IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 281 of 2015
Reserved on: 04.09.2025
Decided on: 12.09.2025

State of Himachal Pradesh .....Appellant

Versus

Sunil Khan .....Respondent

Coram
Hon'ble Mr. Justice Vivek Singh Thakur, Judge
Hon'ble Mr. Justice Sushil Kukreja, Judge
[1] *Whether approved for reporting?* Yes.

For the appellant: Mr. J.S. Guleria, Deputy Advocate General.

For the respondent: Mr. Y.P. Sood, Advocate.

Sushil Kukreja, Judge

The instant appeal has been preferred by the appellant/State under Section 378 of the Code of Criminal Procedure against the impugned judgment of acquittal dated 02.02.2015, passed by the learned Sessions Judge, Una, District Una, H.P., in Sessions Trial No. 8 of 2014, whereby the accused (respondent herein) was acquitted under Sections 376 and 506 of the Indian Penal Code (for short "IPC").

2. Brief facts giving rise to the present appeal, as per the prosecution story, are that on 01.09.2013 the prosecutrix/victim (name withheld) got lodged a complaint at Police Station, Bangana, wherein she alleged that her husband was labourer and on 31.08.2013, he had gone to the village for his work. She further alleged that her children had also gone to the school and after collecting grass from the forest, she returned

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

home at around 12 noon. When she came back home, she found Sunil Mohammad (accused) sitting on a cot in the *verandah* of her house. She went inside the room to bring water for him, but in the interregnum, the accused also entered the room and caught hold of her and laid her on the double bed. As per the prosecutrix, the accused had torn her clothes and committed rape upon her. The accused also threatened her with dire consequences in case she disclosed the incident to anyone. Thereafter, on motor cycle, bearing registration No. HP-72-0397, the accused left the place. The prosecutrix narrated the incident to her husband when he returned home, but she could not report the matter to the police on 31.08.2013 due to fear. Upon the complaint, so made by the prosecutrix, the police registered a case against the accused and the investigation commenced. The prosecutrix was got medically examined at R.H. Una and scientific samples were preserved. Police photographed the spot, prepared the site plan, effected relevant recoveries and the statements of the witnesses were recorded. The accused was also medically examined at CHC Bangana. The scientific samples were sent for chemical analysis to RFSL, Dharamshala. During the course of the investigation, the accused made a disclosure statement under Section 27 of the Indian Evidence Act and the place of occurrence was demarcated. The motorcycle of the accused was taken into possession and the statement of the prosecutrix under Section 164 Cr.P.C. was recorded. After completion of the investigation, police presented the chagesheet before the learned Trial Court.

3. The learned Trial Court, vide order dated 19.06.2014 framed charge against the accused under Section 376 and 506 of IPC, to which he did not plead guilty and claimed trial.

4. The prosecution, in order to prove its case, examined 16 witnesses. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he pleaded not guilty and claimed innocence.

5. The learned Trial Court, vide impugned judgment dated 02.02.2015, acquitted the accused for the offences charged against him, hence, the instant appeal preferred by the appellant-State.

6. The learned Deputy Advocate General for the appellant/State contended that the impugned judgment is against the law and facts, based upon surmises and conjectures, thus liable to set-aside. He further contended that the learned Trial Court has discarded the testimonies of the prosecution witnesses for untenable reasons as such the impugned judgment of acquittal passed by the learned Trial Court deserves to be quashed and set-aside by allowing the instant appeal and the accused be convicted.

7. Conversely, the learned counsel for the respondent/accused contended that the judgment passed by the learned Trial Court is the result of proper appreciation of the material on record and the same was passed after appreciating the evidence and law in its right and true perspective. He further contended that the learned Trial Court has passed a well reasoned judgment, which does not require any interference, thus the instant appeal, which is devoid of any merit, be

dismissed.

8. We have heard the learned Deputy Advocate General for the appellant/State, learned counsel for the respondent/accused and carefully examined the entire records.

9. It is well settled by the Hon'ble Apex Court in a catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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. Further, if two reasonable views 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. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

10. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere***. In Jugendra Singh vs. State of UP, (2012) 6 SCC 297,*** Hon'ble Apex Court has held:-

> *"49. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law."*

11. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence unless there are compelling reasons which necessitate the court for corroboration of her statement. The prosecutrix complaining of having been a victim of the offence of rape is not accomplice of the crime and there is, no rule of law that her testimony cannot be acted without corroboration on material particulars. Her testimony has to be appreciated on the principles of probabilities just as the testimony of any other witness. The deposition of the prosecutrix by itself is sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth, however, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence direct or circumstantial which would lend assurance to her testimony. Corroboration of the testimony of the prosecutrix as the condition for judicial reliance is not requirement of law but a guidance of prudence under the given facts and circumstances.

12. The Hon'ble Supreme Court has observed in a catena of decisions that the Court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature to throw out an otherwise reliable prosecution case. If the statement of the prosecutrix is of sterling quality and inspires confidence, then corroboration from other evidence need not be sought, but where the statement of the prosecutrix is shaky and does not inspire confidence then corroboration should be sought from other evidence collected during investigation.

13. In ***State of Himachal Pradesh Vs. Gian Chand, (2001) 6 SCC 71,*** it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on.

14. In the case of ***Vijay @ Chinee vs. State of Madhya Pradesh, (2010) 8 SCC 191***, it was held that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix. Paras- 9 to 14 of the judgment are reproduced as under:-

> *"9.In State of Maharashtra v. Chandraprakash Kewalchand Jain AIR 1990 SC 658, this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested*

with the same amount of suspicion as that of an accomplice. The Court observed as under:-

> *"16.A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.*

10. In State of U.P. v. Pappu @ Yunus and Anr. AIR 2005 SC 1248, this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under:-

> *12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the*

> *latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.*

11. In State of Punjab v. Gurmit Singh and Ors.: AIR 1996 SC 1393, this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under:

> *"8...The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.... The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self- respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances…*
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> *21….The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or*

> *insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.*
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> *12. In State of Orissa v. Thakara Besra and Anr. AIR 2002 SC 1963, this Court held that rape is not mere a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.*
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> *13. In State of Himachal Pradesh v. Raghubir Singh (1993) 2 SCC 622, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshswar v. State of Rajasthan.*
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> *14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix"*

15. There cannot be any dispute with the proposition of law laid down by the Hon'ble Apex Court in catena of pronouncements that in case of rape, evidence of prosecutrix must be given predominant consideration, and finding of guilt in case of rape can be based upon the uncorroborated evidence of the prosecutrix, but apart from above, Hon'ble Apex court has also held that if the story put forth by the prosecutrix is improbable and belies logic, placing sole reliance upon her

statement would be violence to the very principles which govern the appreciation of evidence in a criminal matter. In this regard, reliance is placed on judgment rendered by the Hon'ble Apex Court in ***Tameezduddin alias Tammu v. State of NCT of Delhi, (2009) 15 SCC 566,*** wherein it has been held as under:-

> *"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable."*

16. In the background of the aforesaid legal position, we are of the view that if the evidence of the prosecutrix is read and considered in totality of the circumstances along with other evidence on record, in which the offence is alleged to have been committed, her deposition does not inspire confidence. While appearing in the witness-box as PW-1, the prosecutrix deposed that she was housewife and her husband was a labourer. They had three children and her elder son used to work at Rajasthan and other sons were studying in the school. She further deposed that on 31.08.2013, her husband had gone to the village for work and the children had gone to the school. Around 12 noon, she returned to her house after taking grass from hillock and she found accused, who was her cousin (son of the uncle) sitting on a cot in their courtyard. As per the prosecutrix, she went inside the room for getting water from the refrigerator and the accused came behind him in the room and gagged her mouth and made her to lie on the bed. She also

deposed that the accused had torn her clothes, i.e., shirt and salwar and committed rape on her. She deposed that after forcibly committing rape with her, the accused threatened her not to disclose the occurrence to anyone and in case she disclosed the same, he would kill her and her whole family. Thereafter, the accused fled away from the spot on his motorcycle. As per the prosecutrix, when her husband returned home in the evening, she was weeping and disclosed the incident to him. The husband of the prosecutrix called her brother, who came around 3 p.m. on the subsequent day. She disclosed the occurrence to her brother as well and he took her to police station and thereafter an application, Ex.PW-1/A, was moved before the police.

17. At this juncture, we would like to refer the judgment rendered by Hon'ble the Supreme Court in the case of ***Rai Sandeep @ Deepu vs. State (NCT of Delhi) reported in (2012) 8 SCC 21,***in which it has been clarified that the "sterling witness" should be of a very high quality and the court considering the version of such witness should be in a position to accept it for its face value without any hesitation and under no circumstance, it should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of events. The relevant paragraphs of the aforesaid judgment read as under:

> *"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre 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 every one 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 such similar tests to be applied, can it 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."*

18. From the above quoted ratio laid down by the Hon’ble Supreme Court, it is clear that before placing reliance upon the statement of a prosecutrix, the Court should satisfy itself that she has withstood the test of cross-examination and under no circumstances it should give room for any doubt about the factum of occurrence, the person involved and the sequence of events. In the light of the aforesaid position of law, let us now analyze the statement of the prosecutrix. The entire cross-examination of the prosecutrix reveals her conduct at the time of the incident and after the incident as quite unnatural. In her cross-examination, she admitted that there were number of other houses near

her house, but surprisingly, neither did she raise any hue and cry nor raised her voice calling for help. As per the prosecutrix, the accused had gagged her mouth with one of his hands, but such fact is missing both in the FIR as well as in her complaint, Ex. PW-1/A. In her cross-examination, she deposed that the accused made her lie on the bed and while sexually molesting her, he kept on gagging her mouth with one hand and with other hand, he had torn her clothes. However, it appears to be highly unimaginable that a young well built lady of 40 years would not show any resistance when the accused was tearing her clothes and was sexually molesting her. In the given circumstances, the accused could not have succeeded in sexually assaulting the prosecutrix, especially when both the hands of the prosecutrix were free for resistance. The medical evidence clearly shows that the prosecutrix did not sustain any injury on any part of her body and there was no mark of any injury or violence on her person at the time of her medical examination, which further fortifies the fact that she did not resist the alleged act done by the accused. The version of the prosecutrix that the accused had torn her clothes also seems concocted, as it was not possible for the accused to tear the clothes with one hand. As per her own version, for the last 25 years she was acquainted with the accused and he was her cousin. In fact, it seems that the prosecutrix was consenting party to the alleged act and had it not been the case, she would have certainly raised hue and cry or cried for help or offered some resistance against the alleged act of the accused.

19. The next limb of the version of the prosecutrix also seems unnatural. She deposed that after sexually exploiting her, the accused fled away from the spot and she started weeping and kept on watching her husband. Now, it is highly surprising that the prosecutrix did not even bother to contact her husband telephonically and to this effect she had given explanation that she did not contact her husband on phone as he did not carry phone with him to his place of work. However, such an explanation does not seem to a valid one, as her husband (PW-3) specifically deposed that he used to receive all his phone calls, in connection with his work, on his mobile phone. He nowhere stated that he had not taken his mobile phone with him on that day.

20. The perusal of the record further reveals that just at the distance of 2 kms, the real sister of the prosecutrix (PW-7) used to reside and the prosecutrix not only had affable relationship with her, but they were on visiting terms with each other. PW-7, in her cross-examination, also admitted that the prosecutrix did not tell her about the alleged incident. It is not discernible that why the prosecutrix did not inform her real sister who used to reside only at a distance of 2 kms from her house. It is also quite strange that neither the prosecutrix nor her husband (PW-3) told about the alleged incident to PW-7 even after they were asked to inform her (PW-7) by PW-12, brother of the prosecutrix. All these deficiencies cast grave doubt over the veracity of the prosecution case.

21. When the statement of the prosecutrix is carefully scrutinized, we find that the same is not of sterling quality and does not inspire

confidence as it contains material inconsistencies and contradictions which affect the core of the prosecution case. After extensively examining the testimony of the prosecutrix (PW-1) and her deposition coupled with the deposition of her husband (PW-3), it can safely be held that the testimony of the prosecutrix does not at all inspire confidence and it is tainted with improvements, contradictions and embellishments and also seems unnatural on various aspects, thus, the same cannot be relied upon.

22. We are aware that conviction for the offence of sexual assault can be founded on the sole testimony of the prosecutrix but the same has to be of sterling quality. Given the fact that testimony of the prosecutrix does not inspire confidence coupled with the peculiar facts and circumstances of the case, it cannot be said that the prosecution has been able to prove its case against the accused beyond all reasonable doubt.

23. In view of what has been discussed hereinabove, no interference in the judgment of acquittal, dated 02.02.2015, passed by the learned Sessions Judge Una, H.P., in Sessions Trial No. 8 of 2014, is required. The view taken by the learned Trial Court was the only possible view, as such the appeal, which sans merits, deserves dismissal and is accordingly dismissed. Bail bonds are discharged.

24. In view of the provisions of Section 481 of *Bhartiya Nagarik Suraksha Sanhita*, 2023, the respondent is directed to furnish bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the

satisfaction of the learned Trial Court within a period of four weeks with the stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

The appeal is accordingly disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Sushil Kukreja)
Judge

12th September, 2025
(virender)