

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

CRA-S-1830-SB-2004
Reserved on: 27.05.2026
Pronounced on: 29.07.2026
Uploaded on: 29.07.2026

Whether only operative part of the judgment is Pronounced: NO

Whether full judgment is pronounced: YES

AVTAR SINGH

....Appellant

Versus

STATE OF PUNJAB

....Respondent

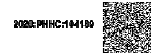
CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Nikhil Ghai, Advocate for the appellant.

Mr. J.S. Rattu, DAG Punjab.

RUPINDERJIT CHAHAL, J.

1. The present appeal has been preferred by the appellant, Avtar Singh, assailing the judgment of conviction and the order of sentence dated 31.07.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Kapurthala. Vide the impugned judgment, the appellant was convicted for the offences punishable under Sections 376 and 450 of the Indian Penal Code. Vide the order of sentence, he was sentenced, under Section 376 IPC, to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months; and, under Section 450 IPC, to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. Both the substantive sentences were ordered to run



concurrently, with the benefit of set off for the period of detention already undergone.

2. The brief facts of the prosecution case are that the prosecutrix was married to Harpreet Singh, who was employed as a truck driver. Out of the said wedlock, two sons, aged about five years and four years, were born. At the relevant time, she was residing along with her two minor children in one room of the house, whereas her parents-in-law occupied the adjoining room. It was the case of the prosecution that on the intervening night of 05/06.02.2004, after her children had fallen asleep, the prosecutrix was sewing clothes. Thereafter, she went out to ease herself and, while returning to her room, the accused, Taj Singh alias Kala, armed with a kirpan, forcibly entered the room after scaling the boundary wall of the house. It was alleged that the accused threatened her with dire consequences and committed forcible sexual intercourse with her against her will and without her consent. On her raising an alarm, her father-in-law, Hardeep Singh, and her mother-in-law reached the spot, whereupon the accused fled from the place of occurrence along with the kirpan. It was further alleged that an attempt was initially made by the village Panchayat to amicably resolve the dispute. However, when no settlement could be arrived at, the matter was reported to the police. On the basis of the statement made by the prosecutrix, FIR No. 23 dated 06.02.2004 came to be registered at Police Station Dhilwan, District Kapurthala, under Sections 376 and 450 of the Indian Penal Code in respect of the aforesaid occurrence.

3. The investigation was thereafter set in motion in accordance with law. During the course of investigation, the Investigating Officer recorded the statement of the prosecutrix and other witnesses under Section 161 of the Code



of Criminal Procedure, prepared the rough site plan of the place of occurrence, took into possession the wearing apparel of the prosecutrix and got her medico-legally examined. The accused was arrested and was also subjected to medico-legal examination by Dr. Rajan Bhatti, who opined that he was capable of performing sexual intercourse and also noticed certain injuries on his person. Pursuant to the disclosure statement suffered by the accused during the course of interrogation, a kirpan was recovered and taken into possession vide the requisite recovery memo in the presence of independent witnesses. The wearing apparel of the prosecutrix along with the vaginal swabs and other relevant parcels were forwarded to the Chemical Examiner for analysis and the report received in that regard formed part of the police report. Upon completion of the investigation and finding sufficient material against the accused, the police presented the final report under Section 173 of the Code of Criminal Procedure before the learned Illaqa Magistrate.

4. Upon finding sufficient grounds to proceed against the accused, the learned trial Court framed charges against him for the offences punishable under Sections 376 and 450 of the Indian Penal Code. The substance of the accusations was read over and explained to the accused, to which he pleaded not guilty and claimed trial.

5. In order to substantiate the charges against the accused, the prosecution examined as many as ten witnesses. The prosecutrix appeared as PW5, whereas her father-in-law, Hardeep Singh, was examined as PW6. Dr. Barinder Gill, who medico-legally examined the prosecutrix, stepped into the witness box as PW9, while Dr. Rajan Bhatti, who medico-legally examined the accused, appeared as PW4. The Investigating Officer, ASI Sukhdev Singh, was



examined as PW7. Besides examining the aforesaid material witnesses, the prosecution also examined the official and formal witnesses and tendered into evidence the report of the Chemical Examiner along with other documentary evidence in support of its case.

6. Upon the conclusion of the prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein all the incriminating circumstances appearing against him in the prosecution evidence were put to him. The accused denied the prosecution allegations in toto and claimed false implication. He, however, set up a defence that the prosecutrix had herself called him to her house, opened the gate and taken him inside her room, where the sexual intercourse took place with her free consent and at her instance. The accused did not lead any evidence in defence. Upon appreciation of the evidence on record, the learned trial Court convicted and sentenced the appellant in the manner mentioned hereinabove.

7. Learned counsel for the appellant contended that the impugned judgment of conviction and the consequent order of sentence are legally unsustainable, being the result of a misappreciation of the oral as well as documentary evidence available on record. It was submitted that the prosecution has failed to prove its case beyond reasonable doubt and that the defence set up by the appellant, namely that the sexual intercourse was consensual, stands duly probalised from the evidence on record. Learned counsel further submitted that the conduct attributed to the prosecutrix is wholly unnatural and inconsistent with the prosecution version.

8. It was argued that the alleged occurrence is stated to have taken place inside the room occupied by the prosecutrix in a residential house where



her parents-in-law were sleeping in the adjoining room and her two minor children were sleeping in the same room. Despite the appellant allegedly entering the house after scaling the boundary wall at about midnight, the prosecutrix admittedly did not raise any immediate alarm. Such conduct, according to the learned counsel, is wholly inconsistent with that expected of a victim of a forcible sexual assault.

9. It was further contended that, according to the prosecution version itself, the appellant remained inside the room for a sufficient length of time, removed the clothes of the prosecutrix and committed sexual intercourse. Yet, neither did her father-in-law and mother-in-law, who were sleeping in the adjoining room, intervene during the alleged occurrence, nor did the two minor children sleeping in the same room wake up. Even no neighbour gathered at the place of occurrence. According to the learned counsel, these circumstances render the prosecution story inherently improbable and cast a serious doubt upon its truthfulness.

10. Learned counsel next submitted that the medical evidence completely belies the allegation of forcible sexual intercourse. Referring to the testimony of PW9 Dr. Barinder Gill, it was contended that no injury whatsoever was found on any part of the body of the prosecutrix, including her private parts. During cross-examination, the witness categorically admitted that there was no external injury on her person. It was argued that despite the prosecutrix alleging resistance and a struggle with the appellant, the complete absence of injuries materially undermines the prosecution version and lends support to the defence plea that the sexual intercourse was consensual. It was further pointed out that



PW6 Hardeep Singh had also admitted that he had not noticed any injury on the person of the prosecutrix.

11. It was then argued that, on the other hand, the appellant himself was found to have sustained multiple injuries on his person. PW4 Dr. Rajan Bhatti proved the injuries noticed on the cheek, forearm, chin and knee of the appellant and also admitted during cross-examination that such injuries could not have been caused by simple slapping. According to the learned counsel, the prosecution has failed to furnish any explanation whatsoever for the injuries found on the person of the appellant. The non-explanation of these injuries, it was submitted, assumes considerable significance and creates a serious doubt regarding the true genesis and manner of the occurrence.

12. Learned counsel also assailed the prosecution case on the ground of delay in the registration of the First Information Report. It was submitted that the matter was not reported to the police immediately and that the delay in setting the criminal law into motion afforded sufficient time for deliberation and consultation, thereby giving rise to the possibility of embellishment and false implication.

13. Lastly, learned counsel submitted that though a conviction in a case of rape can be based on the sole testimony of the prosecutrix, such testimony must inspire implicit confidence and be of sterling quality. It was argued that where the conduct of the prosecutrix appears unnatural, the medical evidence does not support the allegation of forcible sexual intercourse, the injuries found on the person of the accused remain unexplained and the prosecution version suffers from inherent improbabilities, it would be unsafe to sustain the conviction solely on such evidence. On the strength of the aforesaid



submissions, learned counsel prayed that the appeal be allowed, the impugned judgment of conviction and the consequent order of sentence be set aside and the appellant be acquitted of the charges framed against him.

14. Per contra, learned State counsel supported the impugned judgment of conviction and the consequent order of sentence and contended that the learned trial Court had correctly appreciated the oral as well as documentary evidence available on record and had rightly returned the finding of guilt against the appellant. It was submitted that the testimony of the prosecutrix is natural, cogent, trustworthy and inspires confidence. The same, according to the learned State counsel, stands duly corroborated in its material particulars by the testimony of PW6 Hardeep Singh, the medical evidence, the injuries found on the person of the appellant and the recovery of the kirpan pursuant to his disclosure statement. Learned State counsel further argued that the appellant having admitted the factum of sexual intercourse had failed to substantiate his plea that the same was consensual. It was contended that the burden to probabalise the plea of consent was upon the appellant, which he had failed to discharge. It was further submitted that the delay in lodging the First Information Report stood satisfactorily explained by the prosecution and, therefore, no adverse inference could be drawn on that account. On the strength of the aforesaid submissions, learned State counsel prayed for dismissal of the present appeal and for affirmation of the impugned judgment of conviction and the consequent order of sentence passed by the learned trial Court.

15. I have heard learned counsel for the parties and have carefully gone through the record of the case. The evidence adduced by the parties, the submissions advanced on their behalf and the findings recorded by the learned



trial Court have been duly considered. The question that arises for consideration is whether the prosecution has succeeded in proving the charges against the appellant beyond reasonable doubt and whether the impugned judgment of conviction and the consequent order of sentence call for any interference by this Court.

16. Before advertng to the merits of the rival submissions, it would be apposite to notice that the occurrence in the present case is alleged to have taken place on the intervening night of 05/06.02.2004. The case, therefore, is required to be examined in the light of the provisions of Section 375 of the Indian Penal Code as they stood prior to their substitution by the Criminal Law (Amendment) Act, 2013, which reads as under:

"375. Rape.-

A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

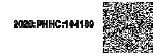
Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

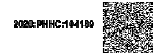


Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

17. The settled principle of criminal jurisprudence is that the burden lies squarely upon the prosecution to establish every ingredient of the offence beyond reasonable doubt. Equally well settled is the proposition that conviction for an offence under Section 376 IPC can be recorded on the sole testimony of the prosecutrix without independent corroboration, provided her testimony inspires implicit confidence and is found to be wholly reliable and of sterling quality. The testimony of such character that it leaves no reasonable doubt regarding its truthfulness and can safely be acted upon without hesitation. In this regard, the Hon'ble Supreme Court in ***Rai Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21***, explained the attributes of a witness of sterling quality in the following terms:-

"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.

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24. There is evidence on record that there was no injury on the breast or the thighs of the prosecutrix and only a minor abrasion on the right-side neck below jaw was noted while according to the prosecutrix's original version, the appellants had forcible sexual intercourse one after the other against her. If that was so, it is hard to believe that there was no other injury on the private parts of the prosecutrix... When on the face value the evidence is found to be defective, the attendant circumstances and other evidence have to be necessarily examined to see whether the allegation... was true."

18. It is equally well settled that where the testimony of the prosecutrix does not inspire confidence, or where the version put forth is improbable and belies logic, the Court would be justified in seeking corroboration and, in its



absence, in extending to the accused the benefit of the doubt. In ***Tameezuddin alias Tammu v. State (NCT of Delhi), (2009) 15 SCC 566***, the Hon'ble Supreme Court observed:

“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.”

19. At the outset, it deserves notice that the factum of sexual intercourse between the appellant and the prosecutrix is not in dispute. In his statement recorded under Section 313 of the Code of Criminal Procedure, the appellant has admitted the sexual intercourse while setting up a specific plea that the same was consensual. Such admission, however, does not absolve the prosecution of its obligation to establish, by cogent, convincing and reliable evidence, that the intercourse was against the will of the prosecutrix and without her consent. The burden to prove the absence of consent rests throughout upon the prosecution and never shifts. Consequently, the principal question that falls for determination is whether the prosecution has succeeded in proving beyond reasonable doubt that the admitted act of sexual intercourse was without the consent of the prosecutrix. In the facts of the present case, the answer to that question substantially depends upon the credibility and reliability of the testimony of the prosecutrix (PW5), there being no eyewitness to the occurrence itself.

20. Tested on the touchstone of the aforesaid principles, this Court finds that the testimony of the prosecutrix does not inspire such confidence as would justify recording a conviction solely on its basis without dependable corroboration. The foremost circumstance which creates a serious dent in the



prosecution case is the inconsistency between the ocular version of the prosecutrix and the medical evidence. While appearing in the witness box, the prosecutrix categorically deposed that the appellant had forcibly committed sexual intercourse with her after a struggle. She further asserted that during the occurrence, the appellant caused an injury with the kirpan on her left hand, as a result whereof bleeding ensued and blood stains were left on her clothes. This part of her testimony, however, does not find support from the medical evidence. PW9 Dr. Barinder Gill, who medico-legally examined the prosecutrix soon after the occurrence, categorically deposed that no injury whatsoever was found on any part of her body, including her external genitalia. During cross-examination, the witness reiterated that there was no external injury on her person. Likewise, PW6 Hardeep Singh, the father-in-law of the prosecutrix, admitted that he had not noticed any injury on her body. Thus, the assertion of the prosecutrix that she had sustained an injury on her left hand resulting in bleeding remains wholly unsubstantiated.

21. It is true, as held in *Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635*, that the mere absence of injuries on the person of the prosecutrix is not, by itself, sufficient to falsify her otherwise cogent and trustworthy testimony, and that a helpless submission under the threat of a weapon need not necessarily leave marks of injury. That principle, however, operates in a case where the prosecutrix does not herself set up a case of active physical resistance.

22. It is true that the absence of injuries on the person of the prosecutrix is not by itself decisive of the issue of consent, nor can it invariably lead to the conclusion that no offence of rape was committed. The law in this regard is well settled. However, the present case stands on a different footing. It is not a case where the Court is merely confronted with the absence of injuries. Rather, the

prosecutrix has positively asserted that she resisted the appellant, that a struggle had ensued and, more importantly, that she sustained a specific kirpan injury on her left hand which resulted in bleeding. When such a specific assertion is found to be wholly inconsistent with the medical evidence, the contradiction assumes considerable significance. It is no longer a mere absence of corroboration but a positive circumstance affecting the intrinsic reliability of the prosecution version. The testimony of the prosecutrix, therefore, cannot be appreciated in isolation from the medical evidence. The inconsistency between the two introduces an element of doubt regarding the manner in which the occurrence is alleged to have taken place and, consequently, renders it unsafe to accept her version at its face value without careful scrutiny of the remaining evidence on record.

23. The prosecution version also gives rise to certain circumstances which cannot be ignored while appreciating the testimony of the prosecutrix. According to her own deposition, the occurrence took place inside the room occupied by her, where her two minor children, aged about five years and four years, were sleeping. Her parents-in-law were occupying the adjoining room. As per her version, the appellant scaled the boundary wall, entered the room at about midnight, threatened her with a kirpan, removed her clothes and committed forcible sexual intercourse. The occurrence, thus, was not instantaneous but is alleged to have continued for some time. It is, however, difficult to overlook that, according to the prosecution itself, the two children sleeping in the same room did not wake up during the alleged occurrence. Equally, there is nothing to indicate that the parents-in-law, who were occupying the adjoining room, became aware of the occurrence until the prosecutrix is stated to have raised an alarm after the alleged act had been committed. No



independent witness from the neighbourhood has also been associated, though the occurrence is alleged to have taken place in a residential locality. While none of these circumstances, viewed in isolation, may be decisive, they nevertheless constitute relevant factors which require the testimony of the prosecutrix to be examined with greater circumspection.

24. Another circumstance relied upon by the prosecution is the presence of injuries on the person of the appellant. PW4 Dr. Rajan Bhatti noticed multiple abrasions and scrape marks on different parts of the body of the appellant. The prosecution, however, has not led any evidence to establish the manner in which those injuries were sustained or to connect them with the occurrence in question. Likewise, the medical witness has not expressed any opinion as to the precise manner in which such injuries could have been caused. In these circumstances, the injuries found on the person of the appellant are, by themselves, incapable of advancing the prosecution case one way or the other. At the same time, the prosecution has also not furnished any explanation for their presence. The evidentiary value of these injuries, therefore, remains inconclusive. They neither lend assurance to the prosecution version nor can they be treated as circumstances corroborating the allegation that the sexual intercourse was against the will or without the consent of the prosecutrix. Their significance, if any, can only be appreciated while evaluating the prosecution case as a whole.

25. The circumstances attending the lodging of the First Information Report also merit consideration. The occurrence is alleged to have taken place at about 12.00 midnight intervening the night of 05/06.02.2004, and as per the prosecution the in-laws of the prosecutrix got to know about the occurrence on



the same night but the FIR came to be registered on 06.02.2004. The prosecution evidence itself reveals that before the matter was reported to the police, it was taken before the village Panchayat in an attempt to bring about a settlement between the parties. No doubt, every delay in lodging the FIR is not fatal to the prosecution case and, in an appropriate case, an attempt to resolve the matter through elders or a Panchayat may constitute a plausible explanation. Nevertheless, the fact remains that the criminal law was not set in motion immediately after the occurrence. The intervening circumstances preceding the registration of the FIR deprive the prosecution version of the spontaneity which ordinarily lends assurance to its truthfulness. Though this circumstance alone may not be sufficient to discard the prosecution case, it is certainly a relevant factor which has to be borne in mind while appreciating the overall reliability of the prosecution evidence.

26. Nor does the other evidence led by the prosecution furnish any independent assurance on the crucial issue of absence of consent. PW6 Hardeep Singh admittedly did not witness the occurrence. His testimony is confined to the events which allegedly transpired after the prosecutrix raised an alarm and, therefore, cannot be treated as corroboration of the actual act of sexual intercourse or the absence of consent. Likewise, the recovery of the kirpan pursuant to the disclosure statement of the appellant does not materially advance the prosecution case. At the highest, the recovery establishes the factum of recovery of the weapon. It does not, by itself, prove that the sexual intercourse was against the will or without the consent of the prosecutrix, which is the real controversy requiring determination in the present case.



27. Similarly, the report of the Chemical Examiner also does not carry the prosecution case any further. The factum of sexual intercourse is not in dispute, the appellant having admitted the same while setting up the plea of consent. The Chemical Examiner's report, therefore, does not furnish any assistance in determining the pivotal issue, namely, whether the admitted act of sexual intercourse was consensual or otherwise.

28. When the evidence is appreciated in its entirety, the cumulative effect of the aforesaid circumstances cannot be overlooked. The inconsistency between the ocular version and the medical evidence, the absence of any medical support to the specific allegation of a kirpan injury, the circumstances attending the alleged occurrence, the inconclusive nature of the injuries found on the person of the appellant, the circumstances preceding the registration of the FIR and the absence of independent corroboration on the crucial issue of consent, when viewed collectively, create a reasonable doubt regarding the prosecution version. Though each of these circumstances, taken individually, may not be sufficient to discredit the prosecution case, their cumulative effect materially affects the credibility of the prosecution evidence. It is trite that suspicion, however strong, cannot take the place of proof.

29. It is a settled law that where two views are reasonably possible on the evidence available on record, the one favourable to the accused must ordinarily prevail. The prosecution is required to establish its case beyond reasonable doubt and the benefit of every reasonable doubt must necessarily ensure to the accused. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that the testimony of the prosecutrix does not possess that degree of intrinsic reliability which would



justify sustaining the conviction solely on its basis. The evidence led by the prosecution falls short of the standard of proof required in criminal jurisprudence to establish beyond reasonable doubt that the admitted act of sexual intercourse was against the will of the prosecutrix and without her consent. Consequently, the appellant is entitled to the benefit of doubt.

30. Once the prosecution fails to establish the charge under Section 376 IPC beyond reasonable doubt, the conviction recorded under Section 450 IPC also cannot be sustained. The prosecution alleged that the appellant committed house-trespass in order to commit the offence punishable under Section 376 IPC. Since the prosecution has failed to prove beyond reasonable doubt that the offence under Section 376 IPC was committed, the foundation on which the conviction under Section 450 IPC rests also fails.

31. The learned trial Court, while returning the finding of guilt, did not accord due weight to the material infirmities and inconsistencies noticed hereinabove. The conclusions drawn by it, therefore, cannot be sustained and deserve to be set aside.

32. For all the foregoing reasons, this Court is of the considered view that the prosecution has failed to bring home the charge against the appellant beyond reasonable doubt, and that the appellant is entitled to the benefit of the doubt.

33. Accordingly, the present appeal is allowed. The impugned judgment of conviction and the order of sentence dated 31.07.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Kapurthala, are set aside, and the appellant, Avtar Singh alias Kala, is acquitted of the charges framed against him under Sections 376 and 450 of the Indian Penal Code, by extending



to him the benefit of the doubt. His bail bonds and surety bonds shall accordingly stand discharged.

34. Pending application(s), if any, shall also stand disposed of.

(RUPINDERJIT CHAHAL)
JUDGE

29.07.2026

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