
(2018) 08 P&H CK 0250

In the Punjab And Haryana At Chandigarh

Case No : Crimina Appeal -D- No.757-Db Of 2013 (O/M)

Gurjant Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506

Protection of Children from Sexual Offences Act, 2012 — Section 5(f), 6

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3

Code of Criminal Procedure, 1973 — Section 164, 313

Citation : (2018) 08 P&H CK 0250

Hon'ble Judges : A.B. CHAUDHARI, J;KULDIP SINGH, J

Bench : Division Bench

Advocate : Vinod Ghai, R.D. Chandiwalla, Anju Arora

Final Decision : Allowed

Judgement

Impugned in present appeal is the judgment of conviction and order of sentence dated 23.5.2013, passed by learned Additional Sessions Judge,

Sangrur, vide which appellant was convicted under Section 376 IPC, under Section 6 read with Section 5 (f) of Protection of Children from Sexual

Offences and under Section 3 read with Clause (xi) (xii) Clause (2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and

was sentenced as under :-

54. Gurjant Singh is sentenced to undergo rigorous imprisonment for life time and to pay fine of Rs. 10,000/- (Rupees Ten thousand only) and in

default of payment of fine to undergo further R.I. for a period of 6 (Six) months under Section 376 of IPC. He is also sentenced to undergo rigorous

imprisonment for life time and to pay fine of Rs. 10,000/-(Rupees Ten thousand only) and in default of payment of fine to undergo further R.I. for a

period of 6 (Six) months under Section 6 read with Section 5 (f) of Protection of Children from Sexual Offences. He is also sentenced to undergo

rigorous imprisonment for life time and to pay fine of Rs. 10,000/- (Rupees Ten Thousand only) and in default of payment of fine to undergo further

R.I. for a period of 6 (Six) months under Section 3 read with Clause (xi) (xii) Clause (2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. All the sentences are ordered to run concurrently.'

1. Facts The facts of the case are that present appellant was a mathematics teacher in Government Senior Secondary School, Namol, District Sangrur

and was residing at village Namol. The prosecutrix Ms. X (identity withheld), aged about 14 years, was studying in 8th class in said school. It was

alleged that on 31.12.2012, accused called the prosecutrix at his house for checking practical of mathematics. The prosecutrix went to the house of

accused at about 12 O' clock on 31.12.2012. The accused was alone in house at that time. It is alleged that accused forcibly took the prosecutrix

inside the room and bolted the room. Thereafter, he committed rape upon prosecutrix. The prosecutrix did not disclose this fact to anybody. However,

on 12.2.2013, she disclosed the incident to her father Chet Singh (complainant). While Chet Singh was going to police station with her daughter

(victim), SI/SHO Rajwant Singh met him at Bus Stand Cheema and recorded his statement (Ex.PA). After making the endorsement, same was sent

to police station. There, formal FIR (Ex.PA/3) under Section 376, 506 IPC was registered on 13.2.2013 at about 2:00/2:15 AM. At the same time,

complainant produced the certificate of his caste before the police. The prosecutrix was taken to the hospital and was got medico legally examined by

Dr. Ramanveer Kaur Boparai, Medical Officer, Civil Hospital, Sangrur. On 14.2.2013, accused was arrested. The statement of prosecutrix under

Section 164 Cr.P.C. (Ex.PC) was recorded by Balwinder Kaur Dhaliwal, learned JMIC (Duty), Sunam, on 16.2.2013. The accused was also got

medico legally examination and found fit for sexual intercourse by doctor. The site plan of place of occurrence was prepared. During the course of

investigation, birth certificate and school record of prosecutrix was taken into possession. As per birth certificate (Ex.PW7/A), date of birth of

prosecutrix is 3.12.1999. The statement of principal of school was also recorded. After completion of investigation, challan was presented against

accused.

Accused was chargesheeted under Section 376 IPC, under Section 5 (f) and 6 of Protection of Children from Sexual Offences and under Section 3

(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, to which accused plead not guilty.

To prove its case, prosecution examined complainant Chet Singh (PW1), prosecutrix (PW2), Dr. Devinder Goyal (PW3), Dr. Ramanbir Kaur Boparai

(PW4), SC Dharminder Singh (PW5), SC Nek Singh (PW6), Gurtej Singh (PW7), DSP Jaskiranjit Singh Teja (PW8), SI Rajwant Singh (PW9),

Paramjit Singh (PW10), Pargat Singh (PW11) and Munish Kumar (PW12) and closed its evidence.

When examined under Section 313 Cr.P.C., accused denied as incorrect the evidence led against him and took the following plea :-

'I am innocent. I am teaching the students and in service since 31.5.1995. Nobody ever raised any accusing finger towards my character. I have

grown up children. My daughter is a student of MBBS and my son has passed +2 in medical and now preparing of entrance examination. I was not

present in my village Namol on 31.12.2012 at the alleged time of occurrence. On that day i.e. on 31.12.2012 was present at Railway Station, Sunam

from 11:45 A.M. to 12:45 P.M. alongwith my wife in connection with the reservation of railway tickets as I was to go to bring my daughter from

Kishanganj, Bihar, where she is studying in Mata Gujri Memorial Medical College and Lions Seva Kendra Hospital of MBBS, part-I course. The

tickets were booked for 9.2.2013 and for return on 13.2.2013. I left for Kishanganj on 9.2.2013 and reached on 10.2.2013 and stayed in room no. 104

of college guest house from 10.2.2013 at 6:00 pm to 12.2.2013 at 5:00 pm. I also made a mobile call from my mobile No. 94630-05476 to my daughter

08987254012 when I was present at Sunam on 31.12.2012 on the railway station. My co-villager Surjit Kaur w/o Jang Singh also met us at the railway

station who was going from Sunam to Lehra alongwith her daughter Raj Kaur. I disclosed this fact to the DSP and other police officials but they did

not listen me. My wife also moved applications to ADGP Crime and SSP, Sangrur, but police wrongly challend me in haste without properly

investigation and inquiry in the present case. I have been falsely implicated due to party faction in the village to destroy the carrier of my children and

defame me and my family. '

In defence, accused examined Ajay Kumar, Head Booking Clerk, Railway Station, Sunam (DW1), HC Makhan Khan (DW2), Darshan Singh, Senior

Telephone Office Assistant, Office of General Manager Telecommunication, BSNL, Sangrur (DW3), Smt. Surjit Kaur (DW4), Smt. Sarabjit Kaur

(DW5) and closed the defence evidence.

After hearing the prosecution, learned counsel for accused and going through the evidence, learned Additional Sessions Judge, Sangrur, convicted and

sentenced the accused as aforesaid.

We have heard learned senior counsel for appellant, learned State counsel, learned counsel for complainant and have also carefully gone through the

lower Court file.

As per prosecution case, as putforth in the statement of Chet Singh (complainant), is that accused, who was a Maths teacher in Government Senior

Secondary School, Namol, called the prosecutrix, who was also a student of same school, to his house on 31.12.2012 at 12 O' clock (noon) on the

pretext of checking practical of mathematics. When prosecutrix went to house of accused, he was alone in the house and committed rape upon her.

The prosecutrix did not disclose this fact to her parents at that time, but disclose same to his father on 12.2.2013, upon which next day i.e. 13.2.2013,

complainant approached police and made statement (Ex.PA), which made the basis of FIR. In this way, there is delay of about 1 month and 13 days

in lodging the FIR. When prosecutrix was examined under Section 164 Cr.P.C. before learned Judicial Magistrate 1st Class (Duty), Sunam, on

16.2.2013, she also stated that accused teaches mathematics to them. On 31.12.2012, she was called by accused for checking practical book of

mathematics. She went to his house at 12 O' clock. Nobody was present in the house. The door of the house was open. Accused was sitting in

courtyard. While checking the copy, he went into the drawing room and called her inside. When she went inside, accused bolted the door and after

removing her clothes, committed rape upon her. Thereafter, he gave her a tablet forcibly. She does not know the name of the tablet. She returned to

her home and due to fear, she did not disclose the incident to anybody. She further alleged that after that accused has been teasing her in the school as

sometime he gave a hint by blinking eyes. If she requests for leave, then he

would say that she has to kiss him. When the matter went beyond her tolerance, she narrated the entire incident to her parents.

Cross examination of Chet Singh (complainant) reveals that Sarabjit Kaur wife of Gurjant Singh (accused) remained member panchayat in the years

2003 to 2008 of village Namol. At that time, Charanjit Singh was Sarpanch of village. He admitted that dharnas were held for registration of case after

the incident. The persons from the communist party joined the dharnas. Charanjit Singh, Sarpanch, was heading those dharnas. Police met them on

13.2.2013. Ex-member Panchayat Dalip Singh was with him at that time. Thereafter, the case was registered and no dharnas were held thereafter. It

has also come out that daughter of accused was studying in MBBS course in Kishanganj, Bihar. City Sunam is about 8 kilometers from village Namol

and it takes about 20 minutes from Namol to go to Sunam by bus. The railway station is at a distance of 9-10 kilometers from bus stand, village

Namol. Chet Singh admitted that there is party faction in the village, but claim that he does not belong to any party. He further disclosed that his

daughter has disclosed the occurrence to him and his wife at about 9:00 pm.

Then, he informed the Ex-Member Dalip Singh after calling him to his house. Charanjit Singh also came to his house at night. Police met them at about

9:30/10:00 pm. They remained at bus stand for about 20-30 minutes.

The defence version put forth by accused to the complainant as well as prosecutrix is that on the day of occurrence i.e. 31.12.2012, accused remained

present along with his wife at Railway Station, Sunam, from 11:45 AM to 12:45 PM (noon) in connection with reservation of tickets as he was to go to

his daughter in Kishanganj at Bihar to bring her back, who was studying in MBBS there. He further stated that at the railway station, he had made a

call from his mobile number 94630-05476 to his daughter on her mobile number 08987254012.

The cross examination of prosecutrix reveals that according to her, on the day of occurrence, she had got checked the practical book of mathematics

from accused. After checking the practical book, accused had put the initial and date on the book. Said practical book was never demanded from her

by police during investigation. She had not gone to house of accused prior to present occurrence. There were 12-13 girl students in the class. She did

not disclose incident to any of her class mates. Data Singh is her uncle and is a

teacher at village Mauran. She stated that Data Singh got recorded his statement at Bus Stand Cheema. Her cross examination further reveals that 2-3 houses fall between house of accused and her house. She disclosed that she did not receive any injury at the time of incident. She also admitted that dharnas were held and one of the dharnas was held at Sangrur. She also denied the defence version put forth by accused as narrated above.

It is necessary to examine the medical evidence. According to the statement of Dr. Ramanveer Kaur Boparai (PW4), Medical Officer, Civil

Hospital, Sangrur, prosecutrix was brought to Civil Hospital, Sangrur, on 13.2.2013 for medico legal examination. A board of three doctors was

constituted to conduct the medico legal examination. The other members of board were Dr. Poonam Dhir and Dr. Kirandeep Kaur, then Medical

Officers, Civil Hospital, Sangrur. The doctor found that hymen was absent. Old hymenal tags present, not tender, no matting of pubic hair vaginal

introitus admits one finger easily. No fresh injury or violence mark present on pubic area. The doctor took two glass slides with smear from vaginal

discharge. Two culture tubes with swab sticks from external genitalia area and posterior fornix were also taken and sent to laboratory.

Now, the report of laboratory (Ex.PW4/G) shows that spermatozoa were detected in the contents of Ex. I and Ex. II, whereas no spermatozoa was

found on Ex. III and Ex. IV i.e. on the pubic hairs and glass slides. Dr. Ramanbir Kaur Boparai (PW4) admitted in examination in chief that she had

opined that sexual intercourse had taken place on the person of prosecutrix. In cross examination she stated that as spermatozoa were found in the

chemical examiner report, so the possibility of sexual intercourse having taken place within 48 hours cannot be ruled out.

The evidence of doctor clearly establishes that prosecutrix had sexual intercourse within 48 hours from 13.2.2013 when she was medico legally

examined. The present occurrence dates back 31.12.2012.

Therefore, the medical report will not show that sexual intercourse was committed with prosecutrix on 31.12.2012. Rather, it shows that sexual

intercourse has taken place within 48 hours from 13.2.2013. Though, the possibility of prosecutrix having indulged in sexual intercourse earlier also

cannot be ruled out from the medico legal report.

Now, the question would arise as to whether the story put forth by complainant

and prosecutrix is to be accepted or version put forth by accused is to be accepted ?

It is an admitted fact that before the registration of case, dharnas were held, which means that dharna was not held for one day, but for some days.

That would mean that the occurrence had come to the notice of complainant even before 12.2.2013.

DSP Jaskiranjit Singh Teja (PW8) admitted in cross examination that daughter of accused was doing MBBS course at Kishanganj, Bihar.

The cross examination of School Principal Paramjit Singh (PW10) shows that accused had taken leave from 11.2.2013 to 14.2.2013 to visit his

daughter at Kishanganj, Bihar. He has also stated that on 12.2.2013, mother of prosecutrix had come to school. There was some discussion regarding

misbehaviour with prosecutrix, but no written complaint was given to him by mother of prosecutrix on the ground that she is an illiterate lady.

Admittedly, prosecutrix belongs to scheduled caste as proved by Munish Kumar (PW12). Prosecutrix is admittedly little less than 14 years as on the day of crime.

In order to prove that on the day of crime, he was not present in his house at 12 O' clock, accused examined Ajay Kumar, Head Booking Clerk,

Railway Station, Sunam (DW1), who stated that a reservation form was filled in by Gurjant Singh son of Niranjana Singh, resident of VPO Namol, on

31.12.2012 at 11:30 AM for train No. 15903, Sleeper Class, from Kishanganj to Ambala. This was ticket for return journey from Kishanganj to

Ambala. Gurjant Singh has mentioned his telephone number 94630-05476. This ticket was for two adults, one for Gurjant Singh, male and second

Navreet Kaur, female. The departure journey was for 9.2.2013 in train number 15610 from Jakhal to Kishanganj. This was for one adult, namely,

Gurjant Singh. He proved the photostat copy (Ex.DW1/A). He has stated that he has also brought the reservation form for return journey of train

number 12505 from Kishanganj to Anand Vihar and same was meant for Gurjant Singh, male and Navreet Kaur, female. This form was filled in on

31.12.2012 at 12:00 PM at Sunam Railway Station, copy of which is Ex.DW1/B. He has also brought the refund form, filled in by said Gurjant Singh,

dated 31.12.2012 at 12:03 PM, copy of which is Ex.DW1/C. In cross examination, he states that the form pertains to reservation form and same can

be collected by any person on that day.

Accused also examined Darshan Singh (DW3), Senior Telephone Office Assistant, Office of General Manager Telecommunication, BSNL, Sangrur,

who proved that mobile number 94630-05476 is issued in the name of Gurjant Singh. He brought the relevant records to prove the same. He also

proved call details of said mobile number from 30.12.2012 to 1.1.2013. He stated that said mobile was being used on 31.12.2012 from 11.38.24 to

12.26.24 at Indra Market, Sunam, and at 12.56.54, same mobile was used from Sunam Tehsil.

Accused also examined one Surjit Kaur (DW4) wife of Jang Singh, who claims that on 31.12.2012, she was present at railway station to board train

from Sunam to Lehra and accused alongwith his wife was present there. She proved her ticket (Ex.DW4/A).

Accused also examined his wife Sarabjit Kaur (DW5), who stated that they were present at railway station at 11:15/11:30 AM on 31.12.2012 and

they had returned to village Namol at about 2:30 PM after making some household purchase from market at Sunam. She also stated that her husband

is innocent. Due to party faction in village, Charanjit

Singh, Ex. Sarpanch, is a close friend of Master Data Singh. She stated that when Charanjit Singh was Sarpanch, she was also a member panchayat

and they were opposite to each other. She claims that this case has been got registered at the instance of Charanjit Singh and Data Singh. The

complainant party are very poor persons and are playing to the tunes of Charanjit Singh and Data Singh. She further stated that she had moved an

application (Ex.DW2/A) to the higher authorities for inquiry.

Now, when prosecution and defence version is examined, it comes out that as per statement of Chet Singh, accused called prosecutrix at his residence

at 12 Noon on 31.12.2012. Prosecutrix in her statement (Ex.PC) stated that she had gone to house of accused, which is situated at a distance of 2-3

houses from her house for checking practical of mathematics. She had reached there at 12 O' clock. The incident was disclosed by prosecutrix to her

parents on 12.2.2013 i.e. after 1 month and 13 days of occurrence. Therefore, on the day of alleged occurrence, it was not known to anybody that

crime has been committed, nor any criminal action was contemplated against accused. Assuming that complainant is an illiterate person and

prosecutrix is semi illiterate person, this Court can take the time of occurrence 15 minutes prior to occurrence i.e. 11:45 AM and 15 minutes after the

occurrence i.e. 12:15 PM. Further, giving more allowance, half an hour before occurrence i.e. 11:30 AM and half an hour after occurrence i.e. 12:30

PM, i.e. between 11:30 AM to 12:30 PM.

We have carefully examined photostat copies of railway booking forms (Ex.DW1/A to Ex.DW1/C). The first form (Ex.DW1/A) was filled in at 11:30

AM on 31.12.2012. There is specific column in reservation form for mentioning telephone number, date and time. The reservation form filled in on

31.12.2012 for return journey on 12.2.2013 from Kishanganj to

Ambala of train number 15903 and onward journey on 9.2.2013 from Jakhal to Kishanganj, of train number 15610. The form indicates the ticket

number issued against said form. The journey from Kishanganj to Ambala is for two persons, namely, Gurjant Singh and his daughter Navreet Kaur

and journey on 9.2.2013, is for one person i.e. Gurjant Singh.

Now, another form filled in at 12:01 PM shows that Gurjant Singh again booked a ticket for return journey on train number 12505 from Kishanganj to

Anand Vihar. This ticket is also for two persons, namely, Gurjant Singh and Navreet Kaur, for sleeper class. The subsequent cancellation form

Ex.DW1/C, filled in at 12:03 PM shows that first ticket on train number 15903 at 12:03 PM for Gurjant Singh and Navreet Kaur was got cancelled, for

which refund was given. As per these forms, Gurjant Singh is stated to be present at Sunam railway station on 31.12.2012 till 12.03 PM when he filled

in the form.

Now, the plea of State is that these forms could have been signed by somebody else.

As discussed above, since no criminal action was contemplated against accused on 31.12.2012 at 11:30 AM, therefore, it is unlikely that he will try to

create evidence for going to Kishanganj on 9.2.2013 to bring her daughter back, who is doing MBBS at Kishanganj, Bihar and come back on

12.2.2013. The presence of accused is further acknowledged from the fact that after having booked the first ticket (Ex.DW1/A), he cancelled said

ticket from Kishanganj to Ambala. He booked another ticket for 12.2.2013 from Kishanganj to Anand Vihar after half an hour on same day at 12:01

PM. If the ticket is to be cancelled and refund is taken, the person booking the

ticket has to be present at railway station to cancel first ticket and fill in the cancellation form and then collect refund. All the forms Ex. DW1/A to Ex. DW1/C are in same handwriting indicating presence of accused at Railway Station, Sunam. Assuming that accused had his own personal vehicle, it has come in evidence of complainant that village Namol is at a distance of 8 kilometers from Railway Station Sunam. Therefore, it would take minimum about 10/15 minutes to reach from village Namol to Railway Station Sunam, which means that accused must have left his village latest by 11:15 AM to go to Railway Station Sunam.

Accused has given his mobile number in the booking form, which belongs to him. Now, call details of accused (ExDW3/C) shows that he made a call from his mobile number 94630-05476 to mobile number 08987254012 on 31.12.2012 at 11:30 AM. The location of tower is Indra Marg, Sunam. The call was made after filling in first form at 11:30 AM. The duration of first call was 60 seconds. Then, he received a call at same number from his daughter's mobile at 11.42.30 AM at the same location. The duration of second call is 1 second which appears to be a missed call. Then, accused made a call from his mobile number 94630-05476 to same mobile number 08987254012, belonging to his daughter staying in Kishanganj, Bihar, at 11.42.53 AM. The duration was 51 seconds. The location of said call was same i.e. Indra Marg, Sunam. It was after the said conversation at 11.42.53 AM that the second form was filled in wherein train number was changed for back journey from Kishanganj for accused and his daughter Navreet Kaur.

The learned senior defence counsel has argued that after taking first ticket, accused made a call to his daughter, who then informed him about her difficulty of some practical. Thereafter, he had to change his ticket and train number for back journey from Kishanganj. Thereafter, he filled in another form for cancellation of back journey ticket from Kishanganj to Ambala at 12:03 PM on 31.12.2012 and fill in refund form for same in his own handwriting. Then, another call was made by accused to abovenoted mobile number of his daughter at 12.26.24. This time, duration of call is for 117 seconds and location is same i.e. Indra Marg, Sunam. This indicates that after making claim booking at 12:03 PM, accused had a bit detailed talk with his daughter from same location, which indicates that from 11.38.24 to

12.26.24, accused was present at Railway Station Sunam, which is duly corroborated by reservation/cancellation forms, as claimed by him. Further, another call by accused on the mobile number of his daughter was made at 12.56.54 PM for 62 seconds. This time, location of tower was Sunam TE Sunam and then, another call was made by accused to same mobile number of his daughter at 14.26.39 PM. This time, tower location was of Namol, Sunam, Sangrur, which means that sometime between 12.56.54 to 14.26.39, accused reached his village Namol.

The complainant and prosecutrix are very categorical that prosecutrix had visited house of accused at 12:00 noon and thereafter the accused had committed rape. It is not case of prosecution wherein approximate time of noon is given. The most important evidence in this case is the practical book, on which accused put his initial and date. It was not taken into possession by police, which could show that on the said date, prosecutrix had visit house of accused for the purpose of checking of her practical book.

Smt. Sarabjit Kaur, wife of accused, has appeared as DW5 in witness box to state that she is living with her husband and that on that day i.e.

31.12.2012, they had gone to Sunam railway station. They had left their village Namol at 10:45 AM and reached railway station at 11:15/11:30 AM.

They remained at railway station for more than one hour and then came to Indra Market of Sunam and then, returned to village at about 2:30 PM. She

further stated that her husband had left village Namol on 8.2.2013 for Kishanganj, to bring back their daughter.

The statement of principal of school Parmajit Singh shows that accused had taken leave from 11.2.2013 to 14.2.2013. Principal had admitted that

daughter of accused is MBBS student at Kishanganj, Bihar. The leave application duly signed by principal is on file (Ex.DX). Leave was sanctioned

for four days though, it is also recorded that it was cancelled on 13.2.2013 apparently as a case was registered against accused.

From the evidence, as discussed above, it comes out that accused was not present in village Namol, at least from 11:15 AM to 1:15 PM on the day of

occurrence. The time could also be little before 11:15 AM to sometime later than 1:15 PM. The stamped evidence of mobile phone when read

together with railway booking and cancellation form shows that accused was at Sunam railway station, which is 8 kilometers away from his village at

11:30 AM on 31.12.2012 and was present in Sunam at 12.56.54 PM. It is also to be noted that it takes sometime to fill in reservation form and it also

takes time to fill in second form for reservation and then, fill in refund form and then collect the refund from railways. Therefore, prosecution story

that rape was committed upon prosecutrix sometime immediately after 12 noon on 31.12.2012 stands shattered by defence evidence. Further, medical

evidence shows that even prosecutrix had indulged in sexual intercourse 48 hours before 13.2.2013 when she was medico legally examined. There are

no allegations that even sometime before 13.2.2013, accused had again committed rape upon prosecutrix. There is only single allegation of rape i.e. on

31.12.2012 sometime immediately after 12 noon.

It is also important to note that wife of accused was a member panchayat in the years 2003 to 2008 and one Charanjit Singh was the Sarpanch.

Charanjit Singh, Ex Sarpanch, was the persons, who alongwith Data Singh, uncle of prosecutrix, held dharnas for pressing registration of case.

Therefore, it appears that dharnas were held sometime before 12.2.2013, at least for some days. One of such dharna was held at Sangrur, as admitted

by prosecutrix. Thereafter, police swung into action. Therefore, the case appears to have been registered to pacify the public. Under such

circumstances, the evidence claimed by defence took a back seat and the trial Court also failed to critically examine the prosecution and defence

version to find out as to whether crime was committed, as alleged. We are of the firm view that since accused was not present in village at or around

the time of crime and was present with his wife at Railway Station Sunam, therefore, he could not commit the crime at the time, as alleged by

prosecutrix.

As a result of foregoing discussion, conviction of accused cannot be sustained in eye of law. Accordingly, present appeal is allowed. Consequently,

accused is acquitted of the charges framed against him. He be released forthwith, if not required in any other case. The fine, if paid by appellant, be

refunded to him.