

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-457-SB of 2004

Reserved On: 15.09.2026
Pronounced On: 21.09.2026

Rambir

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Ms. Mehak Sawhney, Advocate
for the appellant(s).

Mr. Ramender Singh Chauhan, Assistant Advocate General,
Haryana, for the respondent.

Surya Partap Singh, J.

1. This is appeal against conviction. By virtue of judgment dated 21.01.2004, hereinafter being referred to as ‘impugned judgment’, the appellant, hereinafter being referred to as ‘convict’ only, has been held guilty for the commission of offence punishable under Sections 366 & 376 of ‘the Indian Penal Code, 1860’, hereinafter being referred to as ‘IPC’. Resultantly by virtue of order on the quantum of sentence, dated 23.01.2004, hereinafter being referred to as ‘impugned order’, the appellant has been sentenced to undergo imprisonment, as detailed below, by the learned Additional Sessions Judge (Fast Track Court), hereinafter being referred to as ‘Trial Court’ only.

Offence under Section	Sentence
366 of IPC	Rigorous imprisonment for a period of five years and to pay a fine of ₹500/- and in default thereof to further undergo

Offence under Section	Sentence
	rigorous imprisonment for a period of three months.
376 of IPC	Rigorous imprisonment for a period of seven years and to pay a fine of ₹1,000/- and in default thereof to further undergo rigorous imprisonment for a period of six months.

2. All the sentences were ordered to run concurrently.
3. Aggrieved of the above-mentioned impugned judgment of conviction and order on quantum of sentence, the present appeal has been preferred.
4. The above-mentioned impugned judgment of conviction and order on quantum of sentence came pursuant to a trial for the commission of offence punishable under Sections 363, 366 & 376 of IPC vide FIR No. 297 dated 09.05.2001, Police Station Sadar Gurgaon, District Gurgaon, Haryana. The above-mentioned FIR came into being at the instance of ‘Parkashbir Yadav’, hereinafter after being referred to as ‘complainant’ only. As per case set out by the prosecution the above named complainant approached the police in Police Station Sadar Gurgaon and filed a compliant (Ex.PD) wherein he alleged that he was employed in ‘New Delhi Municipal Corporation’, and that as usual his daughter, namely (XXX), hereinafter being referred to as ‘Prosecutrix’ only, had left home in the morning on 07.05.2001 for CMC training. According to complainant ‘Rambir Yadav’, the appellant herein, had enticed his daughter and took her away to some unknown place. The above named complainant had requested for tracing out of his daughter and action be taken against the offender, i.e. the appellant.

5. It was the case of the prosecution that in view of above-mentioned complaint (Ex.PD) formal FIR of this case was lodged for the commission of offence punishable under Sections 363, 366 & 376 of IPC. As per prosecution during the course of investigation, on 05.06.2001 the daughter of complainant, hereinafter being referred to as 'prosecutrix' only, was recovered from the custody of appellant at Dhaula Kuan, Delhi. It was further alleged by the prosecution that once the prosecutrix was recovered from the custody of appellant necessary formalities with regard to her medical examination and recording of her statement under Section 164 of 'Code of Criminal Procedure, 1973', hereinafter being referred to as "Cr.P.C." only, were completed. As per prosecution the appellant was formally arrested and further formalities of investigation, i.e. collection of relevant evidence was undertaken by the Investigating Officer. Once the investigation was complete the appellant was sent to the Court to face trial for the commission of offence punishable under Sections 363, 366 & 376 of IPC.

6. To discharge its burden, of proving charges against the appellant, the prosecution, in the instant case, had relied upon oral and documentary evidence, both. The documents proved, and marked with exhibits, by the prosecution, were:-

- | | | |
|---------|---|---|
| Ex.PA | - | Disclosure Statement of Rambir (the appellant) |
| Ex.PB | - | Copy of demarcation memo of place where Rambir kept the prosecutrix |
| Ex.PC | - | Copy of statement of prosecutrix, recorded under Section 164 of Cr.P.C. |
| Ex.PC/2 | - | Application moved by the Investigating |

- Officer for recording of statement of prosecutrix under Section 164 of Cr.P.C.
- Ex.PC/I - Order dated 14.06.2001, passed by the learned Additional Chief Judicial Magistrate on the application for recording the statement of the prosecutrix under Section 164 of Cr.P.C.
- Ex.PD - Complaint moved before the police by the complainant
- Ex.PD/I - Endorsement, recorded by the Inspector on the complaint moved by the complainant
- Ex.PE - Memo with regard to handing over the custody of prosecutrix to her father
- Ex.PF - Report of Forensic Science Laboratory, Haryana, Madhuban, Karnal
- Ex.PG - Medicolegal Report of accused
- Ex.PH - Rough site plan of the place where the prosecutrix was kept by accused
- Ex.PJ - Copy of First Information Report (FIR)
- Ex.PJ/1 - Endorsement regarding registration of FIR on the complaint
- Ex.PK - Medicolegal Report of the prosecutrix
- Ex.PK/1 - Ultrasound Reports of the prosecutrix
to
Ex.PK/4
- Ex.PL - Application moved by the Investigating Officer with the regard to medical examination of the accused.
- Ex.PL/1 - Memo with regard to a parcel containing clothes of the accused

7. To provide support and corroboration to the above-mentioned documentary evidence, as many as 14 witnesses were examined by the

prosecution. They were:-

PW.1	-	HC Babu Ram
PW.2	-	Krishan Kumar, UGC
PW.3	-	HC Mukh Ram Singh
PW.4	-	The Prosecutrix
PW.5	-	Parkash Vir Yadav, the Complainant
PW.6	-	HC Ram Tirath
PW.7	-	Dr. R.K.Sachdeva, Medical Officer, General Hospital, Gurgaon
PW.8	-	ASI Raj Singh, P.P. Palam Vihar
PW.9	-	Inspector Babu Lal, DI, CID, Narnaul
PW10.	-	Inspector Randhir Singh, SHO NIT Faridabad
PW.11	-	Dr. Usha Rani, Senior Resident, Safdarjung Hospital, Delhi
PW.12	-	ASI Budh Ram
PW.13	-	SI Shakuntla, P.S. City Gurgaon
PW.14	-	Sh. J.R.Duggal, Additional CJM, Gurgaon

8. Once the prosecution evidence was over, the learned trial Court completed all the essential formalities, enshrined under Section 313 CrPC. Thereafter, opportunity to lead defence evidence was afforded to the appellant. In his defence evidence, the appellant had not examined any witness.

9. When the evidence of both the parties was complete, the learned Trial Court gave opportunity to the learned Public Prosecutor and the learned counsel for the appellant, to address arguments. Thereafter, a judgment of conviction, against the appellant, was pronounced and,

accordingly, the sentence, detailed hereinabove, was awarded to the appellant.

10. Heard.

11. It has been contended by the learned counsel for the appellant that the impugned judgment is perverse and unsustainable in view of the fact that that settled principle of criminal jurisprudence had been ignored by the learned Trial Court. According to learned counsel for the appellant merely on the basis of assumptions and presumptions it was observed by the learned Trial Court that charges for the commission of offence punishable under Sections 366 & 376 of IPC had been proved, whereas the evidence adduced by the prosecution was grossly inadequate, inconsistent and contradictory on material parts and therefore, the same was not sufficient to discharge the burden of prosecution. The learned counsel for the appellant has also contended that the learned Trial Court failed to look into the fact that that the story set-out by the prosecution was unnatural and unable to convince a prudent mind.

12. It has been further contended by learned counsel for the appellant that merely on the basis of conjectures and surmises a false story, set-out by the prosecution with regard to abduction and rape of the prosecutrix, had been believed by the learned Trial Court. As per learned counsel for the appellant if the cardinal principle of criminal jurisprudence which prescribes that the prosecution is supposed to prove its case beyond the shadow of all reasonable doubts would have been followed by the learned Trial Court, in any eventuality the impugned judgment of conviction could not have been recorded.

13. The learned counsel for the appellant has further contended that in the present case the first and foremost fact to be taken into consideration was that as per complaint filed by the father of the prosecutrix, she left home in the morning on 07.05.2001, but the matter was reported to the police after two days, i.e. in the afternoon on 09.05.2001 and thus, there was an unexplained delay of two days in reporting the matter to the police. According to learned counsel for the appellant another relevant factor to be taken into consideration was that, that as per prosecution story the prosecutrix was recovered by the police from the custody of appellant on 05.06.2001 and on next date, i.e. 06.06.2001 her medical examination was conducted, but the statement of prosecutrix under Section 164 of Cr.P.C. was recorded on 14.06.2001. While deprecating the above-mentioned approach of the Investigating Agency it has been contended by the learned counsel for the appellant that the above-mentioned delay in recording the statement of prosecutrix under Section 164 of Cr.P.C. was because during the above-mentioned period a false story was cooked-up and the prosecutrix, which had voluntarily eloped with the appellant, was forced to give a false statement against the appellant.

14. In addition to above, the learned counsel for the appellant has also contended that in the present case there is no dispute qua the fact that at the time of incident the prosecutrix was major, i.e. above the age of 21, and that the circumstances in itself showed that she went with the appellant with her free will and was not abducted forcibly. To support of his above-mentioned claim the learned counsel for the appellant has referred to the conduct of the prosecutrix, who travelled extensively through public

transport vehicles, from Gurgaon to Delhi, Delhi to Dehradun, Dehradun to Ludhiana and Ludhiana to Delhi. As per learned counsel for the appellant while travelling through public transport and visiting public places, for boarding buses the prosecutrix had ample opportunities to raise alarm for help, and get herself released, but she never made any such effort. According to learned counsel for the appellant the above-mentioned conduct of the prosecutrix made it apparently clear that she was a consenting party.

15. Another component with regard to above-mentioned plea, highlighted by the learned counsel for the appellant, is that at time of her medical examination on 08.06.2001 it was found that the prosecutrix was pregnant having seven weeks & four days old fetus. As per learned counsel for the appellant since the prosecutrix was abducted on 07.05.2001 and recovered on 05.06.2001, at the most the age of her fetus could have been four weeks old, but the presence of more than seven weeks old fetus showed that the prosecutrix was in physical relationship with the appellant much prior to the incident dated 07.05.2001.

16. It has also been pointed out by learned counsel for the appellant that a false story has been set out by the prosecutrix (PW.4), who had testified that she was enticed by the appellant on the pretext of arranging job for her. While referring to the testimony of PW.5, the father of prosecutrix, it has been contended by learned counsel for the appellant that the prosecutrix was already in job and therefore, the story with regard to allurements on the ground of arranging job for her was nothing but an absolute lie.

17. In view of above-mentioned grounds, the learned counsel for

the appellant has contended that instant case was apparently a case of elopement with free will by a major girl, with the appellant, and that she had sexual intercourse with the appellant with free will, i.e. without any threat, pressure, coercion or use of force, and therefore, the allegations with regard to commission of offence punishable under Sections 366 & 376 of IPC were false. As per learned counsel for the appellant the learned Trial Court, merely on the basis of whims and fancies, returned the judgment of conviction, which needs interference of appellate jurisdiction of this Court.

18. In support of his arguments, the learned counsel for the appellant has placed reliance upon the principles of law laid down, by the Hon'ble Supreme Court of India in the following cases:-

- i) 'State (GNCT of Delhi) v. Vipin alias Lalla' [Criminal Appeal No. 94 of 2025, decided on 07.01.2026]
- ii) 'Shiv Pratap Singh Rana v. State of Madhya Pradesh and Another' [Criminal Appeal No. 1552 of 2023, decided on 08.07.2024]

19. In addition to above, the learned counsel for the appellant has also referred to the observations recorded by this court in the following cases:-

- a) 'Tej Parkash and Others v. State of Punjab' 2016(4) RCR (Criminal) 983
- b) 'Subeg Singh v. State of Punjab' 2015(1) RCR (Criminal) 636
- c) 'Sagar Kumar v. State of Haryana' 2011(1) RCR (Criminal) 620

20. The learned State counsel has controverted the above-mentioned arguments. It has been contended by the learned State counsel that instant case is an open and shut case, wherein the plea with regard to abduction and rape of the prosecutrix, by the appellant, was successfully proved by the prosecution beyond the shadow of all reasonable doubts. According to the learned State counsel in the present case the prosecutrix herself had appeared in the witness-box as PW.4 and supported the prosecution version with regard to the fact that she was forcibly abducted by the appellant and subjected to sexual intercourse against her will. As per learned State counsel it is settled principle of law that great sanctity is attached to the testimony of prosecutrix unless impeached in material particulars. The learned State counsel has further contended that in the present case the prosecutrix had successfully faced the test of cross-examination and the credibility of her testimony could not be impeached despite thorough & probing cross-examination.

21. In addition to above, the learned State counsel has also contended that other supporting evidence also proved each and every ingredient meant for proving of charge for the offence under Sections 366 & 376 of IPC. In this regard, the learned State counsel has referred to the testimony of complainant, examined as PW.5, who thoroughly supported the prosecution case. As per the learned State counsel the above-mentioned oral evidence comprising of the testimony of prosecutrix and the complainant was further supported by the independent evidence, i.e. the medical evidence comprising of the testimony of Medical Officers, i.e. Dr.R.K.Sachdeva, the PW.7 and Dr.Usha Rani, PW.11.

22. The learned State counsel has further contended that the recovery of prosecutrix from the custody of appellant after four weeks of the incident further supported the prosecution case qua the fact that the prosecutrix was forcibly taken out of the lawful custody of her parents, without their consent by the appellant. While defending the impugned judgment of conviction the learned State counsel has contended that on proper appreciation of evidence a right conclusion was drawn by the learned Trial Court, and therefore, there is no scope for indulgence or interference in the above-mentioned verdict of the learned Trial Court. According to learned State counsel the instant appeal has no merits and deserves dismissal.

23. The record has been perused carefully,.

24. As far as the instant case is concerned at the very outset it is relevant to mention here that in the present case there is no dispute qua several facts. Such facts may be summarised as under:-

- I) that the prosecutrix is daughter of the complainant;
- II) that in the complaint (Ex.PD) dated 09.05.2001 the complainant had reported that his daughter, i.e. the prosecutrix, was missing since 07.05.2001;
- III) that at the time of incident, the age of the prosecutrix was about 21 years;
- IV) that as per medical evidence the prosecutrix was subjected to sexual intercourse before her recovery from the custody of appellant on 05.06.2001; and
- V) that the statement of prosecutrix under Section 164 of

Cr.P.C. was recorded on 14.06.2001.

25. In the light of above-mentioned admitted facts now it has to be determined as to whether the learned Trial Court rightly recorded the findings of conviction against the appellant or not.

26. With regard to instant case as set-out by the prosecution, the first and foremost component supposed to be proved by the prosecution was that the prosecutrix was forcibly taken away (abducted) by the appellant, and that against her will she was subjected to sexual intercourse. With regard to above-mentioned allegation the star witness examined by the prosecution was the prosecutrix herself. She was examined as PW.4.

27. In her examination-in-chief the PW.4 had duly supported the prosecution case with regard to above-mentioned allegations. As per PW.4 she was enticed by the appellant by projecting that he was having relations with some person who would help her in getting the job. As per PW.4 first of all, she was taken to Udhyog Vihar Area and then in the evening to a lonely area where she was raped. The PW.4 in her examination-in-chief also supported the claim of the prosecution that she got her statement recorded before the learned Judicial Magistrate under Section 164 of Cr.P.C. The above-mentioned statement was proved by the PW.4 as Ex.P3.

28. However, in her cross-examination the PW.4 deposed that initially when she accompanied the appellant no threat to her was given by the appellant. The PW.4 had admitted that she was taken by the appellant to Dehradun on 07.05.2001 and thereafter to Ludhiana, and that before the above-mentioned incident she was never had sexual intercourse with the appellant. The PW.4 had categorically admitted that throughout her journey

she travelled with the appellant in public transport, i.e. bus, and that at Ludhiana she had stayed with the appellant in the house of relative of appellant. As per deposition of PW.4, in the building where she stayed with the appellant numerous persons were residing.

29. In her cross-examination the PW.4 had given an explanation with regard to a query that she did not raise hue and cry for her rescue, while visiting public places and travelling in public transport vehicles. Qua the above-mentioned aspect the PW.4 had deposed that the appellant forcibly used to administer intoxicating tablets to her and, therefore, she was not capable of raising hue and cry. As per the PW.4 from 07.05.2001, when she was abducted by the appellant, till 05.06.2001, when she was recovered from the custody of appellant, she continued to wear the same clothes, and that during her custody she was subjected to beatings on three/four occasions by the appellant. However, as per PW.4 after recovery from the custody of appellant her marriage was solemnised. Another relevant fact deposed by the PW.4 was that at the time of incident she was jobless.

30. To provide support and corroboration to the above-mentioned testimony of PW.4, the prosecution had examined the complainant, as PW.5. In his examination-in-chief, the PW.5 had thoroughly supported the prosecution case. However, in his cross-examination the PW.5 admitted that the appellant had visited his house on one or two occasions. As per PW.5 when PW.4 was recovered from the custody of appellant, they were carrying two bags containing their belongings. As per PW.5 prior to above-mentioned incident her daughter had been serving in Boss Gear Company at Gurgaon.

31. In order to provide support and corroboration to the testimonies of above-mentioned material witnesses the prosecution had examined Dr.Usha Rani as PW.11. The PW.11 had deposed that she had examined the prosecutrix medico-legally on 06.06.2001. The medico-legal report of the prosecutrix had been proved by the PW.11 as Ex.PK. According to PW.11 there was no external injury mark on the person of prosecutrix, and that her ultrasound examination was conducted.

32. In addition to above-mentioned three witnesses several police officials, too, were examined by the prosecution, for proving each and every event right from the moment of reporting the offence to the police, till the conclusion of investigation.

33. As far as the above-mentioned evidence adduced by the prosecution was concerned a careful analysis of the same would show that the prosecutrix had stayed with the appellant for a period of more than four weeks and during the above said period she travelled extensively, i.e. from Gurgaon to Delhi, Delhi to Dehradun, Dehradun to Ludhiana and Ludhiana to Delhi. During this period she travelled through public transport vehicles. The above said facts proved that she must have visited public places, i.e. bus stands for boarding from the buses. Thus, while visiting the public places, wherein in usual course there was presence of police officials & public, and while travelling in public transport vehicle, i.e. bus, wherein a number of persons travelled with the prosecutrix, the prosecutrix was having ample opportunities to raise alarm for her rescue, but she did not exercise that option. The above-mentioned conduct of the prosecutrix, who was admittedly a major girl, leads to an inference that she was a consenting party.

34. The above-mentioned observations found support from the principles of law propounded by the Hon'ble Supreme Court of India in the cases of 'State (GNCT of Delhi)' (supra) and 'Shiv Pratap Singh Rana' (supra). This High Court also in the cases of 'Tej Parkash' (supra), 'Subeg Singh' (supra) and 'Sagar Kumar' (supra) disbelieved the prosecution stand, wherein it was found that the prosecutrix had travelled through public transport and visited public places during the alleged period of abduction.

35. In the present case another relevant fact to be taken into consideration was that the prosecutrix, in the witness box, had deposed that during the above-mentioned period of abduction she even stayed in the house of relative of appellant at Ludhiana, and that the above-mentioned house was situated in a building wherein numerous persons were residing at different floors. If there would have been use of any illegal force by the appellant, the prosecutrix could have sounded alert and seek help, while residing in the above-mentioned building also but she never did so. Thus, the observations recorded in the foregoing paragraphs are strengthened further in the instant case.

36. Another relevant fact to be taken into consideration was that the PWA.4 in the witness box had categorically deposed that before 07.05.2001 when she was abducted by the appellant, she never had sexual intercourse with the appellant, but the contents of medicolegal report (Ex.PK) and ultrasound report of the prosecutrix (Ex.PK/1 to Ex.PK/4) proved that at the time of her medical examination on 06.06.2001, the prosecutrix was pregnant and she was carrying seven weeks & four days old fetus. The above-mentioned pregnancy of more than seven weeks proved

that this deposition of PW.4 was false that before 07.05.2001 she did not had intercourse with the appellant. The above-mentioned fact was the clinching evidence to prove that the prosecution was in relationship with the appellant and that he was a consenting party to the whole episode.

37. Another relevant aspect to be taken into consideration was that as deposed of PW.4 she was abducted by the appellant on the pretext of arranging job for her with the help of his contact. As per PW.4 before that she was not having any job. But as per complainant (PW.5) before the above-mentioned incident dated 07.05.2001 her daughter was working in Boss Gear Company at Gurgaon. The above-mentioned deposition of PW.4, which was belied by the testimony of PW.5, proved that the PW.4 had not deposed true facts before the Court. Thus, the PW.4 had been rendered to be an unreliable witness.

38. Another important aspect which impeaches the credibility of the testimony of the prosecutrix was that as per PW.4, and as per story set out by the prosecution, the prosecutrix had left home on the pretext of attending coaching which meant that she was not carrying clothes on 07.05.2001. With regard to above the PW.4 had deposed that from 07.05.2001 till 05.06.2001 she continued to wear the same pair of clothes. *Firstly*, this claim fails to convince a prudent mind that for almost once the prosecutrix had been wearing the same clothes, particularly when the prosecutrix had been travelling through public transport vehicle during the above said period, and *secondly* the testimony of PW.5 belied the above-mentioned stand of the prosecutrix as the PW.5 had testified that at the time of recovery the appellant and the prosecutrix were carrying two bags

containing their personal belongings.

39. If the above-mentioned part of the testimonies of PW.4 and PW.5 would have been taken co-jointly, it would lead to the conclusion that the credibility of the testimony of PW.4 had been duly impeached and that her deposition was not worth reliable.

40. Thus, in my considered opinion, without adequate corroboration from an independent evidence with regard to use of force at the time of abduction and sexual intercourse, the sole testimony of prosecutrix could not have been sufficient to draw an inference that charges for the offence under Sections 366 & 376 of IPC had been proved against the appellant.

41. Since there was no corroboration of above-mentioned testimony of prosecutrix, from an independent source, it is hereby observed that an error of judgment was committed by the learned Trial court when it relied upon the sole testimony of prosecutrix with regard to the claim that she was forcibly kidnapped and subjected to sexual intercourse by the appellant. Thus, it is hereby held that an error of judgment was committed by the learned Trial Court by holding the appellant guilty on the basis of sole testimony of prosecutrix. In view of above discussion, it is hereby held that there is merit in the present appeal and the impugned judgment and order on quantum of sentence need interference and indulgence of appellate jurisdiction vested in this court.

42. As a sequel to above-mentioned observations, it is hereby observed that the present appeal deserves to be allowed and impugned judgment of conviction and order on quantum of sentence deserve to be set

aside. Hence, the instant appeal is hereby allowed and the impugned judgment of conviction and order on the quantum of sentence are hereby set-aside. The appellant is hereby acquitted of the charges framed against him.

(Surya Partap Singh)
Judge

September 21, 2026
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No