



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-62-2022 (O&M)
Date of Decision: 13.05.2025

XXXX

.....Appellant

Versus

VAKIL SINGH AND ANR

.....Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. P.S. Jammu, Advocate,
for the appellant.

Mr. Anant Kataria, DAG, Haryana.

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ANUPINDER SINGH GREWAL, J. (Oral)

In view of the directions issued by the Supreme Court in the case of *Nipun Saxena Versus Union of India, (2019) 2 SCC 703*, the identity of the appellant, being the alleged victim, is being masked.

2. This appeal by the prosecutrix 'HK', is directed against the judgment of the trial Court dated 22.03.2021 whereby respondent No.1 has been acquitted of the charges framed against him under Sections 366, 328, 376(2)(n), 420 and 506 of the IPC in FIR No.138 dated 10.09.2018 registered under Section 346 IPC at Police Station Odhan (District Sirsa).

3. Learned counsel for the appellant submits that respondent No.1 has been erroneously acquitted, although, sufficient evidence had been led by the prosecution to show that respondent No.1 had forcibly taken the



appellant away, sedated her and then sexually assaulted her. The trial Court had failed to appreciate the evidence led by the prosecution properly, particularly the statement of the prosecutrix under Section 164 Cr.P.C. as well as her deposition before the trial Court.

4. Heard.

5. Criminal law was set in motion when a complaint was moved by one 'GS' wherein he stated that he is a resident of village Jandwala and his marriage had been solemnised with the appellant-'HK' about two months ago. On 09.09.2018, she had left her matrimonial home without informing him and had taken Rs.1,97,000/- along with about 6-7 tolas of gold with her. He further stated that he had a suspicion that the appellant had eloped with respondent No.1, who was a resident of her native village. On the basis of his complaint, the FIR was registered under Section 346 IPC at Police Station Odhan. About nineteen days later, the appellant was rescued by her relatives from Ambala. During investigation, respondent No.1 and his accomplice, a juvenile, were arrested. Respondent No.1 suffered his disclosure statement, pursuant to which, he identified and demarcated the alleged places of occurrence, including the rooms in various hotels. Later, respondent No.1 was medically examined and his blood sample was collected. The appellant was medically examined and the report of the same is at Ex.P32. Her statement under Section 164 Cr.P.C. was recorded, wherein, she stated that she was forcibly taken away by a person whose face was muffled and was carrying a pistol type article. Thereafter, she had been sedated and was taken by respondent No.1 to several places and was



sexually assaulted. The statement of the appellant was recorded under Section 161 Cr.P.C. on 24.09.2018, 25.09.2018, 29.09.2018 and 30.09.2018 (Ex. D1 to D4). Upon completion of the investigation, the police submitted before the trial Court the final report under Section 173 Cr.P.C. Vide order dated 03.12.2018, the case was committed to the Court of Session. Charges under Sections 366, 328, 376(2)(n), 420 and 506 of the IPC were framed against respondent No.1. In view of the accomplice being a juvenile, his case was placed before the concerned Juvenile Justice Board for further action in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The prosecution had examined eighteen witnesses to support its case.

6. PW-3, who is the father of the appellant deposed that he, along with one Gurjeet Singh and the Sarpanch of the village, had rescued the appellant and took her home. He also deposed that he was associated by the police during the investigation at the time of her medical examination as well as the demarcation of the places.

7. PW-4, the complainant in his examination-in-chief, stated that on 09.09.2018, early in the morning around 4 a.m., his wife, i.e., the present appellant, had left with respondent No.1. She had also taken with her Rs.1,97,000/-, along with 6-7 tolas of gold ornaments and some of her clothes. He further stated that later she had also filed a protection petition before the High Court on the pretext of solemnizing her marriage with the accused (respondent No.1 herein). He also mentioned that thereafter, the appellant had not cohabited with him. Although, the prosecution had



declared him to be hostile and also confronted him with his earlier statement (Ex. P8), but the prosecution was unable to controvert his earlier deposition. Furthermore, in his cross-examination, the complainant had admitted that his wife and respondent No.1 were in constant touch with each other and used to speak frequently over the phone. On 09.09.2018, he had woken up around 05.30 a.m. and informed his mother about the disappearance of his wife. Thereafter, he met his father-in-law, who apprised him about the illicit relationship between the appellant and respondent No.1.

8. PW-6, stated that he had rented the first floor of his house to the appellant and respondent No.1 at a monthly rent of Rs.3,000/-. In his cross-examination, he stated that the appellant had never made any complaint to him alleging that she had been forcibly taken away by respondent No.1 or that she was being sexually assaulted by him.

9. PW-7, the Manager of Komal Residency, IMT Manesar, deposed that the appellant, along with the accused (respondent No.1 herein), had stayed at the hotel from 16.09.2018 to 18.09.2018. He further stated that the appellant and respondent No.1 had stayed in room no.103, while Gurpreet Singh (not challaned by the police) occupied room no.104. In his cross-examination, he specifically stated that the appellant had herself furnished a copy of her Aadhar card at the time of check-in. He also deposed that the appellant neither made any complaint to him about the accused nor did she raise any alarm during her stay at the hotel.

10. PW-10, who was the doctor, who had conducted the medical examination of the appellant on 25.09.2018, deposed that as per the MLR



(Ex.P-32) prepared by her, there was only a small bruise on the appellant's left elbow, which could have been inflicted approximately 36 hours prior to her medical examination. She further stated that there were no other internal or external injuries on her person and she had collected the clothes worn by the appellant at the time of the examination and identified the same during trial.

11. PW-13, the Senior Scientific Officer (Biology), FSL, Madhuban, and PW-14, the Senior Scientific Assistant (DNA Division), FSL, Madhuban, deposed to the effect that samples were collected from the person and clothes of both the appellant and the accused (respondent No.1 herein). The reports (Ex.P-46 to P-48) indicated that the DNA profile generated from the semen stains detected on the clothes of the appellant matched with the DNA profile generated from the blood samples of the accused (respondent No.1 herein).

12. The prosecutrix, who was examined as PW-2, stated that on 09.09.2018, at about 4 a.m., while she was preparing tea in the kitchen, suddenly a person whose face was muffled and was carrying a gun like article entered the kitchen. He placed his hand over her mouth and threatened to kill her and her husband. He further threatened that if she made any noise, he would disclose the 'wrong doings' done by her at her parental village to her husband. He then forcibly took her out of the house, where two other people whose faces were also muffled were waiting in a car. They took her to Bathinda. They, then put some sedative in her tea and took her to Chandigarh. Upon regaining consciousness, she discovered that the person



who had abducted her was respondent No.1. She further deposed that respondent No.1 threatened to kill her and her family members if she did not marry him. Owing to these threats, she agreed to marry him in Chandigarh. Thereafter, respondent No.1 and the juvenile took her to Ambala where they stayed in a hotel and where respondent No.1 again threatened and assaulted her. Subsequently, they took her to Gurugram and kept her in a hotel room for two days. She was assaulted there as well. After two days, they brought her back to Ambala and kept her there in a rented accommodation. After some days, she was rescued by her uncle and other good samaritans and was brought back to her parental home.

13. The accused (respondent No.1 herein), in his statement under Section 313 Cr.P.C., pleaded that he had been falsely implicated. The appellant had willingly eloped with him and she had levelled false allegations against him under pressure from her husband and her parents. The defence had examined the advocate who had filed the petition before the High Court on behalf of the appellant and respondent No.1 seeking protection of life and liberty. The evidence of the defence was closed on 19.03.2021. The trial Court after appreciating the evidence before it, acquitted respondent No.1 of all the charges.

14. The prosecution, through forensic evidence, has been able to establish beyond reasonable doubt that physical relations had taken place between the appellant and respondent No.1. The appellant in her deposition before the trial Court had stated that she had been sedated and that respondent No.1 had established physical relations with her against her will



by threatening her with dire consequences.

15. It is a settled principle of law that conviction can be based solely on the testimony of the victim of sexual assault without being corroborated by any other evidence. Where the testimony is of such a nature that it instils confidence in the Court, the same can be relied upon for convicting the accused. It is also a well settled principle of law that when a conviction is to be based on the sole testimony of the prosecutrix, the Court has to be extremely careful while examining this sole testimony. Reference can be made to the judgment of the Supreme Court in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra***, (2006) 10 SCC 92, wherein the Supreme Court made the following observation:

“8. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

(Emphasis supplied)

16. The Supreme Court in ***Rai Sandeep vs. State (NCT of Delhi)*** (2012) 8 SCC 21 had the occasion to define as to who can be said to be a ‘sterling witness’. The relevant extract of the judgment is reproduced below

“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."

17. The fundamental issue for our consideration in the instant case is whether the evidence adduced by the prosecution, particularly the testimony of the prosecutrix is trustworthy, credible and worthy of reliance, so as to warrant the conviction of respondent No.1 under Sections 366, 328, 376(2)(n), 420 and 506 of the IPC.

18. Analysis of the testimony of the prosecutrix in the light of the above mentioned principles laid down by the Supreme Court, makes it crystal clear that there are several material inconsistencies in the prosecution evidence, particularly the testimony of the prosecutrix and therefore, she is not a reliable witness.

19. The appellant is stated to have been aged 20 years at the time of



registration of the FIR. Her husband had lodged the complaint stating therein that he had a suspicion that she had eloped with the accused (respondent No.1 herein). In his cross-examination, he had stated that the father of the appellant had informed him that the appellant had an affair with respondent No.1 prior to the marriage.

20. The appellant in her statements before the police under Section 161 Cr.P.C. (Ex.D1 to D4), had categorically stated that it was Vakil, i.e., respondent No.1, who had come to her house and had threatened to expose her previous relationship with him to her husband and had then forced her to depart with him to village Takhatmal. However, in her statement before the Magistrate under Section 164 Cr.P.C., she puts forth a different version and states that a person whose face was muffled and was carrying a pistol type article, had forcibly taken her away from her home and had sedated her. In her deposition before the trial Court, she puts forth an improved version and states that a man with a muffled face carrying a gun like article had threatened her that he will expose her antecedents to her husband. He took her out of the house and two other persons were sitting in a car. When confronted with her contrary statements, she admitted making these statements to the police on the said dates, but then came out with another version. There are several material inconsistencies and in fact, she has put forth different versions of the incident at different stages.

21. Moreover, with regard to her story about her abduction, she admitted that the time taken to go from the kitchen to the outside door would be about three to four minutes. The trial Court in this regard had observed



that it would be implausible for a person in such great distress to collect her clothes, gold ornaments viz. chain, necklace, earrings and cash of Rs.2,50,000/- in such a short span. It is evident that she had planned to elope with respondent No.1 well in advance and we find merit in this observation of the trial Court.

22. Furthermore, in her cross-examination, she admitted that she had been acquainted with respondent No.1 for a period of five to six months prior to the solemnisation of her marriage with PW-4. She also stated that she had willingly established physical relations with respondent No.1 before the said marriage.

23. Admittedly, the appellant and respondent No.1 had filed a criminal miscellaneous petition bearing CRM-M-40063-2018 before this Court seeking protection of life and liberty, which is evident from her affidavit and vakalatnama produced on record as Mark A and Mark B, respectively. The Advocate, who had filed the petition on their behalf, was examined as DW-1. He had stated that the appellant and respondent No.1 had come together to his office at Chandigarh and had furnished the necessary documents for filing the petition. He had identified the appellant on the basis of her affidavit and Aadhar Card. He further stated that at the time of filing the said petition, the appellant had mentioned that she was unmarried at the time, her marriage was solemnised with respondent No.1. When confronted with the deposition of DW-1, the appellant denied meeting with the said Advocate at Chandigarh, but admitted her visit to the High Court.



24. It is thus apparent that the appellant and respondent No.1 performed marriage with their mutual consent and of their own free will and photographs in this regard were also produced on record as Mark C and Mark D, respectively, which were admitted by the appellant. The appellant had also admitted in her cross-examination, that while she had gone with respondent No.1, she had taken along with her a necklace, chain, earrings and rings made of gold and Rs.2,50,000/- cash.

25. In view of the above, we are of the considered view that the prosecution evidence is full of loopholes and inherent contradictions leading to the acquittal of respondent No.1 and the impugned judgement of the trial Court is based upon proper appreciation of the evidence on record.

26. It is trite that interference in an appeal against acquittal would be warranted only where the judgment is perverse or manifestly illegal. By the judgment of acquittal, the presumption of innocence of the accused is reinforced. Even if, another view is possible from appreciation of evidence, the appellate Court should refrain from interfering in an order of acquittal. Reference may be made to the judgment of the Supreme Court in the case of **Chandrappa & Ors vs State of Karnataka**, (2007) 4 SCC 415. The relevant extract of the judgment is reproduced as under:

“xxx xxx the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) to (3) xxx xxxx xxx

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a



competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

xxx xxx”

(Emphasis supplied)

27. Consequently, we do not find any manifest illegality in the judgment of the trial Court acquitting respondent No.1 and the instant appeal stands dismissed accordingly.

28. All pending miscellaneous application(s) also stand disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

13.05.2025

sandeep

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