

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1395-SB-2009 (O&M)
Date of Decision: 25.05.2015

Satwinder Singh

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. S.P.S. Sidhu, Advocate for
Mr. Gurpal Sandhu, Advocate
for the appellant.

Mr. Deep Singh, Addl. A.G, Punjab
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellant is aggrieved by the judgment of conviction and sentence dated 05.05.2009, passed by the Additional Sessions Judge, Jalandhar. He was convicted and sentenced to undergo rigorous imprisonment for a period of 7 years for commission of offence under Section 376 IPC along with a fine of Rs.2,000/-. In default of payment of fine he was to further undergo rigorous imprisonment for a period of 4 months. He was also sentenced to undergo rigorous imprisonment for a period of 7 years for commission of offence under Section 366 IPC along with a fine of Rs. 2,000/-. In default of payment of fine he was to further undergo rigorous imprisonment for a period of 4 months.

Both the sentences were to run concurrently.

2. It is necessary to first notice the circumstances which led to the registration of the FIR against the appellant who was posted as Sub-Inspector of Punjab Police in 2007. On 14.02.2007, Lachhman Ram, father of the victim approached the police and lodged a complaint that his daughter who was just close to 15 years had stepped out of the house along with a neighbourer to purchase medicines and were proceeding towards Bus Stand Vidhipur at 6:30 PM. On the way a white car bearing registration no. PB-08-4667 came from Jalandhar side and stopped by their side. A person wearing a police uniform stepped out. He was wearing a head gear. He started asking questions, threatening and making accusations and pulled the girl into the car and left. Janardhan and Manoj went to the house of the complainant and narrated the kidnapping incident. The FIR was registered under Section 365 IPC.

3. Lachhman Ram, complainant was a resident of Jharkhand, he had moved to Punjab and was working as a Chowkidar at a rice sheller. His daughter was working as a helper in REC College at Jalandhar. The girl returned the next day and narrated the incident. The police was informed and her medical was got done. The girl did not have any clue as to where she was taken and who was the perpetrator but she complained of rape.

4. A news was reported in a newspaper 'Jagbani' on 08.03.2003 which reported that a person had been arrested for attempting to kidnap young girls. The photograph of a

person in uniform was also flashed. The victim identified the person and the family again approached the police. The accused who had been arrested in another case of attempting to kidnap the girl, was in custody. He was formally arrested in this case. The matter was investigated and the challan was presented.

5. In support of its case, the prosecution examined eight witnesses, viz. PW1 Dr. Manjit Bawa medicolegally examined the prosecutrix on 15.02.2007; PW2 MHC Narinder Kumar was posted at Police Station City Tarn Taran. ASI Baldev Singh handed over the Santro car bearing registration No.PB-10AY-4667 and .38 bore revolver and the car was in the name of Davinder; PW3 Dr. Raj Kumar medically examined the appellant; PW4 Pawan Kumar from the office of DTO, Ludhiana proved that Santro car bearing registration No. PB-10AY-4667 was in the name of Sukhdev Aggarwal, as per record; PW5 ASI Baldev Singh registered another FIR against the accused and took the car bearing No. PB-10AY-4667 into possession in that case. The prosecutrix appeared in the witness box as PW6 and her father-complainant Lachhman Ram as PW7. The investigating officer of the case, ASI Jaswant Singh appeared as PW8. The evidence of the prosecution was closed by Court order.

6. The incriminating evidence led by the prosecution were put to the accused in his statement under Section 313 Cr.P.C. He denied the allegations of kidnapping and rape. He took the plea of *alibi* and denied his presence in Jalandhar on

14.02.2007. He took the stand that he was deputed on election duty from 23.01.2007 to 01.03.2007 at village Sherpur and on 14.02.2007, he was present at Dharamshala in Tapa Mandi. He remained there till 15.02.2007. On 16.02.2007, he returned from Tapa Mandi to Barnala. He further took the stand that he was falsely implicated at the instance of HC Ashok Kumar, who was inimical to him.

7. In defence, the appellant examined seven witnesses, namely HC Buta Singh as DW1, HC Palwinder Singh as DW2, Daljit Kaur, Junior Assistant, DTO, Jalandhar as DW3, Constable Sudhir Kumar as DW4, Mohinder Singh, S.S. Teacher, Sangrur as DW5, HC Manohar Singh as DW6 and his father Surjan Singh stepped in to the witness box as DW8.

8. On appraisal of the evidence produced on record, the trial Court rejected the defence and convicted and sentenced the appellant in the manner indicated above.

9. Dis-satisfied with the same, the instant appeal has been filed by the appellant.

10. I have heard learned counsel for the parties and with their able assistance gone through the record of the case very carefully.

11. The prosecutrix was examined in the Court as PW6. In her deposition, she narrated the sequence and disclosed that her mother and Janardhan were with her and they were returning after taking medicines and when they had reached near the Gurudwara, the accused came in a

white car and stopped the car beside them and the time was around 7:30 PM. She stated that the accused asked her companions as to who they were and Janardhan had explained that he was his brother and lady was her mother but the accused insisted that the girl was his wife and not sister and forcibly made her sit in the car and showed a revolver and took her to a Kothi where she was confined. She stated that she was kept in a room and he returned after some time after consuming liquor and started molesting her. She stated that he forcibly removed her clothes and forced himself upon her. In the early hours at about 4:00 – 5:00 AM he left her at Kapurthala Chowk and gave her Rs.30/- and she returned home in a Auto Rickshaw at 5:00–6:00 AM. She stated that the incident was disclosed to her mother and the same afternoon she had accompanied them to the police station to lodge the report. She stated that 20 days later there was a news printed and a photograph of a person who had committed rape upon her and she had identified him from the photograph and it was the accused who had raped her. She stated that she was illiterate and registration number of the car was noted by Janardhan and she could only read the numericals on the number plate of the car which read as 4667. The cross-examination directed at the victim mainly was with a view to elicit contradictions and confronting her with statement Ex.DA.

12. Lachhman Ram PW7, father of the victim narrated the sequence and stated that his daughter was kidnapped

and he was informed by Janardhan that a Sikh gentleman wearing khaki uniform had kidnapped her daughter. He stated that his daughter returned on the next day and disclosed all the facts and she told that she had been insulted. The prosecutor insisted as to what he meant by the word insult. When pressed for the right words, the witness stated "as to how he could disclose those facts regarding the insult in the Court." He stated that his daughter was 15 years old.

13. Dr.Manjit Bawa PW1 had examined the prosecutrix on 15.02.2007. She did not find any fresh external injury on any part of the body but found that hymen was torn on both the sides with mild bluish discoloration. She stated that child had taken a bath and changed her clothes when she came to the hospital and in her opinion the possibility of sexual intercourse could not be ruled out.

14. Narinder Kumar Head Constable PW3 had stated that one Santro car bearing registration no. PB-10AY-4667 and a revolver .38 bore was deposited with him. He stated that Davinder Singh was the owner of the said car.

15. The prosecution had cited Raju Walia, a Press Reporter working with Newspaper Jagbani but was given up as having been won over by the accused.

16. The main defence raised by the accused was that he was on election duty and he remained at Dharamshala Tapa Mandi from till 16.02.2007 and he was not present in Jalandhar on 14.02.2007. He stated that he had strained

relations with Constable Ashok Kumar and he had been framed and he did not know the prosecutrix.

17. The accused had examined police officials who brought the duty roster and deposed about the police officials who were deputed on election duty.

18. The accused also tendered in evidence a judgment dated 07.01.2009 Ex.DX.

19. The main submission of the appellant was that though the accused had completed his sentence and had been released on completion of his sentence but as the conviction was a blot on his career, therefore, they were urging for decision on merits. It was contended that the Addl. Sessions Judge had recorded conviction on fragile evidence. It was contended that a story had been concocted and no photograph had been appeared in any newspaper. It was urged that the main witness namely Janardhan was not examined and the medical evidence also did not support the prosecution as no incriminating material was found in the FSL report. It was urged that identification was for the first time in the Court and the case hinges only on the oral statement of the prosecutrix who was not even aware as to where the incident had occurred and where she was taken. It was urged that registration number given by the witness was of a scooter.

20. The State counsel supported the judgment and urged that the complainant was new to the area as they had moved from Jharkhand to Punjab in search of work. The

father was a Chowkidar, the daughter was working as a domestic helper in the houses in the engineering college and she along with a neighbourer had gone out to purchase medicines and the accused forcibly picked up the girl and took her away and raped her and left her in the morning. It was urged that another incident took place and the appellant was caught and beaten as his attempt to kidnap another minor girl was stalled and the matter was reported to the police. It was urged that it was not a case of identification for the first time in the Court.

21. I have anxiously and carefully scrutinized the evidence of the prosecution. There is no dispute about the age of girl. The girl was about 15 years old when the incident occurred. The age of the victim has not been challenged nor could have been. Before proceeding further, the salient proposition of law laid down by the Hon'ble Apex Court need to be noted.

In ***State of Punjab Vs. Gurmit Singh and others, AIR, 1996 S.C. 1393*** the Hon'ble apex Court had laid down the following propositions of law which may be summed up as follows:-

- 1. The delay in lodging of the First Information Report, if properly explained should not matter in sexual offences.*
- 2. The testimony of the victim in cases of sexual offences is vital and unless there are compelling circumstances which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of a victim*

of sexual assault alone to convict.

3. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury.

4. The Court while appreciating the evidence of the prosecution may look for some assurance of her statement to satisfy its judicial conscience, since she, is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

5. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness.

6. The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding,

7. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

8. Even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of "lose moral character" is permissible to be drawn from that circumstances alone.

9. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in Court.

Earlier also the Supreme Court in the case of [State of Maharashtra v. Chandraprakash Kewalchand Jain,](#)

[A.I.R.](#) 1990 Supreme Court 658, summarised the legal position with regard to corroboration of the statement of the prosecutrix. Justice Ahmadi as he was then, speaking for the Court, observed :-

"15. It is necessary at the outset to state what the approach of the Court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex-offences. It is essential that the evidence of the prosecutrix should be corroborated in material particulars before the Court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the Court should look for corroboration before acting on the evidence of the prosecutrix."

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime.....

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a

conservative society where it concerns sexual behaviour. Our is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases, must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity".

In the case of [Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, A.I.R. 1996 Supreme Court 922](#), S. Saghir Ahmad, J. speaking for the Bench observed as follows:-

"10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt.

Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

22. The plea taken by the appellant is regarding his identity and plea of *alibi*. The evidence led by the prosecution is required to be appreciated, keeping the background of the entire case and keeping the ground realities into view. The prosecutrix and her father are illiterate and belong to the lower strata of the society. They had moved from Jharkhand to Punjab only few months ago. The minor had stepped out of the house with her mother and a neighbour, which is not unusual. The prosecutrix had spoken about the harrowing experience she had that evening. The trial Court had believed the prosecution version as it found that the narration was convincing. It held that the evidence of victim of rape was at par with the evidence of an injured witness and no corroboration was required.

23. The police had collected material and had cited a witness working with the newspaper but was given up as having been won over by the accused. It is easy to understand what pressure the accused would have exerted he being a member of the police force.

24. What pains me is the manner in which the evidence of the prosecution was closed by the Court, which resulted in the non-examination of Janardhan. A perusal of the record reveals that the entire responsibility of producing the witnesses was placed upon the Public Prosecutor and no summons were issued after December, 2007. No intimation was given to the Superintendent of Police regarding last opportunity to the prosecution before the evidence was closed. A perusal of the record shows that when the appellant had approached the High Court for bail, a submission had been made that family of the victim was not traceable and therefore, he should be released on bail. That argument did not find favour and the bail plea was disallowed and the appellant remained in custody through out trial.

25. The police had collected the newspaper in which photograph of the appellant was published but they had to give up the reporter as he had been won over by the appellant. An attempt had been made to weaken the case at each slip. The plea of *alibi* was rightly rejected by the trial Court. There was no evidence that on that evening the appellant was somewhere else. The distance between two places could be covered in an hour.

26. I find that no suggestion was made to the Investigating Officer that any such picture was printed in the newspaper. This question was purposely not put up as it could have nailed the defence.

27. The accused had produced in defence a copy of the judgment Ex.DX rendered in the case which was subsequently registered against the appellant. Though ultimately the trial ended in acquittal because the prosecutrix failed to support the prosecution version but their the vehicle used by the appellant is the same. It appears that the appellant was in the habit of picking up young girls. The next attempt failed as several people collected and call was made to the police who arrived on the scene. The newspaper in which the photograph was printed, is available on record but it was formally not introduced in evidence. It shows that the accused had made every attempt to pressurize the witnesses and had managed to win over the photographer. None-the-else I find that the evidence led by the prosecution was sufficient to nail the accused-appellant.

28. The evidence of the victim was vital. Her statement is convincing and acceptable. She had no reason to point a finger at a person whom she did not know. The prosecutrix had made a truthful statement and the prosecution had established the case against the appellant without any reasonable doubt. The appellant was a monster in police uniform. Though, he was married and had children but was indulging in sexually assaulting minor girls without any fear. He thought that he would never be caught. The evidence of the victim does not suffer from basic infirmity. The conclusion arrived at by the trial Court cannot be faulted with. I am of the considered opinion that the evidence led by

the prosecution does not leave any scope for a different view. The findings are affirmed.

The custody certificate shows that the appellant had undergone custody for 5 years, 2 months and 5 days. He had earned remission of 1 year, 9 months and 25 days and was released on 24.11.2012, after completion of sentence and deposit of fine.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

25.05.2015
sunil