

*Even if the allegations of the accused that the prosecutrix is of “immoral character” are taken to be correct, it does not give any right to the accused to rape her.*

**[Case Brief] Pankaj Chaudhary V. The State (Govt. of NCT) of Delhi**

<b>Case name - Pankaj Chaudhary V. The State (Govt. of NCT) of Delhi</b>
<b>Criminal Appeal No.2299 of 2009.</b>
<b>Court - Supreme Court of India</b>
<b>Bench - Justice R. Banumathi and Justice Indira Banerjee</b>
<b>Decided on - 5th May, 2009.</b>
<b>Relevant statutes – Indian Penal Code,1860. Code of Criminal Procedure, 1974 , Indian Evidence Act,1872</b>

**> BRIEF FACTS AND PROCEDURAL HISTORY:**

1. For the past 12 years, Pankaj Chaudhary, his brother Gunjesh and two of their friends have gone through hell. Declared "rapists", they become outcastes and lost their job. They also remained in jail for four years till the High Court granted them bail in 2001. They had been accused of gang-raping their neighbour on **July 28, 1997** in Katwaria Sarai. Rejecting their defence that a prostitute

in connivance with local policemen had framed them for protesting against an organised flesh trade operating in their area, a trial court handed them a ten-year jail term on **May 24, 2000**.

2. The case was that the accused went to the prosecutrix Jhuggi who lived in the same neighbour at around 9 pm in the night and raped her. The case was registered, and the lower court convicted the accused under 376(2)(g) IPC and sentenced each of them imprisonment of ten years. However, the accused filed an appeal before the High Court.
3. In their statement, the accused said that the complainant was of loose character and who also indulged in prostitution and that is why it is a false case. The Delhi High court noted that there were some discrepancies in the case and based on the that the court acquitted the accused. The case was then challenged in the Supreme Court.

### **> ISSUES BEFORE THE COURT :**

1. Whether the judgement of the High Court maintainable and was this a case of false rape.
2. Whether loose character is a license to perform sexual offences.

### **> RATIO OF THE COURT :**

1. The State is aggrieved by the impugned judgment of the High Court on the ground that the Trial Court fell into error and committed a grave illegality in holding that since the hymen of the prosecutrix was intact; rape could not have been committed. It is urged on behalf of the State that the slightest penetration is sufficient to constitute the offence of rape and in cases of a small girl the hymen is situated deeply because of the rotundity of the labia majora on account of excessive fat content. It is urged that in view of the prosecutrix's testimony that Pankaj Chaudhary had struck his private part against her private part, the offence of rape was complete. Thus, the State avers that the Appellant ought to have been convicted for the offence of rape and carnal intercourse against the order of nature and not merely for an attempt.
2. On the other hand, Pankaj Chaudhary, in his appeal urges that there were discrepancies in the prosecutrix's testimony, he was falsely implicated because of a dispute between his uncle and prosecutrix's father regarding repayment of certain loan and therefore, he was entitled to be acquitted.

3. The prosecution had alleged that - the prosecutrix is a small girl, aged about 5/6 years. On **21.10.2007** at about 6:00 P.M., she was standing near the main entrance of her house. It is alleged that the Pankaj Chaudhary, (son of the landlord's brother) was sitting in the staircase. He asked the prosecutrix to go upstairs. She followed his instructions and he followed her to the first floor. The Appellant removed the prosecutrix's pant (trousers) as well as his own pant. He laid the prosecutrix on the floor and struck her vagina with his private part. The prosecution version is that the Appellant also struck the prosecutrix's anus with his private part. The prosecutrix cried with pain. The Appellant scolded her and threatened her that if she would disclose the incident, she would be killed. It is alleged that the prosecutrix went down stairs. She was in a lot of pain and, narrated the entire incident to her mother PW-5 Smt. Rakhi Bisht. PW-5 called prosecutrix's father PW-1 Mukesh Singh Bisht and informed him about the offence committed by the Appellant Pankaj Chaudhary against the prosecutrix.
4. The Supreme Court, however, found that the high court failed to appreciate the evidence of the rape survivor, which is corroborated by the medical evidence. The statement of the rape survivor was corroborated by that of her mother, who saw the accused leaving the crime spot and identified two of them in the trial court. The absence of external injuries on her does not tantamount to consent, nor does it discredit the version of prosecutrix, the Supreme Court held.
5. The Supreme Court upheld the trial court's conclusion that even if the allegations of the accused that the prosecutrix is of "immoral character" are taken to be correct, it does not give any right to the accused to rape her. The bench relied on **State of Maharashtra and Another v Madhukar Narayan Mardikar (1991) 1 SCC 57**, delivered by the Supreme Court earlier, to hold that even a woman of "easy virtue" is entitled to privacy and it is not open to any person to violate her and she is equally entitled to protection of law. Further, the evidence of such a woman cannot be thrown overboard merely because she is a woman of "easy virtue".
6. The bench held that even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference like the victim being a woman of 'loose moral character' is permissible to be drawn from that circumstance alone. A woman of "easy virtue" also could not be raped by a person for that reason, the bench added.
7. The bench held that the high court clearly erred in placing reliance upon the complaints allegedly made against the prosecutrix to doubt her version and to hold that a false case has been foisted

against the accused. The bench reiterated the well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence.

8. The high court ought not to have heavily interfered with the verdict of conviction based on the alleged time gap in the registration of two FIRs and other discrepancies in investigation, to reverse it.
9. The Bench also set aside the disparaging remarks of the high court against the police officials who were involved in the investigation, as they were made without affording an opportunity of hearing to them. The bench also found that the high court's direction to prosecute the police officials for perjury was erroneous and quashed it.
10. Even assuming that the prosecutrix was of "easy virtue", she has a right to refuse to submit herself to sexual intercourse to anyone, the bench emphasised and restored the sentence of ten years imposed on the accused by the trial court.

**> DECISION HELD BY THE COURT :**

1. The Bench comprising of R. Banumathi and Indira Banerjee, JJ. while setting aside the judgment of the Delhi High Court which had reversed the conviction under Section 376(2)(g) recorded by the trial court stated that, "Even assuming that the prosecutrix was of easy virtue, she has a right to refuse to submit herself to sexual intercourse to anyone."
2. The factual matrix of the case draws a picture in which it is stated that the present appeals came up on account of the Delhi High Court's judgment which had allowed the respondents/accused conviction under Section 376(2)(g) IPC to be set aside. The direction of the High Court to lodge complaint against the police officials (appellants in Criminal Appeal No.2298 of 2009) is set aside and the appeal preferred by them is allowed.