

Before Shalini Singh Nagpal, J.

xxxx—Appellants

versus

STATE OF HARYANA—Respondent

CRA-S No. 1426-SB of 2001

October 22, 2025

Indian Penal Code, 1860—Ss. 2(g), 34, 342, 366, 372—Code of Criminal Procedure, 1973—S. 173—Code of Criminal Procedure, 1973—S. 372—Appeal filed against conviction under Sections 376(2)(g), 366, 342, 34 IPC. As per the prosecution version the prosecutrix was taken by the appellants on the pretext that her sister was unwell and that 'jadu/tona/mantras' were to be performed. Later she was illegally confined and raped. The police party recovered her on an application by her father in law. The defence version was that she had gone of her free will and was not kidnapped.

Whether the prosecution is required to prove its case beyond reasonable doubt in rape cases or can the evidence of the prosecutrix be taken as gospel truth?

The broad principle that prosecution is to prove its case beyond reasonable doubt applies to rape cases as well. There is no presumption that the prosecutrix would always tell the story truthfully.

The FIR was lodged after delay of 1 month. The prosecutrix changed her evidence from stage to stage. The story of gang rape is improbable and the evidence is marked by blatant infirmities and inconsistencies, which fail to pass judicial scrutiny. It is clear that the prosecutrix left the house of her own volition to accompany the appellants. Appeal allowed. Conviction set aside.

Held, that the broad principle that prosecution is required to prove its case beyond shadow of reasonable doubt applies equally to a case of rape and there can be no presumption that prosecutrix would always tell the story truthfully (vide **Abbas Ahmad Choudhary vs. State of Assam, (2010) 12 SCC 115**). Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence (refer to **The State of Punjab vs Gurmit Singh and others, (1996) 2 SCC 384, State of Himachal Pradesh vs. Asha Ram, AIR 2006 SC 381 and Rajinder @ Raju vs. State of Himachal Pradesh, (2009) 16 SCC 69**. No doubt, uncorroborated testimony of the prosecutrix is sufficient to sustain

conviction of an accused of rape but such testimony should be unflinching, consistent, infallible and should inspire confidence of the court. Evidence of the prosecutrix has to be examined as that of an injured witness but it is not the law that her statement should, without exception, be taken as a gospel truth. The veracity of the story projected by the prosecution qua allegations of rape has to be examined in the facts and circumstances of each individual case.

(Para 21)

Further held, that from entire facts and circumstances emanating on record, the court is convinced that prosecutrix left the house of her own volition, to accompany the accused and remained with them of her free will. She was never abducted or subjected to gang rape. There is no question of placing reliance on the tainted deposition of the prosecutrix, who has changed her version from stage to stage of the case. It is true that in a case of rape, evidence of prosecutrix must be given pre-dominant consideration but to hold that this evidence has to be accepted even if the story is outrageous would be against justice. The story of gang rape put forward by the prosecutrix is indeed improbable and her evidence, marked with blatant infirmities and inconsistencies fails to pass the test of judicial scrutiny. The delay of one month in reporting the incident is obviously a result of much thought and deliberation with a view to implicate the accused falsely. The facts, emanating on record make it highly improbable that such an incident ever took place. Statement of the prosecutrix does not inspire confidence of the court and cannot be used to foist criminal liability on the accused for a charge as serious as one of gang rape. Unfortunately, learned trial court has gravely erred in convicting the accused relying upon the statement of the prosecutrix, swayed by irrelevant considerations.

(Para 31)

Further held, that for the reasons above, the appeal is allowed. Impugned judgment of conviction and the order on quantum of sentence are set aside. Prosecution having miserably failed to prove its case, accused are acquitted of the charges under Sections 366, 342 read with Section 34 and 376 (2)(g) IPC. They are already on bail.

(Para 32)

Cases Referred:

Abbas Ahmad Choudhry v State of Assam
(2010) 12 SCC 115

(Para 21)

The State of Punjab v Gurmit Singh
(1996) 2 SCC 384

(Para 21)

State of Himachal Pradesh v Asha Ram

Rajinder @ Raju v State of Himachal Pradesh,
(2009) 16 SCC 69

(Para 21)

S.P.Chahar, Advocate, *for the appellants.*

Vikas Bhardwaj, AAG, Haryana.

SHALINI SINGH NAGPAL, J.

(1) This appeal is directed against the judgment of conviction and order on quantum of sentence dated 19.09.2001, recorded by the Court of learned Additional Sessions Judge-II, Jind.

(2) Vide impugned judgment and order, appellants-Karambir and Dharambir were convicted under Section 366, 342 read with Section 34 and 376 (2)(g) IPC. They were sentenced as under:-

Under Section 376(2)(g) IPC	Rigorous imprisonment for a period of ten years and to pay a fine of Rs.5000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of two years.
Under Section 366/34 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.5000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of two years.
Under Section 342/34 IPC	Rigorous imprisonment for a period of one year

All the substantive sentences were ordered to run concurrently.

(3) For better appreciation and clarity, the parties shall be referred to as they were before the Court of first instance.

(4) On 20.03.1998, prosecutrix 'P' filed a complaint under Sections 379, 363, 366, 376, 342, 34 IPC in the Court of learned Sub Divisional Judicial Magistrate, Safidon, who ordered registration of FIR thereon. The case was accordingly registered. She alleged in the complaint that accused no.1-Karambir and accused no.2-Dharambir being related to her, occasionally visited her house. Karambir treated evil spirits and used to teach her '*Jadu Tona/Mantras*'. Sunita, her real sister, who was married with Krishan resident of village Jamni fell ill. Suspecting that she was under the influence of evil spirits, she(Sunita) was taken to the house of Karambir in village Bir Bangran on 23.02.1998 for '*Jhara*'. The same day, at about 8/8.30 PM, both accused Karambir and Dharambir reached the house of complainant on

motorcycle of Krishan, when her husband was out of station and asked her to accompany them on the pretext that Sunita was seriously ill, under the influence of evil spirits. When complainant was looking for her father-in-law Dharma, both accused committed theft of two gold rings, two *Rani Hars*, one pair of gold *Bujni* (ear ring) weighing about 100 grams, silver ornaments and Rs.2500/- in cash from a box lying in the room.

(5) Complainant further alleged that she sat on motorcycle of the accused for going to village Bir Bangran. On the way, there was a jeep parked near the bridge of village Dhatrath in which accused no.3-Sinder was sitting with one or two others. The accused forcibly took her in the jeep along with motorcycle and proceeded to village Bania Khera where they stopped the jeep in the fields. Accused no.1 to 3 committed rape with the complainant one by one. Thereafter, she was taken to village Sitamai, District Karnal in the jeep and was kept in the house of some relatives for about 4/5 hours. The same day, she was taken to a tubewell kotha in village Badoli where she was kept in illegal confinement and was again subjected to rape. Police party of Pillikhera Police Station recovered her on application moved by her father-in-law. The police, by putting her in, undue pressure, in connivance with the accused got her statement recorded before a Magistrate that she had gone of her free will and no one had kidnapped her. Complainant claimed that she made the statement under pressure of the accused and the police, who threatened her with death and involvement in false cases. Accordingly, DDR was recorded. No complaint was immediately filed out of fear.

(6) After registration of the FIR, the case was investigated, rough site plan was prepared by the Investigating Officer and statements of witnesses were recorded. On 27.04.1998, prosecutrix was medico legally examined, in General Hospital, Jind. On 06.05.1998, motorcycle bearing registration no.HRP-6848 was taken into police possession. On 27.02.1998, Dharam Singh son of Hari Chand, father-in-law of the prosecutrix, moved an application in Police Station Pillukhera on which a DDR No.50, dated 29.02.1998 was recorded and the prosecutrix was recovered from village Badoli. Accused Karambir and Dharambir were arrested by the Police on 10.09.1998. Accused Sinder son of Asha Singh was declared proclaimed offender vide order dated 19.12.1998 of learned Judicial Magistrate Ist Class, Safidon. On completion of usual formalities of investigation, report under Section 173 Cr.PC. was presented in the Court.

(7) Vide order dated 19.12.1998, learned Judicial Magistrate Ist Class, Safidon, committed the case to the court of learned Sessions

Judge, Jind.

(8) The court charged-sheeted Karambir and Dharambir under Sections 366/34, 342/34, 376(2)(g) IPC, on 18.07.2001. They abjured their guilt and claimed trial.

(9) Prosecution, in order to prove its case, examined PW1-Dr. Renu Aggarwal, who deposed that she medico legally examined the prosecutrix and found no external mark of injury on her person; further that she was habitual of sexual intercourse. PW2-Maya Devi, mother-in-law of the prosecutrix, stated that accused Karambir and Dharambir were her relatives and were on visiting terms. About 1½ years ago, when she was away to her parental home, Karambir took Sunita on the pretext of 'Tuna-totka' saying that she would become pregnant. Shamsheer Singh went to her village Jhanj and took her to Jamni. On checking, she found her iron box empty. Her two gold ear rings (*Bhujni*), two gold rings, Rs.2500/- cash and silver ornaments were missing. After 3-4 days, prosecutrix 'P' told that she had gone to search for her father-in-law and that accused Karambir and Dharambir accompanied by two other persons had sexual intercourse with her.

(10) PW3-Sh. A.S.Narang, then learned Sub Divisional Judicial Magistrate, Safidon, proved his order Ex.PB/4, vide which he ordered registration of case on complaint Ex.PB against Karambir, Dharambir and Sinder. He stated that on 20.03.1998, prosecutrix filed complaint Ex.PB against the accused on which he passed order Ex.PB/1. On 25.03.1998, he passed order Ex.PB/2 and on 01.04.1998, he summoned SHO, Pillukhera, vide order Ex.PB/3. After hearing the complainant and SI Chander Bhan, he ordered registration of the criminal case vide order Ex.PB/4 and FIR No.78, dated 14.04.1998, under Sections 363, 366, 376, 342/34 IPC was registered in Police Station Pillukhera.

(11) PW4-'P' is the prosecutrix, who deposed on the lines of her complaint which she proved. PW5-Dharam Singh son of Hari Chand, stated that his two sons, namely Ishwar and Krishan were married with two daughters of Kapur Singh, 4-5 years ago. Prosecutrix was married with Ishwar and Sunita with Krishan. At the time of occurrence, Sunita had one daughter. Karambir and his brother used to visit their house and were remotely related to them. The two accused took away 'P' under false excuse of illness of her sister Sunita. 'P' also took away some ornaments while leaving the house. She was taken to U.P. Instead of Bangra.

(12) PW6-Constable Darshan Singh proved recovery memo Ex.PC of motorcycle No.6848. PW7-SI Ram Mehar, investigated the case after 24.07.1998. He recorded statement of witnesses, arrested the

accused and after completion of investigation, prepared the report under Section 173 Cr.P.C. PW8-Harpal Singh produced motorcycle before the police in September, 1998 and proved the recovery memo Ex.PC. PW9-Sher Singh, SI, stated that on 14.04.1998, he received private complaint Ex/PB from learned Sub Divisional Judicial Magistrate, Safidon, for registration of case, he recorded formal FIR Ex.PB/5 and made endorsement on certified copy of order Ex.PB/6. Thereafter, he visited village Jamni, verified facts from the complainant and other respectables, prepared site plan Ex.PD on demarcation of prosecutrix 'P'. Then, he recorded statements of witnesses. On 27.04.1998, he moved application Ex.PA, for medical examination of prosecutrix 'P'. On 06.05.1998, motorcycle no.HYR-6848 was taken into possession vide recovery memo Ex.PC, rough site plan PE was prepared on demarcation of 'P'.

(13) After closure of prosecution evidence, statements of accused Karambir and Dharambir were recorded under Section 313 Cr.P.C. Entire oral as well as documentary evidence was put to them in question-answer form. Both denied the evidence as false and claimed innocence.

(14) In defence, accused produced copy of statement of Dharam Singh, ex.DA, copy of statement of Satbir Singh, Tehsildar, Ex.DB, copy of statement of Karnail Singh, Ex.DC, copy of statement of Surjit Singh, Ex.DD and copy of statement of ASI Chander Singh Ex.DE.

(15) The Court of learned Additional Sessions Judge heard respective submissions and after examining the case file and the authoritative pronouncements relied upon, found no reason to disbelieve statement of the prosecutrix regarding forcible sexual intercourse against her wishes by all the accused, in the area of village Jamni, District Jind. It was concluded that prosecution successfully proved that on 23.02.1998, accused abducted prosecutrix 'P' from village Jamni, detained her from 23.02.1998 to 28.02.1998 and gang raped her during this period in the area of village Jamni and Baroli. Both accused were accordingly held guilty for the offence under Sections 366, 342 read with Section 34 and 376(2)(g) IPC, convicted and sentenced as indicated in the preceding paragraphs.

(16) Dissatisfied and aggrieved with the judgment of conviction and order on quantum of sentence, both accused are before this court in appeal.

(17) Initiating arguments, learned counsel for the appellants submitted that the case was false and planted and the accused were maliciously prosecuted. It was urged that prosecutrix had some kind of interaction with accused Karambir and left with him of her own will.

Her father-in-law lodged a report with the police on 28.02.1998, informing that she left with Karambir son of Ratti Ram, resident of village Bir Bangran of her free will and while leaving, had taken away jewellery, cash etc. and that she was not traceable. On that report, police recovered prosecutrix on 28.02.1998 from village Badoli, whereafter she was immediately produced before the Executive Magistrate, Safidon. She made statement before the Executive Magistrate on 28.02.1998 that she had gone with Karambir of her free Will. No complaint of any kind regarding commission of gang rape was made either to the police or to Executive Magistrate and version of the prosecutrix that statement before Magistrate was made on threat was false. It was further argued that from 23.02.1998 to 28.02.1998, prosecutrix travelled to various places with accused Karambir but neither raised alarm nor reported alleged commission of offence to any authority. Her cross-examination proved that she had willingly accompanied accused Karambir and moved with him from one place to another. The allegation of forcible sexual intercourse was an afterthought, only to falsely implicate the accused. It was further argued that medico legal report of the prosecutrix did not reveal any injury marks or bruises. Recovery of motorcycle could not be connected with the accused. Prosecutrix had considerably improved her version before the Court and was not a reliable witness. Learned trial court did not correctly appreciate statement of the prosecutrix and other witnesses examined during trial. It was prayed that judgment of conviction and order on quantum of sentence passed by learned trial court be set aside and accused be acquitted of the charges.

(18) Against this, learned State counsel submitted that statements of prosecution witnesses PW2-Maya Devi wife of Dharam Singh, PW4-prosecutrix P' and PW5-Dharam Singh were consistent and statement of the prosecutrix, victim of the sexual offence was correctly relied upon by the learned trial court. As such, no interference in the order of conviction was warranted.

(19) Sexual violence is a dehumanizing act which degrades and humiliates the victim. Cases relating to crime against women are, therefore dealt with utmost sensitivity. The courts shoulder a great responsibility while trying accused on charges of rape, one of the most heinous and reprehensible of all crimes that can be committed on a women. It is for this reason that the courts lean heavily in favour of victims of sexual assaults. In a plethora of judgments, Hon'ble Supreme Court of India has observed that ordinarily, evidence of a prosecutrix should not be suspected and should be believed and such statement has to be evaluated at par with that of an injured witness. If evidence of the prosecutrix is found reliable and creditworthy, no

corroboration is necessary.

(20) Though, the above observations carry greatest weight, they cannot be mechanically applied to every case of sexual assault which comes before the court. The courts while dealing with cases of sexual assault, also must bear in mind that false charges of rape are not uncommon. Rape indeed causes great humiliation and distress to the victim, at the same time, a false allegation of rape can cause equal distress, psychological trauma, societal stigma and humiliation to the accused as well, besides the agony of incarceration. Instances are replete where false allegations of rape have been levelled to extort money to wreak vengeance, for self preservation or for any other extraneous reasons. In appropriate cases, the accused should also be protected against false implication.

(21) The broad principle that prosecution is required to prove its case beyond shadow of reasonable doubt applies equally to a case of rape and there can be no presumption that prosecutrix would always tell the story truthfully (vide ***Abbas Ahmad Choudhary versus State of Assam***¹. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence (refer to ***The State of Punjab versus Gurmit Singh and others***², ***State of Himachal Pradesh versus Asha Ram***³ and ***Rajinder @ Raju versus State of Himachal Pradesh***⁴. No doubt, uncorroborated testimony of the prosecutrix is sufficient to sustain conviction of an accused of rape but such testimony should be unflinching, consistent, infallible and should inspire confidence of the court. Evidence of the prosecutrix has to be examined as that of an injured witness but it is not the law that her statement should, without exception, be taken as a gospel truth. The veracity of the story projected by the prosecution qua allegations of rape has to be examined in the facts and circumstances of each individual case.

(22) Facts of the case are to be marshalled in the light of the above principles.

(23) Complaint of the prosecutrix, on which the case was registered records that on the day of incident, she was brought to tubewell kotha of village Badoli where she was kept in illegal confinement and from that place police party of Pillukhera Police Station recovered her on application moved by her father-in-law. It

¹ 2010 (12) SCC 115

² (1996) 2 SCC 384

³ AIR 2006 SC 381

⁴ (2009) 16 SCC 69

further states that prosecutrix 'P' was produced before Executive Magistrate where the police in connivance with the accused forced her to state that she had gone with her free will. The report of father-in-law of the prosecutrix on which the police party recovered her from village Badoli is a part of the report under Section 173 Cr.P.C, as also her statement made before the Executive Magistrate. DDR No.50 being a part of the police report can also be relied upon by the accused, even though it is not exhibited. The report reads as under:-

“At 6.30 am, Dharma son of Hari Chand accompanied by Bhim Singh, his elder brother, came to the police station and made statement that he was resident of village Jamni and was an agriculturist. He had two sons, Ishwar Singh and Krishan Kumar, who were both married with the daughters of Kapura son of Kali Ram of village Narnaund. Their relative Karamvir son of Dati Ram, Vairagi resident of Bangra used to visit their house. Prosecutrix 'P' wife of his son Ishwar Singh, aged 23-24 years left with Karambir Son of Ratti Ram of village Bangra, on 23.02.1998 of her will and while going took away jewellery and Rs.2500/- cash. 'P' had no child though she was married two years ago. They had been searching for 'P' at their own level but could not find her. She was fair complexion, medium height and was wearing red colour suit.”

(24) Equally significant is the statement of the prosecutrix which she made before Executive Magistrate, Safidon, soon after recovery on 28.02.1998. The same is reproduced hereunder for the facility of reference:-

“Statement of 'P' wife of 'I', daughter of '--', aged 23-24 years, occupation Household, resident of 'J' Narnaund Stated that I was married in village Jamni two years ago and my husband was 'I.S' son of Dharam Singh. I have no children. I do not wish to live with my husband I want to go to my father's house in village Narnaund where I want to solemnize second marriage. I did not bring any articles or jewellery etc. from the house and my clothes etc. were in village Jamni. I was carrying my jewellery while the jewellery given by my in-laws was with them. I want to go to my father's house of my free will along with my brother Suresh. I do not wish to live with my husband. I had gone with Karambir son of Rati Ram, resident of village Bagra of my free will but now I do not wish to live with him.

(25) First information regarding an offence is of utmost

significance from the standpoint of the accused. Law requires prompt reporting of offences and the very object of insisting on a first information regarding the commission of an offence is to obtain early information regarding the alleged criminal activity and to record the circumstances before there is time for the parties concerned to embellish or develop the case as circumstances present themselves to them. That information is very important so far as the accused are concerned because they are entitled to know as to what was the nature or the manner in which the occurrence was first related or started (vide *Thulia Kali versus State of Tamil Nadu*⁵).

(26) It is pertinent that though the prosecutrix was recovered by the police along with accused Karambir on 28.02.1998, from village Badoli, she did not state anything to the police regarding the alleged commission of gang rape by accused Karambir, Dharambir and Sinder or regarding her illegal confinement. Even when she was produced before the Executive Magistrate at Safidon, she did not narrate the incident as per her version in the complaint. Her stance that she was threatened by the police, who were in conniving with the accused and was forced to make statement favourable to the accused, appears to be a clever afterthought, to escape the implication of DDR no.50 and statement dated 28.02.1998 before Executive Magistrate. Cross-examination of the prosecutrix reveals that she was alone before the Executive Magistrate while making statement. She conceded that the accused were present outside the room and even her father-in-law and Bhim Singh remained outside the room. She also admitted that the Tehsildar told her that she should not fear anyone and should make statement containing true facts. The subsequent improved version regarding the police and the accused having threatened her to make statement in their favour does not inspire confidence and is a clear attempt to falsely implicate the accused.

(27) The sequence of events, as unfolded by the prosecution in the report under Section 173 Cr.P.C. shows that there was a complete u-turn in version of the prosecutrix. Having been recovered by the police and having made statement before the Executive Magistrate on 28.02.1998, wherein no allegations of illegal confinement or rape were levelled, prosecutrix 'P' filed the complaint after a period of one month claiming that accused Karambir, Dharamir abducted her, committed theft of gold, silver ornaments, cash from her house and raped her repeatedly with co-accused. Her testimony which is a reiteration of her complaint, is not of sterling quality, so as to inspire confidence of the Court. Prosecutrix 'P' having introduced a heavily improved and

⁵ (1972) 3 SCC 393

embellished version after one month, prosecution case loses its credibility.

(28) There is a delay of more than one month in lodging FIR. The delay in lodging report of sexual offence is normally not considered fatal if the same is properly explained. This general principle, however, cannot be applied to the facts of the present case considering that the prosecutrix is a mature, married lady and came in contract with the police immediately after the occurrence, yet did not make any complaint about the alleged commission of gang rape. It is difficult to accept that she was threatened by the accused or the police, that too in the presence of her father-in-law Dharam Singh and his elder brother. Her plea that she did not disclose the true facts to the police or to the Executive Magistrate out of fear and threats extended is not acceptable on the face of it. The delay of more than one month, in the light of statement dated 28.02.1998 to the Executive Magistrate, seriously affects the edifice of prosecution case.

(29) A sterling witness on whose statement conviction can be ordered should be of high quality and caliber whose version should be unassailable. Statement of the prosecutrix, on a careful examination, does not inspire faith and confidence in the court. Her version that the accused committed theft of gold, silver jewellery weighing 100 grams and Rs.2500/- cash while she was searching for her father-in-law is false on the face of it in the wake of statement of PW5-Dharam Singh, who stated that while leaving with the accused, prosecutrix took away some ornaments. Even in his report regarding absence of the prosecutrix, reproduced in the preceding paragraphs of the judgment, he stated that while going, his daughter in law 'P' had taken away gold, silver ornaments and Rs.25,00/- cash. Version of the prosecutrix that accused Karambir and Dharambir took her to village Jamni on a motorcycle and then forced her into a jeep which co-accused Sinder was driving and the motorcycle was also put in the jeep is equally outrageous. She stated that after all three accused committed forcible sexual intercourse with her without her consent, she was taken to village Sitamai, District Karnal, to the house of relative of the accused where she stayed for 4-5 hours and thereafter, she was taken away to Badoli in U.P. by accused Karambir on a bus, whereafter she was kept in kotha tubewell for two days.

(30) The act of the prosecutrix leaving her house with both accused on motorcycle at about 8.30 pm, without even telling her parents-in-law is suspicious. Her version in cross-examination that on the way, accused gave her some medicines due to which she became unconscious and on that account, she did not raise any alarm is missing

in the complaint. Her version that the accused gagged her mouth on the way to village Sitamai is also difficult to believe. She admitted that in village Sitamai there were ladies and gents in the house with whom she remained for 4-5 hours, yet, she did not inform them of her abduction and rape. She reached village Badoli from Sitamai in a bus and changed another bus. Admittedly, several persons were present at Bus Stand of Sitamai but neither she tried to run away nor she raised any hue and cry. While in the tubewell kotha of village Badoli, she did not try to escape from custody of the accused. Her explanation in cross-examination that accused threatened her and always carried a knife is also improved over her first version in the complaint. The material contradictions in statement of prosecutrix 'P' at various stages of the case, rob prosecution version of its credibility. Prosecutrix 'P' was not a naïve innocent young girl who could be prevailed over and forced to go from one place to another and pressured to make statement before Executive Magistrate. From her first version, the Court is convinced that she willingly accompanied the accused and later, for some reason, filed the false complaint containing an altogether improbable story.

(31) From entire facts and circumstances emanating on record, the court is convinced that prosecutrix left the house of her own volition, to accompany the accused and remained with them of her free will. She was never abducted or subjected to gang rape. There is no question of placing reliance on the tainted deposition of the prosecutrix, who has changed her version from stage to stage of the case. It is true that in a case of rape, evidence of prosecutrix must be given pre-dominant consideration but to hold that this evidence has to be accepted even if the story is outrageous would be against justice. The story of gang rape put forward by the prosecutrix is indeed improbable and her evidence, marked with blatant infirmities and inconsistencies fails to pass the test of judicial scrutiny. The delay of one month in reporting the incident is obviously a result of much thought and deliberation with a view to implicate the accused falsely. The facts, emanating on record make it highly improbable that such an incident ever took place. Statement of the prosecutrix does not inspire confidence of the court and cannot be used to foist criminal liability on the accused for a charge as serious as one of gang rape. Unfortunately, learned trial court has gravely erred in convicting the accused relying upon the statement of the prosecutrix, swayed by irrelevant considerations.

(32) For the reasons above, the appeal is allowed. Impugned judgment of conviction and the order on quantum of sentence are set aside. Prosecution having miserably failed to prove its case, accused are acquitted of the charges under Sections 366, 342 read with Section

34 and 376 (2)(g) IPC. They are already on bail.

(33) All the miscellaneous applications, if any, stand disposed of.

Reporter-Shubreet Kaur