.

PW11-Inspector-Eram Rizvi, Investigating Officer has also deposed about the investigation proceedings conducted by him in this case.

PW12-Dr. A.S. Padda, EMO, GMSH-16 Chandigarh, conducted medical examination of the accused on 09.11.2019 and deposed that there was nothing to suggest that person was incapable of performing sexual intercourse.

PW13-Retired Inspector Kuldeep Singh, Investigating Officer, has also deposed regarding investigation proceedings conducted by him.

11. Besides that prosecution also tendered into evidence CFSL report Ex.P2.

12. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond the reasonable doubt.

13. It is trite law that conviction can be based on the sole testimony of the prosecutrix, if it is found to be reliable and trustworthy and it does not require any further corroboration.

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 present case the prosecutrix, who was a major married lady had levelled allegations of rape against the accused, for fulfilling his desire to have a male child. In the light of the aforesaid judgments, now, it is to be analysed whether testimony of prosecutrix is of sterling quality on the sole basis of which, the conviction of accused can be based.

17. It is the admitted fact that accused was husband of Rupinder Kaur, sister-in-law of prosecutrix (husband's sister). It is also the admitted fact that wife of accused/ sister-in-law of prosecutrix was suffering from cancer and was undergoing treatment for the same. As per the prosecutrix, owing to her ailment, her sister-in-law Rupinder Kaur was unable to give birth to a child, so she agreed to conceive the child for her by way of Test-tube technique. Except the oral and bald version of the prosecutrix, there is no documentary evidence or any other evidence on record to show that at

any point of time, the prosecutrix had visited some doctor for conceiving through Test-tube technique (IVF).

18. The complaint Ex.PW2/1 filed by the prosecutrix is silent regarding the fact that it was ever settled that she would bear the child of accused through Test Tube technique.

19. The version of prosecutrix suffers from self contradiction and improvement. She has not given any specific date when she was forcibly raped by the accused and has rather given vague statement that she was raped in 2017. It was again not a natural conduct of the prosecutrix that even when she had been allegedly raped several times by the accused, she did not disclose about the same to anyone, not even to her husband. This explanation of the prosecutrix does not appear to be probable that she was under the fear that accused would not provide proper treatment to her sister-in-law. Learned trial Court has rightly held that it is highly improbable that a lady would be so much concerned and attached to her sister-in-law that she would allow her sexual exploitation at the hands of the husband of her sister-in-law. It is also not believable that a mature married lady would be under fear, upon such threat extended to her by the accused. Moreover, it is a strange conduct of the prosecutrix that even after committing of the alleged rape upon her by the accused several times, she kept on staying in his house. Not only this, she carried the child of accused for nine months and underwent the follow up treatment during her pregnancy by hiding her true identity and posing as the wife of accused. These facts have been substantiated by PW6 Dr. Abha and PW7 Dr. Rashmi Aggarwal. Initially, the matter came to the light for the first time at the Abha Clinic, where it

was revealed that prosecutrix was posing to be the wife of accused, when her Aadhar Card was demanded. Learned trial Court has rightly held that these circumstances on record, supports the probable defence raised by the accused that it was the mutual arrangement in the family of accused and in-laws of prosecutrix that she would bear the child of accused. Execution of affidavit Ex.D1 is also not disputed by the prosecutrix. As per affidavit Ex.D1, after two days of the delivery, the child was to be given in adoption to the wife of the accused.

20. The conduct of the prosecutrix at the time of follow up and delivery of child did not disclose that the child was result of rape and she continued presenting herself to be the wife of accused is also to be noticed. Despite numerous opportunities to disclose about the alleged wrongful act of the accused, she chose to remain silent. Learned trial Court has rightly held that this conduct of the prosecutrix along with factum that during the entire medical record of pregnancy, she did not mention her true name and rather, posed herself to be the wife of the accused, itself speak volumes of the mutual arrangement between in-laws of prosecutrix and the accused's family. It has also been admitted by the prosecutrix that the entire expenses of her pregnancy and delivery were borne by the accused.

21. Learned trial Court has rightly come to the conclusion that prosecutrix was not subjected to rape and rather she became pregnant as a result of the mutual arrangement and her relations with the accused were consensual.

22. 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 the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' **2014 (14) SCC 589**. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned judgment dated 11.04.2023 which calls for interference.

23. No other argument was raised.

24. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 11.04.2023 passed by learned trial Court being upheld.

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

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

19.02.2025

Komal

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