



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

**CRA-D-772-DB-2014
Reserved on : 04.02.2026
Date of decision:06.03.2026**

STATE OF HARYANA **Appellant**

Versus

YASHPAL **Respondent**

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present : Ms. Sheenu Sura, D.A.G., Haryana.

Mr. Aditya Yadav, Advocate with
Mr. Viransh Ghawari, Mr. Atul Bhardwaj and
Ms. Hemlata, Advocates for the respondent.

RAMESH KUMARI, J.

1. The instant appeal is filed by the State of Haryana aggrieved with the impugned judgment dated 09.05.2013 in case arising out of FIR No.71 dated 16.04.2012 registered under Sections 376 and 452 of IPC at Police Station Kosli, District Rewari vide which the respondent (hereinafter referred as accused) has been acquitted of charges for commission of aforesaid offences.
2. The prosecution story against the accused is that prosecutrix PW-3 submitted an application Ex.P-3 on 16.04.2012 to PW-12 ASI Sunder Lal stating that on 15.04.2012 at about 8-8:30 PM, the members of her family had gone to their fields. She was alone at her house. Accused entered in her house. He forcibly caught her and took her to the bathroom in the



house of Rampat. He forcibly had physical relations with her. When her family members returned home and her mother noticed that she (prosecutrix) was not there. She started searching for her. Accused ran away by pushing her mother. She raised alarm attracting the members of the family to the spot. The victim thus alleged that the accused had committed rape.

3. Pursuant to lodging of FIR Ex.P-1 by PW-1 ASI Jai Bhagwan, the prosecutrix was got medically examined. After her medical examination, PW8 Dr. Suman Tanwar handed over the sealed parcels containing clothes and vaginal swabs etc. to PW-12 ASI Sunder Lal vide Ex. P-12 which was deposited with PW5 MHC/EASI Bhagwan Das. The rough site plan Ex.P-17 of place of occurrence and scaled site plan Ex.P-18 were prepared. Statements of PW10 i.e. mother and father of the prosecutrix was recorded under Section 161 Cr.P.C. On 22.04.2012, the accused was arrested. He was also medically examined. Parcel containing his underwear, sealed envelope and sample seal was taken into police possession vide Ex.P-13. The samples in due course were sent to FSL.
4. After presentation of challan and framing of charges under Section 376 and 452 of IPC, prosecution examined 12 witnesses, whose testimonies are as under:-

- (i) **PW3 prosecutrix** herself stepped into the witness box and narrated about the occurrence in detail and specifically stated that on 15.04.2012 at about 8:30PM, when she was alone in her house, as her family members had gone to the fields for harvesting and finding her alone, accused took her to nearby

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bathroom of Rampat. He gagged her mouth and forcibly committed raped her. He also gave elbow blows on her chest. In the meantime, her mother came on the spot and accused pushed her and ran away. Her mother raised noise (alarm). She narrated about the incident to her family members. She also stated that when she was taken to police post Nahar, police met them on the way near bus stand of Nahar. She moved application Ex.P-3 to the Police, Police brought her to CHC Nahar where she was medico-legally examined.

- (ii) **PW-10 mother** of PW3 deposed that prosecutrix is her elder daughter and two sons are younger to her. She also alleged that on 15.04.2012, at about 8 PM, her daughter was cooking food. When she returned at about 8:30 PM from the fields, she did not find her daughter in the house. Thereafter, she went to the bath room of Rampat looking for her daughter and saw that accused Yashpal @ Guddu was committing wrong act with her daughter and upon seeking her, the accused fled away from the spot after pushing her. Her husband and her brother came on the spot and searched for the accused but they were unable to find him. Her daughter narrated the entire story to her that the accused had committed rape after breaking the string of her salwar. Thereafter, they went to Police Station and Police met her at bus stand Nahar where her daughter submitted written application Ex. P-3 to the Police. She was with her daughter

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when she was medically examined. She also identified her signatures on memo Ex.P-12 vide which the parcel containing clothes of PW3 prosecutrix and sample of vaginal swabs and sample seal and envelope containing documents were taken into possession by the Police.

- (iii) **PW-12 ASI Sunder Lal** conducted investigation. He in his statement before the Court proved that the application P-3 was submitted to him on the intervening night of 15/16.04.2012 by the prosecutrix when she met him along with her parents. He sent *ruqa* Ex.P-15 to Police Station Kosli for registration of FIR and took the prosecutrix along with her parents to CHC Nahar and got the prosecutrix medically examined. After medico-legally examination, MLR was received by him.

As per his further testimony, PW8 Dr. Suman Tanwar handed over a parcel, an envelope, sample seal to him vide memo Ex.P-12. He deposited the parcel, envelop and sample seal with the MHC PS Kosli.

He also stated about visiting the place of occurrence and preparation of site plan Ex.P-17. He recorded the statements of the parents of the prosecutrix.

PW-12 ASI Sunder Lal also deposed that he also got the accused medically examined and collected the MLR Ex.P-5 pertaining to accused. He further deposed that after conducting medical examination of accused, PW4 Dr. Suresh



Kumar Kataria, handed over to him a parcel containing underwear of accused, sealed envelope and sample seal vide memo Ex.P-13.

The parcel of lower of the prosecutrix and underwear of the accused was produced in the Court at the time of recording of his statement and exhibited vide Ex.P-11 and Ex.P-13, respectively.

- (iv) **PW-8 Dr. Suman Tanwar, LMO. CHC, Nahar** tendered her affidavit Ex.P-9 in support of examination-in-chief and also proved MLR Ex.P-10. FSL report Ex.P-7 and gave opinion that possibility of sexual assault cannot be ruled out. She also exhibited salwar of the prosecutrix vide Ex.P-11. In her affidavit Ex.P-9, she stated that on 16.04.2012, she medico-legally examined the prosecutrix and noted following injuries;-

1. *Big red colour contusion on back right median to scapula and on midline of body over vertebral column about 15cm.x5cm.lying vertically.*
2. *Local Examination; No Ext. injury, well developed body organs. Salwar is stained with white discharge hymen ruptured at 7'o clock position. No tenderness, labia's were separated, vagina admit tip of two finger easily on P/V examined white colour discharge of the tips of finger.*



PW8 Dr. Suman Tanwar in her affidavit Ex.P-9 stated that she handed over to the Police one sealed parcel containing 8 seal of ST which also had brown colour salwar, two swabs, two slides, pubic hairs and a sample of seal and another sealed envelope containing MLR and a letter addressed to FSL bearing 8 seal of ST.

- (v) **PW-4 Dr.Suresh Kumar Kataria** tendered his duly sworn affidavit Ex.P-4 in support of examination-in-chief and proved MLR Ex.P5 This affidavit stated that he medically examined the accused on 22.04.2012 and he gave the opinion that there is nothing to suggest that the accused is not capable of doing sexual intercourse. He also handed over one underwear brown colour, forwarding letter and sample seal CSP to the police.
- (vi) **PW-5 EASI Bhagwan Dass** tendered his affidavit Ex.P-6 in support of examination in chief. He stated about deposit of case property with him and that he handed over the same to PW-11 Constable Pritam for depositing the same with FSL Madhuban.
- (vii) **PW-11 HC Pritam Singh** tendered his affidavit Ex.P-16 wherein he stated that on 27.04.2012, SHO handed over to him the sample parcels of this case on the direction of MHC, he deposited the same on the same day i.e.27.04.2012 in office of FSL, Madhuban.



- (viii) **PW-9 HC Kishore Kumar** deposed about getting the prosecutrix medically examined on 16.04.2012 and after medical examination, doctor handed over to him the parcel, sample seal and envelope which he handed over to PW-12 ASI Sunder Lal vide memo Ex.P12.
- (ix) **PW1 ASI Jai Bhagwan** proved recording of FIR Ex. P-1 on receipt of an application Ex.P-3 and that he made endorsement Ex.P-2 on *ruqa*.
- (x) **PW-7 Constable Ashok Kumar** deposed that he delivered the special report to Illaqa Magistrate and higher police officers.
- (xi) **PW-6 Dharampal, Draftsman** proved the scaled site plan which he prepares on the direction of PW-12 ASI Sunder Lal.
- (xii) **PW-2 Sarvsukh**, the then SI/SHO (since retired) prepared report under Section 173 Cr.P.C.
5. On 11.01.2013, prosecution closed the evidence. The statement of accused under Section 313 Cr.P.C. was recorded. Accused pleaded denial and claimed false implication. Accused examined three witnesses in defence whose testimonies are as under:
- (i) **DW-1 Rampat** who stated that he knows prosecutrix and his father and accused as they are co-villagers. He had seen site place Ex.P-8. He is the owner of the property/bathroom Mark-B shown in Ex.P-8. He is also owner of the adjoining plot shown in the site plan. He further stated that on

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15.04.2012, he was present in the above mentioned plot from 7.30 PM to 9.00 PM. No incidence took place in bathroom Mark-B during that period and no rape incidence had taken place.

- (ii) **DW-2 ASI Anand Kumar** produced the attendance register of General Branch, DCP, Office, 1st Battalion, Delhi, Armed Police, Kingsway Camp Delhi, pertaining to accused where he was posted as Constable. He deposed that as per attendance record, Constable Yashpal was on duty on 15.04.2012. Copy of attendance register pertaining to 15.04.2012 is exhibited vide DW2/A. He further stated that election of Municipal Corporation of Delhi was held in 2012 and in that background, all kinds of leaves of police officials were stopped vide letter Ex.DW2/B, from 08.04.2012 to 17.04.2012 by DCP, Election Cell.
- (iii) **DW-3 Constable Amit NO.4730-DAP** posted at in the office of DCP 1st Battalion, Delhi, Armed Police Kingsway Camp Delhi, stated that the accused was in their battalion. On 15.04.2012, he along with accused and other police officials were on reserve duty regarding to Election of Municipal Corporation of Delhi and they were placed at Kingway Camp Office Delhi. He and accused had remained together from 9.30AM to 6.30PM. After duty, he and accused also had taken tea together.



6. The learned trial Court, upon considering the evidence led before it, acquitted the accused for the offences under Sections 376, 452 IPC.
7. Learned State counsel contended that learned trial Court committed error in passing judgment of acquittal. Learned trial Court has not appreciated the evidence. The prosecution proved that on 15.04.2012 at 8:30 PM, accused entered into her house and committed rape. PW10 mother of the prosecutrix also saw the accused committing the rape and running away from the spot.

Learned State counsel further contended that the allegations of rape are corroborated by medical evidence as PW8 Dr. Suman Tanwar who had medico-legally examined the prosecutrix and proved MLR vide Ex.P-10, and specifically stated in her affidavit Ex.P-9 that there was a big red colour contusion on her back and also opined that possibility of sexual assault cannot be ruled out.

The plea of *alibi* of the accused that he was on duty at Delhi on 15.04.2012, is disbelieved by learned trial Court in para No.28 of its judgment. Accused deserves to be convicted but learned trial Court took into consideration the minor contradictions in the statements of prosecution witnesses.

Learned State counsel further submitted that trial Court failed to appreciate that DNA profiling was got done at the instance of accused and not by prosecution and merely on the basis of DNA profile report, learned trial Court completely swayed its decision in favour of the accused and learned trial Court also failed to assign any reason as to why PW3



prosecutrix and PW10 mother of the prosecutrix would depose against the accused.

8. Learned defence counsel contended that accused was falsely implicated in this case. He never indulged in any offence, in fact, he was at his place of work on the fateful day till evening and the allegations of the prosecution are rebutted from the DNA report 01.03.2013 and he prayed for dismissal of the appeal.
 9. It is basic principle of criminal jurisprudence that an accused is presumed to be innocent unless proved contrary by the prosecution by leading cogent and convincing evidence. The presumption in favour of accused is strengthened by judgment of acquittal in his favour. Initially presumption exists throughout the trial in favour of the accused and acquittal by the Court reinforces, reaffirms and strengthens this presumption. Thus, an acquittal creates a “double presumption” in favour of the accused.
- 9(a) For this purpose reliance can be placed upon the judgment rendered by the Hon’ble Apex Court in case titled **Chandrappa and Ors. Vs. State of Karnataka, [2007 (4) SCC 415]** wherein after elaborate discussion as to how the appellate court should approach the order of acquittal while exercising appellate jurisdiction, certain principles regarding the powers of the appellate court to be exercised against an order of acquittal, were laid down,

"(i) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.



(ii) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law*

(iii) *Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(iv) *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 is 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.*

(v) *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."*



- 9(b) The judgment in *Chandrappa's case (supra)* has also been referred *Raj Pal Singh vs. Rajveer and Ors, 2026(1) RCR (Criminal) 177* and it has been further observed that:

“9.3 In Chandrappa and Others v. State of Karnataka [2007 (4) SCC 415], Apex Court laid down on the scope of powers of the appellate court to re-appreciate, review or reconsider the evidence and interfere with the acquittal. It was held that where two views are possible on the evidence on record, one taken in favour of the accused acquitting him should not be disturbed by the Appellate Court. In that case, the trial Court had given the benefit of doubt to the accused finding that the prosecution had not examined the material witnesses, that the testimony of the witnesses was unreliable and inconsistent, that the prosecution story was unnatural and that the knife produced before the Court as muddamal article was not the same which was used by the accused in inflicting injuries etc. There were also other circumstances which created doubt about the prosecution story. This Court held that the High Court was in error in interfering with the possible view taken by the Trial Court on the evidence and the reversal of the order of acquittal by the High Court was not justified.”

- 9(c) In *Raj Pal Singh's case* (supra), it is also observed that:-

“9. It is well settled that the guilt of the accused and the commission of the offence by the accused have to be



*established beyond reasonable doubt. The circumstances should suggest "must or should" and not "may be". It was stated by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra [1973 (2) SCC 793]**, that the distinction between "may be proved" and "must be proved" is not one of mere grammatical, but it is a legal distinction.*

9.1 In **Shivaji**, the Court observed,

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.."

9.2 *It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial and compelling reasons" to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor."*



- 9(d) In the light of these settled principles, it is to be scrutinized whether the judgment of acquittal in favour of accused is to be reversed or not. It is also fundamental principle of criminal jurisprudence that defence witnesses examined by the accused have same credibility as the prosecution witnesses. The defence evidence cannot be doubted or disbelieved simply because it is brought on record by the accused. The defence evidence is legally entitled to same respect, treatment and evolution of credibility as prosecution evidence. The defence evidence cannot be automatically rejected. Nor any preferential treatment can be given to prosecution evidence as the goal of the Court is to unearth the truth rather than the sole purpose of conviction of accused by just relying upon the prosecution witnesses. Thus, the defence evidence cannot be discarded simply because it was brought on record by the accused. Both prosecution and defence evidence are subjected to same level of scrutiny to determine if the fact brought on record by either party is truthful and reliable. If the defence evidence brought on record by the accused is found reliable, that evidence can be used to rebut or discredit the prosecution's case.
- 9(e). In the present case, FSL Report Ex.P-7 reflects that human semen was detected on Ex.1-a (salwar Ex.P-11 of prosecutrix) and Ex.P-2 (underwear of accused), however, no semen was detected on the rest of the exhibits i.e. on two cotton wool swabs on sticks stated as vaginal swabs but the police did not get any report whether the semen of these exhibits were that of accused because the blood sample of the accused was never collected



by PW-4 Dr. Suresh Kumar Kataria, who medically examined the accused.

9(f). The accused himself moved application before the Court of learned SDJM to get the DNA profiling done to determine whether the human semen detected on the salwar and underwear was that of him or not ? On the basis of this application, the accused was taken to FSL Madhuban for taking sample of his blood for DNA profiling. DNA report dated 01.03.2013 states that the allelic pattern of item No.1 i.e. salwar of the prosecutrix did not match with the allelic pattern of item No.12 i.e the blood sample of accused. This fact is noted by learned trial Court in para No.22 (viii and ix) of the impugned judgment.

9(g). So far as the legal position in respect of evidentiary value to be given to the DNA report is concerned, reference can be made here to decision by Hon'ble the Apex Court in the case of **Anil @ Anthony Arikswamy Joseph v. State Maharashtra MANU/SC/0124/2014: (2014) 4 SCC 69**, in which it was observed in paragraph 18 as under:

18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be



concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory".

9(h). In the present case, after FSL report Ex. P-7, the accused moved application for DNA profiling and upon the order of the Court, his blood sample was taken by FSL Madhuban. Thus, so far as the integrity of his blood sample and integrity of the salwar Ex. P-11 as sample is not questionable. There is no reason for not relying upon the DNA report regarding the DNA profiling of the blood of accused with the semen found on the salwar Ex.P-11 of PW3 prosecutrix. As the DNA of the semen on the salwar Ex.P-11 of the prosecution was found not matching with the blood of the accused and since DNA report is valid and reliable piece of evidence, learned trial Court committed no irregularity or illegality to make this report as one of the basis/reasoning for its judgment of acquittal

9(i). Besides this, learned trial Court also noted the discrepancies in the statement of the prosecutrix and her mother PW-10 to disbelieve their testimonies. These discrepancies are as under:-

- (i) PW3 prosecutrix stated that accused kept her mouth clubbed with his hand throughout the occurrence and as such, she could not raise alarm. She also stated that accused kept his hand at her mouth even when accused was putting of his pant. Learned trial Court rightly



observed that this version of the prosecutrix is hard to believe and is not acceptable as the same does not appeal to a common sense.

- (ii) Learned trial Court also noted that the house of the prosecutrix is surrounded by the house of her uncles and prosecutrix further stated that she was alone at the time of incident when she was taken by the accused from her house to bathroom of Rampat which is about 40-45 yards away. Learned trial Court rightly noted that when the house of the prosecutrix is surrounded by houses of her family members, then it is highly improbable to take the prosecutrix to the toilet of another person without being noticed by the residents of the adjoining houses.
- (iii) Regarding the place of occurrence, PW3 prosecutrix in her complaint Ex.P-3 and in her testimony before the Court stated that the incident took place in the bathroom of Rampat whereas, she informed PW8 Dr. Suman Tanwar that she was sexually assaulted at her own house. PW8 Dr. Suman Tanwar during the cross examination also stated that she was intimated by the prosecutrix that the incident had taken place at her house. Thus, there are two versions regarding the place of occurrence disclosed by the prosecutrix and this also makes the prosecution's case highly doubtful.



- (iv) As per the MLR Ex. P-10, there was no injury on the private parts and there was only one injury on the back of the prosecutrix regarding which doctor had opined that the possibility of the said injury being 48 hours old cannot be ruled out. Meaning thereby, the said injury could have been suffered by the prosecutrix prior to the occurrence as the medical examination of PW3 was conducted within 5 hours of occurrence. PW3 in her examination in chief also did not depose that she suffered injury on her back although she has stated that accused had given elbow blow on her chest. As per MLR Ex. P-10 there was no injury on her chest. PW3 also deposed that accused clubbed her mouth with his hand throughout the occurrence. Had that been the case, there would have been swelling or some mark of injury on her face. The testimony of prosecutrix that she was forcibly taken from her house to place of occurrence which was at a distance of around 45 feet from her house was rightly disbelieved by the learned trial Court because there was no injury or dragging marks on her leg or any part of her body. In statement Ex.D1 of PW10 mother of prosecutrix, she had stated that she had not seen the accused committing intercourse with her daughter and she had only seen the accused coming out of bathroom. So as



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per her statement Ex.D1 before the Police, the version of rape is not corroborated.

- (v) PW3 prosecutrix in her examination in chief also stated that she had given nail bite or tooth bite to accused during struggle but as per MLR Ex. P5 of accused, there was no mark on his body. This also belies the story of the prosecution.

9(j) In view of the DNA report dated 01.03.2013 that negates that semen found on the salwar Ex.P-11 of PW3 was that of accused, and in view of the discrepancies and contradictions noted above, learned trial Court rightly recorded acquittal of the accused.

9(k) In view of above discussion, we do not find any illegality or irregularity in the impugned judgment.

Consequently, the appeal fails and is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

(RAMESH KUMARI)
JUDGE

06.03.2026

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