

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Appeal No.D-608-DB of 2014
Date of Decision: March 09, 2015.**

Z

.....APPELLANT(s).

VERSUS

State of Haryana and another

.....RESPONDENT(s).

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Pankaj Bali, Advocate
for the appellant.

Mr. Naveen Kaushik, Addl.A.G. Haryana.

None for respondent No.2.

SURINDER GUPTA, J.

This appeal has been preferred by Z (name withheld) against the judgment dated 12.11.2013 passed by the learned Additional Sessions Judge, Karnal, whereby respondent No.2 has been acquitted of the charges framed against him for the offences punishable under Sections 363, 365, 354, 376 (2) (g) read with Section 34 Indian Penal Code (for short-‘IPC’) as also Section 323 IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short-‘POCSO Act’) and Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short-‘SCST Act’).

Brief Facts:

FIR No.86 (Ex.P17) dated 19.01.2013 in the case was registered

on the statement (Ex P5) of the prosecutrix-appellant. She stated that she

was a student of BA IInd year and was studying in Govt College, Railway Road, Karnal. Her friend was with her on 19.1.2013 between 10 and 11 a.m. She alleged that at about 10.00/11.00 a.m. she along with her friend 'Y' (referred as prosecutrix-B in the judgment) were going towards the Oriental Bank of Commerce behind their college (Government College, Railway Road, Karnal) to inquire about the deposit of government grants in their account. When both were on the rear side of their college, three boys came in a white colour car and forcibly put the appellant and her friend in it. The appellant was made to sit on the front seat of the car while her friend was pulled to the rear seat. One of the boys (not named in the FIR) sitting on the front seat started obscene activities with her. The boy on the front of the car by pressing her with his knees removed her shirt. The complainant started raising alarm in a loud voice, at which that boy hit on her head with a heavy object and made her unconscious. Thereafter she did not know as to after how many days she gained consciousness. On gaining consciousness, she found herself in the Government Hospital, Karnal. Out of three boys in the car, the one who was on the back seat with her friend was being addressed as Kamal. The person who was driving the car did not commit any obscene activity. She got her above statement recorded in the presence of her mother Kailasho, heard, read and accepted it as correct and sought legal action against the accused. The statement was signed by the prosecutrix, counter-signed by her mother and endorsed by Shri Raman Malhotra, Advocate on which police proceedings (Ex.P22) were recorded.

On 09.01.2013, police of Police Station, Civil Lines, Karnal received information that a car (Alto) bearing No.HR-05AF-4754 had met with an accident between Liberty Chowk and NDRI Chowk, Karnal. On receipt of the said information, ASI Harbhajan Singh reached the spot and

found the above car, which had hit a eucalyptus tree at the spot but no injured was found at the spot. ASI Harbhajan Singh was informed that the injured had been got admitted in the hospital by passer-by. He then reached Kalpana Chawla Govt. Medical College Hospital, Karnal, where the appellant and Kamal (juvenile) had been admitted. He sought opinion of the doctor about the fitness of both to make statements but they were declared 'unfit for statement'. The prosecutrix-B was admitted in Parveen Hospital and she was also declared 'unfit to make statement'.

The prosecutrix-B was also admitted in Kalpana Chawla Govt. Medical College Hospital, Karnal on 10.01.2013. ASI Harbhajan Singh again reached the hospital and obtained the MLR of prosecutrix-B (MLR No.AV/15/13 dated 10.01.2013) where one injury on her person was mentioned, which was kept for surgeon's opinion. He also obtained copy of MLR No.SST/26/2013/KNL dated 09.01.2013 regarding injuries on the person of the complainant. In that MLR, three injuries on the person of appellant were mentioned, out of which one was simple and two were kept under observation. The doctors again declared that the prosecutrix and her friend were unfit to make statement.

A complaint dated 11.01.2013 (Ex.P2) was made by father of prosecutrix-B, on the basis of which report in the daily diary register bearing DDE No.18 dated 11.01.2013 was recorded. In that complaint, the complainant levelled allegations that Kamal (juvenile) son of Balbir Singh had been teasing his daughter (prosecutrix-B). A complaint was made to his mother and other persons but said Kamal did not improve his behaviour. On 09.01.2013, Kamal with other boys had kidnapped his daughter, who was found lying unconscious in Dr. Parveen Garg Hospital, Karnal.

ASI Harbhajan Singh visited Government Hospital, Karnal on

12.01.2013, 13.01.2013, 14.01.2013 and 15.01.2013 but every time, both the prosecutrixs were declared unfit to make statements. Mother of the appellant and her mother's brother on 16.01.2013 submitted an application (Ex.P7) to ASI Harbhajan Singh that they would get the statement of appellant recorded when she would be in a position to make a statement. They requested the police not to harass them. The appellant was declared fit to make statement on 17.01.2013 but due to the application given by her family members, her statement could not be recorded. Her statement was recorded on 19.01.2013 which formed the basis for recording the FIR.

The statement (Ex.P6) of appellant was got recorded under Section 164 of the Code of Criminal Procedure (for short-'Cr.P.C.') in Hindi before the learned Judicial Magistrate Ist Class (Duty), Karnal on 20.01.2013, wherein she inter alia stated as follows:-

“Question: What statement you have to give?

Answer: Stated that the incident was of 09.01.2013 I had gone to my college in the morning but did not attend the class, however, had gone to the college canteen, where I met my friend (prosecutrix-B) who was studying in the college and had met her for the first time 2/3 days earlier. Then we both left to proceed towards the O.B.C. Bank. I had to get an entry in my bank copy. When we both reached at some distance from the college, some boys came in a white colour car and they hit me on head with a '*danda*' and pulled us inside the car. Thereafter, I do not remember what happened with me. However, after some interval I used to gain conscious and I heard that one of the boys was saying

'O Sandeep, let us take her towards the fields'. I then felt as

if they had removed my clothes in the car. I do not know what happened with me thereafter.

Question: When did you gain consciousness?

Answer: I gained consciousness after 6/7 days and found myself in the hospital. My parents were also in the hospital.

Question: Do you want to say anything else?

Answer: I have to say this much only that out of them one of the boys was saying '*Kamal oye let us take her to the fields*'.

Question: Whether you have to say anything more in this regard?

Answer: I have to say nothing more in this regard.

Question: Whether you have come for giving your statement now from your house?

Answer: Yes for giving my statement, I have been brought from my house and I want to stay at my house only.

Question: Whether you have to say anything more in this regard?

Answer: No I have nothing more to say in this regard."

The statement was signed by the prosecutrix and by the learned Judicial Magistrate Ist Class (Duty), Karnal on 20.01.2013. It was also certified that the statement bears true and correct version of the statement of the prosecutrix and nothing had been added or omitted therein; it was read over to the prosecutrix and she appended her signature as a token of admitting the same to be correct.

The appellant was got medically examined from Dr. Sarika

(PW5) Medical Officer, Kalpana Chawla Govt. Medical College Hospital,

Karnal on 20.01.2013. Prosecutrix-B was got medically examined on 08.02.2013 from Dr. Kailash Dhingra (PW12). During investigation, the allegations of rape were also found against respondent No.2 and Kamal (juvenile). Kamal (juvenile) was arrested on 20.01.2013 and respondent No.2 was arrested on 25.01.2013. Sandeep named by the appellant was also arrested on 08.02.2013 but he was not identified by the appellant, as such, he was got discharged. After completion of investigation, final report ('challan') against respondent No.2 was presented for the offences punishable under Sections 363, 365, 354, 323, 376 (2) (g), 120-B, 34 IPC, Sections 3 (1) (iii) (xi) (xii), 3 (2) (v) of the SC and ST Act and Section 6 of the POCSO Act.

Finding a prima facie case, respondent No.2 was charge-sheeted by the learned Additional Sessions Judge, Karnal for the offences punishable under Section 363 read with Section 34 IPC, Section 366 read with Section 34 IPC, Section 354 IPC, Section 376 (2) (g) read with Section 34 IPC, Section 323 IPC, Section 6 of the POCSO Act and Section 3 (2) (v) of SC and ST Act. Respondent No.2 heard and understood the charge framed against him, pleaded not guilty and claimed trial.

In support of its case, the prosecution examined prosecutrix-B as PW1; her father as PW2; appellant as PW3; her mother as PW4; Dr. Sarika, who conducted the medical examination of appellant, as PW5; Dr. Kailash Dhingra, who conducted the medical examination of prosecutrix-B, as PW12; Dr. Neeraj Sharma, who conducted the medical examination of respondent No.2, as PW15; ASI Sukhbir Singh, who remained associated with the investigation, as PW16; Investigating Officer SI Siri Pal as PW17; Surinder Singh Bhorla DSP as PW18 and Ms. Rajni Kaushal, JMIC, Karnal, who recorded the statement (Ex.P6) of appellant under Section 164 Cr.P.C., as

PW19. Besides them some other formal witnesses were also examined and documents were tendered in evidence.

On completion of the prosecution evidence, the entire incriminating circumstances appearing against respondent No.2 were put to him in terms of Section 313 Cr.P.C. He stated the he was innocent and had nothing to do with the alleged story. He had been falsely implicated in the case on the basis of pre-conceived notion of suspicion and prosecutrix had deposed falsely just to save her skin. She might have gone with someone else. She deposed before the Court on being tutored in this regard just to save her skin. Respondent No.2 did not examine any witness in his defence.

The learned Additional Sessions Judge, Karnal after considering the evidence and material on record vide judgment dated 12.11.2013 acquitted respondent No.2 of the charges framed against him.

Aggrieved against the said acquittal of respondent No.2, the appellant Z (prosecutrix) has come up with instant appeal.

We have heard learned counsel for the appellant, learned counsel for the State and have perused the trial Court record with their assistance.

Learned counsel for the appellant has argued that the prosecution version was supported by the appellant in her deposition. She had categorically stated about the rape committed by respondent No.2. She narrated the whole incident to her mother, who while appearing as PW4 corroborated the statement of appellant. The appellant had narrated the incident of rape with her and her friend prosecutrix-B but due to the reasons personal to her, the prosecutrix-B and her father did not support the prosecution version. She stated that respondent No.2 committed rape with her in the car and then took her to an isolated place in the field, where she was again raped by him. When she cried, he hit on her head with a heavy

object, as a result of which, she became unconscious. In view of these facts and circumstances, statement of prosecutrix could be relied without any corroboration. Dr. Sarika (PW5) had not ruled out the possibility of sexual intercourse with her. Semen was found on salwar of appellant, which was taken into possession at the time of her medical examination. All these facts and circumstances corroborate the testimony of the prosecutrix and the learned trial Court has rejected the prosecution case on the ground that the prosecutrix-B had not supported the prosecution case and there were certain improvements in the statement of appellant. In our society, no woman comes out to allege rape with her and level false allegation against a person as it affects the honour and dignity of that lady and also of her family. The mere fact that semen was not detected on the vaginal swabs and the pubic hair of appellant sent to Forensic Science Laboratory is not a relevant factor as the medical examination of prosecutrix was conducted 11 days after the incident and during this period, she had taken bath.

The contention of the learned counsel for the appellant that the testimony of a prosecutrix can be accepted without corroboration, if found reliable in the facts and circumstances of the case, cannot be disputed. The fact which invites our attention in the present case is as to whether the statement of prosecutrix inspires confidence so as to rely on it for convicting respondent No.2 for the grave offences for which he was charged.

In, *State of Punjab Vs. Gurmeet Singh (1996) 2 SCC 384*, Hon'ble the Supreme Court while discussing the aspect of corroboration to the statement of a victim of rape observed as follows:-

“Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial

reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons' lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

The Hon'ble Supreme Court observed in above case that If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice.

Keeping the above principle in view when we examine the testimony of the prosecutrix in the present case, we find that instead of inspiring any confidence, it inspires a lot of suspicion. The learned trial Court was rightly very cautious while scrutinizing the statement of the prosecutrix in the facts and circumstances of the case before reaching the

conclusion that the same was not liable to be relied upon. The story narrated by the prosecutrix from time to time has seen a number of improvements. On perusal of the learned trial Court file, we find that the entire story starts with the receipt of a message from Control Room at the Police Station Civil Lines, Karnal that a car bearing No. HR-05AF-4754 (Alto) had met with an accident between Liberty Chowk and NDRI Chowk, Karnal. On receipt of information, ASI Harbhajan Singh reached the place of accident and found that an Alto car had hit an eucalyptus tree at the spot but he did not find any injured person in that car. He was informed that passers-by had already got the injured admitted in the hospital. The appellant was got admitted in Kalpana Chawla Govt. Medical College Hospital, Karnal, whereas prosecutrix-B was initially admitted in Parveen Hospital and later on shifted to Kalpana Chawla Govt. Medical College Hospital, Karnal. Another injured Kamal (juvenile) was also admitted in Government Hospital. Medical examination of the appellant was conducted on 09.01.2013. It is case of the prosecution that she was lying unconscious in the hospital due to the injuries received by her.

ASI Sukhbir Singh PW3, who conducted part investigation of this case, has stated in his cross-examination as follows:-

“..... It is correct that in the MLRs, history of road side accident was mentioned. Even thereafter, no DDR or FIR was recorded although it came to the notice of the police that it was a case of road side accident. On 13.1.2013 when I reached General Hospital, Karnal, the parents of injured appellant and prosecutrix-B met me there. They also did not disclose to me anything about the incident

leading to injuries to the injured. I did not make any inquiry from the concerned doctor as to who supplied the history of road side accident to him. The parents of the injured did not disclose to me as to where the injured were going on that day i.e. 9.1.2013. I made inquiries from the family members of injured appellant and prosecutrix-B regarding their whereabouts on 9.1.2013 and regarding receipt of injuries by them, but they refused to tell anything in this regard. I came to know only on 19.1.2013 regarding the injuries received by both the injured when appellant disclosed about the incident.”

It would be relevant to scrutinize the testimony of appellant also, who appeared as PW3 and has described the incident that took place on 09.01.2013 as follows:-

“On 9.1.2013 at about 10.00/11.00 am, I alongwith my friend namely (prosecutrix-B) were going to Oriental Bank of Commerce situated behind our College to know whether the amount of Govt. funds has been deposited in our accounts or not and on the way, a car of white colour came from behind in which three boys were travelling and they all the three forcibly put me and prosecutrix-B in the said car and they started committing rape upon us in the car. I was sitting on the front seat of the car whereas prosecutrix-B was sitting on the rear seat of the car. The name of the boy who was sitting on the rear seat was Kamal as

the driver of the car was addressing him as Kamal. Thereafter, they took us to isolated place in the fields where Parveen committed rape upon me. We then raised cries for help and then accused Parveen caused injury on my head with some heavy article and then I fell unconscious. The remaining accused committed rape upon prosecutrix-B. I do not know what happened thereafter and on 19.1.2013, when I regained consciousness, I found myself admitted in Govt. Hospital, Karnal. I narrated this incident to my mother on the same day and on the same day, my mother took me to the office of D.S.P. Karnal where my statement was recorded which is **Ex.P-5** and it bears my signatures.”

It may be noticed that the appellant has nowhere stated that her statement Ex.P5 was not recorded correctly by the police. In statement Ex.P5, the appellant has not named respondent No.2 and neither does she allege that rape was committed with her in the car or in the fields. In that statement, she only named Kamal as an accused, who was sitting on the rear seat of the car with prosecutrix-B.

The matter does not end here. After the statement Ex.P5 dated 19.01.2013 was recorded by the police, she was produced before the learned Judicial Magistrate Ist Class (Duty), Karnal for getting her statement recorded under Section 164 Cr.P.C., where again she does not name respondent No.2 as the person who had committed rape with her. In this statement, she had named one Sandeep, who was found innocent by the police during investigation as he was not identified. As per the version given

by the appellant under Section 164 Cr.P.C., she was given a *danda* blow while she was going on the road and then was pulled inside the car and she became unconscious.

Prosecutrix-B appeared as PW1 and denied that she was kidnapped or raped by respondent No.2. According to prosecutrix-B, she did not know respondent No.2 or could even identify him. The father of prosecutrix-B also stated that no incident of kidnapping of her daughter or rape ever took place.

The statement of the appellant was also recorded before the learned Juvenile Justice Board, Karnal on 09.07.2013 where again she had given a new twist to the version of the occurrence stating that she along with prosecutrix-B was put in the car by three boys. Two boys were sitting on the front seat while one was sitting on the rear seat. In the said statement, she disclosed the name of respondent No.2 by alleging that he started indecent activities with her and removed her clothes. When she cried, Parveen hit her head with a heavy object, as a result of which she became unconscious. Here also, she does not state that she was raped in the car or taken to a secluded place and raped in the field.

The mother of the appellant appeared as PW4. She stated that on 09.01.2013, she received information from the police that her daughter had met with an accident. She reached the hospital, where appellant was lying admitted in an unconscious state. Her daughter (appellant) had regained consciousness after ten days i.e. on 19.01.2013. She had given an application (Ex.P7) to the police of Civil Lines, Karnal on 16.01.2013, stating therein that the appellant was not in a fit state of mind and they would get her statement recorded when she gets fully cured. She stated that the appellant on gaining consciousness, informed that she and prosecutrix-B

were forcibly pulled in a car and taken to an unknown place by these boys, where she and prosecutrix-B were raped. When she raised cries, one of the boys hit her on her head with a heavy object. She took the appellant to the police. Even at the time of recording of the statement of the appellant by the police on 19.01.2013, she (mother of the prosecutrix) was present and her signature was also taken on that statement (Ex.P5). She has not named respondent No.2 in her statement while appearing as PW4.

The evidence discussed above reflects major contradictions in the statements of the appellant who did not name respondent No.2 on the first available occasion when her statement Ex.P5 was recorded on 19.01.2013 or in her statement Ex.P6 recorded under Section 164 Cr.P.C. on 20.01.2013. She did not allege rape with her when her statement was recorded before the learned Juvenile Justice Board on 09.07.2013. Even in the application moved on 11.01.2013 by the father of prosecutrix-B, no allegation was levelled against respondent No.2 or he was even named.

As already discussed, the car in which the appellant and her friend (prosecutrix-B) and Kamal (juvenile) were travelling met with an accident and the appellant and her friend (prosecutrix-B) were taken to hospital in an unconscious state. There is total inconsistency in the statements of appellant. In one statement, she alleged that she was given a blow on the head with a heavy object in the car while in her statement as PW3, she has stated that she was picked up near her college and raped in the car. Thereafter, she was taken to an isolated place and again raped by all the accused. It was here that respondent No.2 hit her head with a heavy object and she became unconscious. The entire version given by the appellant does not inspire confidence. It is nowhere case of the appellant or was projected by the prosecution that the accident of the car took place when the appellant

and prosecutrix-B were being brought back to Karnal after the alleged offence of rape. Keeping in view all the above facts and circumstances, learned trial Court has committed no error of law and fact while discarding the statement of appellant as unreliable.

In order to strengthen its case, prosecution has shown the recovery of car and *danda* from respondent No.2. This appears to have been done to strengthen the prosecution case. As per the prosecution case itself, the car was lying by the side of the road when ASI Harbhajan Singh visited the spot of accident. The car had hit a eucalyptus tree and in these circumstances, the recovery of car on the disclosure statement of respondent No.2 appears to be a desperate attempt of the Investigating Officer just to create evidence to support the prosecution case.

As a sequel of our discussion of the aforesaid facts, we find no merits in this appeal and the same is dismissed.

(S.S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

March 09, 2015.
Sachin M./A.Kaundal