



CRA-S-858-SB-2004 -1-

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

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CRA-S-858-SB-2004

Reserved on: 06.03.2026

Pronounced on: 28.04.2026

Uploaded on: 29.04.2026

Whether only operative part of the judgment is

*Pronounced or the full judgment is pronounced: operative
part/**full judgment***

Sudhir Kumar @ Titu and Anr.

....Appellants

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Rohit Singh, Advocate
for the appellant.

Mr. Gagandeep Singh Chhina,
Sr. DAG, Haryana.

RUPINDERJIT CHAHAL, J.

1. The present appeal is directed against the judgment of conviction dated 07.04.2004 and the order of sentence dated 10.04.2004 passed by the learned Sessions Judge, Yamuna Nagar at Jagadhari whereby the appellants Sudhir Kumar and Geeta Rani were convicted for the offence punishable under Section 376 IPC read with section 120-B IPC and were

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sentenced to undergo rigorous imprisonment for seven years each along with fine of ₹1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each. Appellant No.1-Sudhir Kumar was additionally convicted under Section 506 IPC and sentenced to undergo rigorous imprisonment for one year and also to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Appellant No.1-Sudhir Kumar was additionally convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for six months and also to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. All the substantive sentences were directed to run concurrently.

2. During pendency of the appeal, appellant no.1-Sudhir Kumar expired on 21.05.2019 and the proceedings qua him stood abated vide order dated 22.12.2025. The present appeal, therefore, survives only in respect of appellant no.2-Geeta Rani (hereinafter referred to as appellant).

3. The prosecution case, in substance, is that on 02.01.2002, at around 4 am, appellant Geeta Rani came to the house of the prosecutrix and took her along for the purpose of easing. When they reached in front of the room of Sudhir Kumar (since deceased), appellant asked the prosecutrix to check as to whether Sudhir Kumar was inside the room or not.

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Prosecutrix went inside the room, where Sudhir Kumar by brandishing a knife compelled her to lie on bed and thereafter committed rape upon her after breaking the string of her salwar. The prosecutrix raised alarm, which attracted the attention of her mother Shanti Devi. On seeing Shanti Devi, Sudhir Kumar scaled over the boundary wall of the plot and fled from the spot. The prosecutrix was then brought by her mother at her home. The father of the complainant used to remain drunk and thus the prosecutrix told the entire incident to her mother as her brother had gone out of station. Thereafter, Sudhir allegedly came to the house of the complainant-prosecutrix many times and threatened the complainant and her mother with a knife that if above occurrence was disclosed to anybody including police, he would kill them. On the arrival of the complainant's brother Rajkumar, her mother told the whole occurrence to him and thereafter the case was registered on 09.01.2002.

4. After the registration of the FIR, medical examination of the prosecutrix was conducted by Dr. Mamta Goel in Civil Hospital, Jagadhri. On the same day, the Investigating Officer visited the spot and prepared rough site plan and after that, he searched for the accused. On 14.01.2002, Sudhir Kumar surrendered before the police and was medically examined. On 06.02.2002, the Prosecutrix was produced before the Ilaqa Magistrate for getting her statement under Section 164 Cr.P.C.



recorded. On 11.02.2002, Appellant-Geeta Rani surrendered before the Court and she was formally arrested. After completion of the investigation Challan was submitted. Thereby charges were framed under Sections 376, 342, 506, 120-B IPC by the learned trial Court vide Order dated 08.06.2002, to which the appellants pleaded not guilty and claimed trial.

5. The prosecution in order to prove their case examined 11 witnesses. Dr. Mamta Goel was examined as PW1, HC Karambeer Singh as PW2, Sher Singh UGC examined as PW3, Constable Ram Kumar as PW4, ASI Arjun Singh as PW5, prosecutrix as PW6, Smt. Shanti Devi, mother of the prosecutrix as PW7, Raj Kumar brother of the prosecutrix as PW8, Dr. M.R. Passi as PW9, Shamsheer Singh, father of the prosecutrix as PW10 and ASI Pawan Kumar as PW11.

6. After closure of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. They denied all incriminating circumstances and pleaded false implication.

7. In defence, the appellants examined Jai Pal Singh as DW1, Jagdish Lamba as DW2, Constable Som Nath as DW3, HC Gurmail Singh as DW4 and Asha as DW5.

8. Learned counsel for the appellant submits that the conviction recorded by the learned trial Court cannot be sustained, either on facts or in law, it is argued that the finding



of guilt under Section 120-B IPC is based merely on conjecture than on any reliable evidence on record.

9. At the outset, learned counsel submits that the prosecution has failed to establish the basic requirement of a criminal conspiracy, namely, any prior agreement or meeting of minds between the appellant and the main accused. There is no material, whether direct or circumstantial, to show that appellant was privy to any plan or shared any common intention. In the absence of any such evidence, the very foundation of charge under Section 120-B is not made out.

10. It is further submitted that even if the prosecution case is taken at its highest, the role attributed to the appellant remains extremely limited. The only allegation is that she accompanied the prosecutrix and asked her to check whether the co-accused Sudhir Kumar (since deceased) was present in the room. Learned counsel submits that the circumstance by itself, is entirely innocuous. He argued that it does not indicate knowledge of any criminal design, nor does it suggest that the appellant intended to facilitate any offence.

11. Learned counsel emphasises that no overt act has been attributed to the appellant at the time of the alleged incident. The allegation of rape is solely against the main accused-Sudhir Kumar (since deceased). There is nothing on record to show that the appellant was present at the spot when the incident is said to have taken place or that she extended

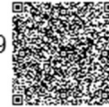


any assistance in its commission. In fact, the prosecutrix, in cross-examination, has clearly stated that she does not know whether the appellant remained outside the room or had left altogether when the rape was being committed upon her. This admission clearly creates a serious gap in the prosecution case and severs any link between the appellant and the alleged occurrence. Learned counsel also pointed out that there is complete absence of any evidence suggesting prior communication, planning, or coordination between the appellant and the main accused. He argued that in a case of criminal conspiracy, such material assumes significance. Its absence makes it unsafe to uphold the conviction of such a serious charge.

12. Learned counsel further argued that the trial Court has drawn inferences which are not borne out from the evidence. The conclusions appear to rest on suspicion, rather than proof. It is settled law that suspicion, however strong cannot take the place of evidence.

13. In these circumstances, learned counsel submits that the prosecution has failed to establish the essential ingredients of Section 120-B IPC and the conviction of appellant is therefore unsustainable and she deserves to be acquitted by extending the benefit of doubt.

14. On the other hand, learned State counsel has supported the impugned judgment and submits that the



prosecution by examining the witnesses has duly established the charges against the present appellant. It is argued that the trial Court had correctly appreciated the evidence and rightly convicted the appellant.

15. The learned State counsel submits that the testimony of prosecutrix is clear and reliable, particularly regarding the role attributed to the appellant, and there is no reason to discard her version. It is further contended that the evidence on record shows that appellant played a role in facilitating the offence and the circumstances formed a chain pointing towards a common design between her and co-accused Sudhir Kumar (since deceased).

16. It is thus argued that the finding of trial Court is based upon proper evidence and does not warrant any interference and thus, he prayed for dismissal of the appeal.

17. This Court has heard learned counsel for the parties and perused the record.

18. The present appeal is directed against the judgment of conviction passed by the learned trial Court whereby the appellant has been held guilty with the aid of Section 120-B IPC in relation to the offence under Section 376 IPC. The appellant has assailed the judgment passed by the trial Court mainly on the ground that the essential ingredients of criminal conspiracy have not been established on record.

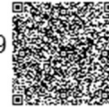


19. The case of the prosecution, in brief, is that the appellant had accompanied the prosecutrix and had asked her to check as to whether the co-accused Sudhir Kumar (since deceased) was in the room and when the prosecutrix went in the room to check the same, then the co-accused Sudhir Kumar (since deceased) by brandishing a knife compelled her to lie on the bed and thereafter, committed rape upon her. The allegation of rape is against the main accused Sudhir Kumar (since deceased). The appellant has been roped in on the premise that she facilitated the commission of rape and was part of a conspiracy.

20. The central issue, therefore, is whether the material on record is sufficient to sustain a conviction of the appellant for criminal conspiracy. It is well settled that to bring home a charge under Section 120-B IPC, the prosecution must establish a prior agreement or meeting of mind to commit an illegal act. Such agreement may be proved by direct evidence or inferred from circumstances, but those circumstances must be of a definite nature, forming a complete chain and pointing unerringly towards a common design. At this juncture, it would be apposite to mention Section 120-A and Section 120-B of IPC, which reads as under:

"120-A. Definition of criminal conspiracy:

When two or more persons agree to do, or cause to be done-



(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

"120B. Punishment of criminal conspiracy:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

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21. In the present case, the evidence falls short of the requirement as envisaged under section 120-A IPC. The role attributed to the appellant is limited. As per the prosecution itself, she accompanied the prosecutrix and asked her to see whether the co-accused was present inside the room, this circumstance, by itself, does not indicate knowledge of any criminal intend. There is no material to show that the appellant was aware of any plan or that she shared any common intention with the main accused. Significantly, the prosecutrix in her cross-examination, has stated that she does not know whether the appellant remained outside the room or had left altogether when rape was being committed upon her. This admission assumes importance. It creates a clear doubt regarding the presence and participation of the appellant at the relevant time. In the absence of any evidence showing that appellant remained at the spot or played any role during the occurrence, the link sought to be drawn by the prosecution becomes tenuous.

22. There is also no evidence of any prior communication, planning or coordination between the appellant and the co-accused Sudhir Kumar (since deceased). No circumstance has been brought on record to suggest that they acted pursuant to any pre-arranged plan, the prosecution has not been able to establish any conduct on the part of the appellant either before or after the incident which may indicate conscious involvement.



23. It is also established principle of criminal jurisprudence that a charge can be proved only through clear, reliable, and convincing evidence sufficient to justify a legal conviction. No individual can be declared guilty merely on the basis of moral belief or suspicion. Regardless of how serious or disturbing the alleged offence may be, suspicion by itself cannot substitute for legal proof. The well-established canon of criminal justice is "*fouler the crime, higher the proof*". Therefore, the law unequivocally mandates that the prosecution must establish the charges beyond all reasonable doubt in order to secure a conviction in a criminal trial.

24. Learned trial Court appears to have drawn an inference of conspiracy on the basis of suspicion arising from the presence of the appellant. Suspicion however strong, cannot take the place of proof in criminal law, the burden is always on the prosecution to establish guilt beyond reasonable doubt. Having regard to material on record, this Court is of the view that the prosecution has failed to prove the essential ingredients of Section 120-B IPC. The evidence does not disclose any prior agreement, nor does it establish that the appellant intentionally facilitated the commission of offence. Reliance in this regard is placed upon the decision Hon'ble Supreme Court in ***CBI v. K. Narayana Rao; (2012) 9 SCC 512***, wherein it was held as follows:



"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."



25. More recently, in the matter of **Parveen @ Sonu v. State of Haryana, 2022 SIR (SC) 270**; the Hon'ble Supreme Court observed as under:

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.

14. On close scrutiny of evidence on record, we are of the considered view that prosecution has failed to prove its case, that the appellant herein, has conspired with other accused for the offences for which he was charged. Except the alleged confessional statements of the co-accused and in absence of any other corroborative evidence, it is not safe to maintain the conviction and



sentence imposed upon the Appellant. The findings recorded by the Trial Court in convicting the appellant mainly on the ground that he was one of the conspirators for the crime in question, is erroneous and illegal. The High Court has not considered the evidence on record in proper perspective and erroneously confirmed the conviction and sentence imposed on the appellant."

26. Taking into consideration that the prosecution has failed to establish that the appellant intentionally facilitated the commission of offence and also its failure to bring on record any evidence indicating a prior meeting of minds between the appellant and the co-accused, and having regard to the settled legal position governing the offence of criminal conspiracy, this Court is of the considered view that the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. The circumstances relied upon by the prosecution do not form a complete chain pointing towards the guilt of the appellant nor do they exclude other reasonable possibilities. Consequently, the conviction of the appellant under Section 120-B IPC cannot be sustained.

27. With the aforesaid observations and discussion, the present appeal deserves to be allowed. Accordingly, the judgment of conviction dated 07.04.2004 and order of sentence dated 10.04.2004 passed by the learned trial Court, in so far as



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it relates to the appellant No.2-Geeta Rani is hereby set aside and she is acquitted of the charges framed against her by extending her benefit of doubt. Her bail bonds, if any, shall stand discharged.

28.04.2026

Puneet....

**(RUPINDERJIT CHAHAL)
JUDGE**

- i) Whether speaking/reasoned? : Yes
- ii) Whether reportable? : Yes