

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-669-SB-2002 (O&M)
Date of Decision: 11.08.2015

Shankar & another
...Appellant(s)

Versus

State of Haryana
...Respondent(s)

CORAM: HON'BLE MRS. 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. Saurabh Arora , Advocate
for the appellants.

Mr. G.S. Salwara, D.A.G, Haryana
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellants Shankar and Baljeet have assailed the judgment passed by the Additional Sessions, Bhiwani who vide its judgment dated 22.08.2001 had convicted both the appellants along with one other accused and awarded the following sentence:-

Offence Under Sections	Rigorous Imprisonment for a period of	Fine	In default of payment of fine RI
342 read with Section 34 IPC	6 months	-	-
363 read with Section 34 IPC	3 years	Rs.500/-	3 months
366 read with Section 34 IPC	5 years	Rs.500/-	3 months
376(2)(g) read with Section 34 IPC	10 years	Rs.500/-	3 months
506 read with Section 34 IPC	3 years	-	-

2. The occurrence which gave rise to the FIR is said to have occurred between 1st October to 5th October, 1998. The prosecutrix was stated to be a minor and had gone to collect wood from the fields of Suresh. The complaint was lodged by the mother Ratni Devi, a year later on 28.11.1999. The complainant's husband had died few years ago. She had alleged that she used to cultivate the land of Suresh. Her daughter had gone to collect wood at 3:00 PM in the said field but did not return that night. The mother searched for her but could not trace her. She returned the next morning at 10:00 AM and disclosed to her mother that three young persons had waylaid her and made her sit in a Rickshaw and she was taken to the fields near village Bapora where she was kept in a 'Kotha' and was threatened and three boys raped her and the next morning she was released and was given a threat that she should not report the incident to the police. The complainant disclosed that victim did not know the name or whereabouts of the culprits and she made every effort and now she had come to know that they were Suresh Kumar @ Suraj Kumar, Shankar and Baljeet @ Bachee.

3. The victim was produced before the Magistrate where her statement under Section 164 Cr.P.C. was recorded. The prosecutrix was sent for her medical examination which was conducted on 28.01.2000. During this time, the victim had got married.

4. The accused were arrested and on completion of investigation, challan was presented under Sections 342/363/366/376(2)(g) and 506 IPC.

5. The accused denied the prosecution case and pleaded false implication. They failed to examine any witness. The trial Court extensively referred to the test conducted by the Medical Officer and on examination of the other evidence, observed that the girl was under 16 at the time of the occurrence. It noted that the complaint given to the police was not signed or thumb marked by the complainant but accepted the statement of the prosecutrix and convicted the appellants along with Suresh whose appeal was separately filed.

6. The submission on behalf of the appellants is that there was a huge delay and the explanation given by the complainant was that they did not know the name of the accused but admitted one of the culprits was Suresh whose land the mother used to cultivate. It was urged that the incident is said to have taken place in the afternoon and the girl was taken in a Rickshaw and the prosecutrix claims that the accused came and dropped her at her house and came inside and washed her clothes and the story is indeed unbelievable. It was urged that the names of the accused were given after a year and the medical evidence does not hold as the victim had got married. It was urged that the law expects prompt registration of the FIR and even if the names were not known, the complainant could have gone to the

police to register her complaint and the entire story is concocted and the statement of the prosecutrix is unbelievable and does not get corroboration from any source and the appellants were entitled to acquittal. Reliance was placed upon ***Krishan Kumar Malik Vs. State of Haryana 2011(3) RCR (criminal) 589*** and ***Thulia Kali Vs. The State of Tamil Nadu AIR 1973 SC 501***.

7. The submission on the other hand is that there was no reason for the prosecutrix to falsely implicate the accused and the explanation has come that the name of the culprits was not known to the prosecutrix and when the names were known, the incident was reported. It was urged that the prosecution case should not be thrown out because the medical could not be conducted earlier. It was urged that the complainant is a widow & illiterate and she would not have known that the medical examination was necessary or that the FIR should be registered promptly.

8. I have carefully gone through the evidence. The incident took place in the month of October, 1998. According to the prosecution, the date of birth of the prosecutrix was 01.12.1982. Therefore, she was short of 16 year when the incident occurred. The prosecution has produced Subh Karan, Statistical Assistant from the office of Municipal Council, Bhiwani who brought the birth and death register and proved entry Ex.PL. The matter was reported to the police a year later and therefore, there is a huge delay. The Court was also deprived of the medical report as the medical got done in

January, 2000 was hardly of any use as the victim had got married by then and was living with her husband. 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 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."

9. In a criminal case, the First Information Report is extremely vital and valuable piece of evidence for the purposes of corroborating the oral evidence adduced at the trial. Since there is no medical evidence to support the statement of the prosecutrix, therefore, the evidence has to be carefully scrutinized.

10. Law expects prompt lodging of FIR and the part played by each of the accused. Delay is known quite often results in embellishments and it is a creature of afterthought. On account of delay, a report not only gets bereft of the advantages of spontaneity and danger creeps in and an exaggerated account or a concocted story appears.

11. In the present case, the occurrence has been reported after one year and one month. The explanation given by the complainant is that the victim did not know the names of the accused but the statement given by the prosecutrix in the Court makes an interesting reading. I find it difficult to act on the testimony of the victim as there is no acceptable material on the record. The reasons follow:-

The prosecutrix had stated that she had gone to the field of Suresh Kumar. Suresh Kumar is one of the accused, named by her subsequently. She had stated that the accused took her to house situated in the fields but was taken there in a Rickshaw after she was gagged. She stated that she tried to raise alarm but nobody could listen to her and there was a threat that they would kill her if she disclosed about the occurrence to anybody. She stated that

she came back to the house and narrated the entire version to her mother and she was medically examined in the hospital and the accused were arrested in the fields and she had made a statement before the Magistrate. She does not give the time line. The medical was got done after a year and two months. She stated that they had travelled in the Rickshaw for about two killas and there was no person on the road and she was dropped by the accused at her house, the next day. She stated that her clothes were washed at her house the next day by the accused. She had stated that the accused themselves had disclosed their identity and their names and she had given those names to the police. She had stated that the names were given to her at the Kotha and the accused had also given their place of residence. Reading of the statement suggests that the prosecutrix knew the names of the culprits. She knew where they resided and they had also come to drop her home. They had washed her clothes, at her house. It is extremely difficult to act on such a testimony. No doubt, seeking corroboration to the statement of a victim is not the rule but when the statement does not satisfy the judicial conscious then the Courts have to look for some assurance of her statement and in the absence of corroboration, the testimony has to be rejected.

12. The prosecutrix had stated that she knew the name of the accused and she knew where they lived but the matter was reported after a year. It is unbelievable that the accused would drop her home and come inside the house

and wash her clothes. The statement given under Section 164 Cr.P.C. again makes an interesting reading. She had given the names of the culprits in her statement and she had also stated that she knew those persons very well then in the next sentence she had stated that she had not seen any of the accused in the village. She had also stated that when those boys had come to leave her home, they had met the police party on the way and they had taken them to the police station and the police got the clothes washed. She could not give the names of the police officials but stated that she could identify them.

13. The statement given by the prosecutrix is shaky. It is a statement which cannot be relied upon. There is no explanation as to why the prosecutrix did not name the accused in October, 1998. Had the accused left the prosecutrix home, the family/neighbours would have had an occasion to see them. In the statement under Section 164 Cr.P.C., the prosecutrix had stated that when they were returning, the police had taken them to the police station. It is impossible that the mother did not come to know then.

14. Having examined the statement of the prosecutrix and her mother, threadbare, it appears that the story projected by the prosecution is quite improbable. There are serious omissions. The credibility of the prosecutrix gets shaken. There are contradictions which make the prosecution case weak. The role of the Court is to see whether the evidence available before the Court is enough and cogent.

Looking at the matter from all the angles, I am of the considered view that there are basic lacunas on the part of the prosecution and the conviction of the appellants cannot be upheld. The appeal is allowed. Lower Court record be sent back.

(ANITA CHAUDHRY)
JUDGE

11.08.2015
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