

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

**Crl. Appeal No. S-1244-SB of 2003
Date of decision : 05.05.2015**

Mohan Singh

..... Appellant

versus

State of Punjab

... Respondent

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/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. Suvineet Sharma, Advocate and
Mr. Gaurav Goel, Advocate
for appellant.**

Mr. V.P.S. Sidhu, AAG Punjab.

**Mr. G.S. Sandhu, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

Appellant Mohan Singh has preferred the instant appeal against the judgment of conviction and sentence dated 26.04.2003 and 28.04.2003 respectively passed by Addl. Sessions Judge, Patiala. He was convicted under Sections 342, 376, 452, and 506 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.250/-, in default of which he was required to undergo further rigorous imprisonment for 15 days, for committing an offence under Section 342 IPC. He was sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.4000/- under Section 376 IPC. In default whereof, he was to undergo further rigorous imprisonment for six months. He was also

sentenced to undergo two years rigorous imprisonment with a fine of Rs.1000/- under Section 452 IPC. In default of fine, he was to undergo further rigorous imprisonment for two months. A year's rigorous imprisonment was ordered under Section 506 IPC along with fine of Rs.500/-. In default of payment of fine, further rigorous imprisonment for one month was awarded. All the sentences were ordered to run concurrently. On recovery of fine, Rs.2000/- was ordered to be paid to the prosecutrix under Section 357 Cr.P.C.

The facts leading to the institution of present appeal are being noticed first.

Prosecutrix a widow, was working as a Sewadar (Class-IV employee) in Shakti Vihar, Bandugar. She had a son aged seven years. Harmel Dass, her *devar* was residing in the same house. Appellant Mohan Singh was running a milk dairy near her house. The prosecutrix used to fetch milk from his dairy. On 26.06.2000 the prosecutrix had gone to take milk at 5:00 p.m. No one was else present then. Taking advantage of the situation, the appellant forcibly took the complainant inside the room, bolted the door and committed rape upon her. She raised hue and cry, but no one heard her. Thereafter, the accused threatened to kill her son in case, she complained about the incident. The complainant returned home. She did not narrate the incident to anyone.

On the next day i.e. 27.06.2000 at about 3.30 p.m. the prosecutrix was at her house when the appellant entered her house and tried to commit rape. However, the attempt was foiled as just then Harmel Dass entered the house. The accused managed to escape from the spot.

The matter was reported to the police. Case FIR No. 508 dated 28.06.2000 was registered under Sections 342, 376, 452 and 506 IPC. The prosecutrix was got medically examined. The police failed to take any action against the accused nor the challan was filed.

It is apt to mention here that the aforesaid FIR lodged by the complainant was found to be false and was cancelled.

A complaint was filed before the Magistrate.

In preliminary evidence, the complainant examined herself and Dr. Anju Goel as PW2. On the basis thereof, finding a prima facie case, the accused was summoned to face trial under Sections 342, 376, 452 and 506 IPC vide order dated 09.07.2001. On appearance, the case was committed to the Sessions Court for trial.

Charge under Sections 342, 376 506 and 452 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 Dr. Sushila Goel who proved the admission of prosecutrix in Rajindra Hospital on 28.6.2000 and discharged on 30.6.2000; PW2 CII. Pavittar Singh who proved FIR No.508 dated 26.6.2000 as Ex.PA. The prosecutrix herself appeared as PW3; Harmel Dass was examined as PW4; Dr. Anju Gupta, PW5 had medicolegally examined the prosecutrix.

The incriminating circumstances led by the prosecution were put to the accused in his statement under Section 313 Cr.P.C., which he denied. He took the stand that the prosecutrix and Harmel Dass were residing in a rented house near his house and they shared a family relation with the complainant and Harmel Dass. The complainant and her brother-in-

law were constructing a house and had borrowed Rs.15,000/-. He disclosed that the amount was not returned and on 24.05.2000 he asked for his money back and was attacked by Harmel Dass and a complaint was filed in conspiracy with Harmel Dass and a story was concocted.

In defence, the appellant examined Prem Nath, Clerk as DW1, who proved the service record of complainant; DW2 Harkishan Singh, Clerk proved the service of Harmel Dass; DW3 Manjit Kaur, landlady of the complainant; DW4 Krishna, wife of the appellant and Harnek Singh, neighbour as DW5.

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.

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

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

The learned Counsel for the appellant have assailed the findings of the learned trial court inter-alia on the ground that the case of the prosecution was extremely weak and the court below did not appreciate the inherent infirmities, contradictions and improbabilities in the testimony of the prosecution witnesses. He further submitted that the medical evidence was in conflict with the ocular testimony of the prosecutrix. According to them, the inordinate and unexplained delay in reporting the matter to the police casts a doubt about the story propounded by the prosecutrix.

Elaborating his arguments, the counsel submitted that the rape was allegedly

committed on 26.06.2000, but no action was taken by the complainant. According to him, even otherwise, it was not possible to commit the rape in the dairy during day when people frequent the streets.

Continuing with the arguments, he urged that the occurrence is shown to have taken place on 27.06.2000 and is concocted and the appellant has been implicated just to avoid repayment of loan amount taken by the prosecutrix and Harmel Singh. The counsel further submitted that the police found the case to be false and cancelled the FIR and when complainant realized that she was going to be prosecuted under Section 182 IPC, she filed the instant complaint. The learned Counsel has further submitted that the learned court below did not consider the defence evidence produced on behalf of the appellant.

On the other hand, learned State counsel and counsel for the complainant supported the judgment of trial Court. According to them, the findings returned by the Court below are based on proper appreciation of evidence and called for no interference.

The law is well settled that the court can safely act upon the solitary statement of the prosecutrix provided the court finds it to be trustworthy, but at the same time, it cannot be mechanically applied to every case of sexual assault.

The veracity of the story projected by the prosecution qua allegations of rape must, thus, be examined.

The occurrence takes place on two dates. The appellant is alleged to have committed rape upon the prosecutrix on 26.06.2000 around 5:00 p.m. in a closed room, when she had gone to his dairy to fetch milk.

After the incident the appellant is said to have criminally intimidated the prosecutrix and a threat was extended to kill her son in case she made a complaint. Sequel thereto is that on 27.06.2000 the appellant went to the house of the prosecutrix and attempted rape upon her, but this time Harmel Dass intervened and the accused fled away from the spot.

In this case, qua the occurrence dated 26.06.2000 there is solitary statement of the prosecutrix who appeared in the witness box as PW3 while to depose about the occurrence dated 27.06.2000, the prosecution also examined Harmel Dass as PW4.

The trial Court has placed implicit reliance upon the testimonies of prosecutrix and Harmel Dass to conclude that the accused committed rape upon the prosecutrix and confined her in a room on 26.06.2000; criminally intimidated her and on 27.06.2000, he trespassed into the house of prosecutrix and tried to molest her. The trial Court referred to various judgments of Hon'ble Apex Court and observed that non-examination of any independent witness was not fatal to the prosecution case and merely on account of absence of external injuries, the prosecutrix could not be said to be a consenting party and the omissions and improvements were not material and did not change the very fabric of prosecution case and therefore, the case of the prosecution could not be thrown out. The trial Court further observed that in sexual offences, delay in lodging the report may be for variety of reasons and once the delay has been satisfactorily explained, the same cannot be a factor to disbelieve the prosecution case and the conviction can be recorded on the solitary statement of the prosecutrix alone.

Let us first examine the statement of prosecutrix.

Stepping into the witness box as PW3, the prosecutrix deposed that her brother-in-law Harmel Dass was an employee of PSEB. She herself also works in the same department. Accused Mohan Singh was known to her and was engaged in the business of sale and purchase of buffaloes. Narrating the sequence she disclosed that on 26.06.2000 she had gone to the house of Mohan Singh to bring milk. At that time, there was no other person. When she was about to return, the accused caught her and took her inside and bolted the door from inside. She was gagged and raped. She further stated that at that time, the accused was holding a knife in his hand. The accused wiped himself with her salwar. The complainant threw the dollu(container) there and returned home. She further stated that though she had raised hue and cry, but none got attracted. She did not disclose the incident to anybody. She failed to give any explanation or reason for it. She further stated that on 27.06.2000 the accused came to her house and tried to molest her. In the meantime, her brother-in-law Harmel Dass came there and gave a beating to Mohan Singh. Mohan Singh managed to escape. She further stated that on 27.06.2000 they went to the police station for lodging the report, but police did not listen to them. A complaint was filed in the Court. She further stated that she was medically examined at Model Town Dispensary, Patiala. She identified her signatures on complaint Ex.PB.

The cross-examination reveals that the prosecutrix had made improvements at every stage of the case i.e. the initial statement made before the investigating agency; in the version given in the complaint and thirdly, when her evidence was recorded at the preliminary stage and later

during trial. She was confronted with all such improvements. She admitted that she made a statement to the police that after the death of her husband, she and her brother-in-law Harmel Dass started living as tenants in the house of Balwinder Singh. She admitted that house of Mohan Singh was situated in the abadi, at a distance of 25/30 houses from the house of Balwinder Singh. The factum of the accused gagging her with his hand was not mentioned in the complaint. In her statement before the investigating agency she had disclosed that her mouth was gagged with a cloth. It was for the first time when she stated in her statement before the Court that the accused threatened her and held a knife in his hand. At no earlier point of time, the prosecutrix had stated that the accused was holding a knife or that she was criminally intimidated prior to rape. The duration of the incident and then wiping himself was also conspicuously missing in her statement made before the investigating agency, in the complaint and in the preliminary evidence recorded before the Magistrate.

The manner in which the incident is narrated and post conduct casts a serious doubt. The prosecutrix had admitted in her cross-examination that there was boundary wall around the house of the accused, which is bound with residential houses on its three sides. But she had also stated that every activity in the house was visible as there was no boundary wall. She further stated in her cross-examination that prior to rape she cried loudly for 5/10 minutes, but no help came. The occurrence took place in broad day light. The house is situated in an area where there are number of houses. The victim did not resist the advances nor made effort to free herself. She had admitted that after the rape when the accused unbolted the door and she

came out of the room, she saw many people had collected. Still she remained quiet. Her conduct was unusual. The inordinate and unexplained delay in reporting the matter make it more doubtful. It has also come in the testimony of prosecutrix that family of the accused consisted of three children, wife and an old mother. It cannot also be believed that the prosecutrix, a married woman could be over-powered by the accused when he was holding a knife in one hand.

It is apt to mention here that the medical evidence produced on record belies the version of rape. PW5 Dr. Anju Gupta had medically examined the prosecutrix on 28.06.2000. She deposed that on examination, no scratch mark or bruises were noticed on the prosecutrix, except a linear scratch on right breast and a bruise of 1 cm X 1 cm on the inner side of left thigh, which was bluish in colour with tenderness.

In the case of **Munna Vs. State of Madhya Pradesh, 2014(10)**

SCC 254, in a similar situation, the Hon'ble Apex Court held as under:-

“11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecution in view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused.”

Though, the clothes of the prosecutrix were sent to chemical examiner for analysis, but there is no report in this regard.

The MLR available on record does not not lend any support to her claim of rape and assault. This is, perhaps, the reason for which the investigating agency declined to charge sheet the appellant and cancelled the FIR lodged by the prosecutrix.

The evidence led by the prosecutrix is found suffering from serious infirmities and inconsistencies. The prosecutrix has made deliberate improvements on material point with a view to rule out consent on her part. There is no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. In this view of the matter, it cannot be believed that the accused committed rape upon the prosecutrix. The testimony of the prosecutrix does not inspire confidence.

Hon'ble Supreme Court in **Raju and others Vs. State of Madhya Pradesh, (2008) 15 SCC 133** has held that the accused must be protected against the possibility of false implication. It has been further held that in so far as the allegations of rape are concerned, the evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should without exception be taken as the gospel truth. It was held:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no

corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections [375](#) and [376](#) of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section [114A](#) of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections [113A](#) and [113B](#) too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section [114A](#) is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are