

In the High Court of Punjab and Haryana at Chandigarh

1. Criminal Appeal No. S-1126-SB-2004
Date of Decision: 03.8.2016

Tej ParkashAppellant

Versus

State of PunjabRespondent

2. Criminal Appeal No. S-1185-SB-2004

Shyam SunderAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. Rishav Jain, Advocate
Amicus Curiae for the appellants.

Mr. K.S.Aulakh, AAG, Punjab.

ANITA CHAUDHRY, J(ORAL)

These two appeals are being taken up together as they arise out of the same FIR.

Both the appellants were convicted under Section 366 IPC and were sentenced to two years imprisonment along with a fine of ₹ 500/- and in default of payment of fine to undergo further imprisonment for one month. Additionally accused Sham Sunder was convicted under Section

of ₹ 1,000/-. In default of payment of fine he was to further undergo rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

It is necessary to give the brief facts.

Mangat Ram made a statement to the police on 3.9.2000 and disclosed that he had gone to the market to purchase household articles. His family members were away for work, the younger children had gone to school and his daughter was alone in the house. When he returned from Kharar, he found his daughter missing. He made inquiries from the family and relatives but could not trace her. Complainant's wife informed him that Shyam Sunder and Tej Parkash, residents of Kumbra and Manimajra, respectively, had been seen loitering around their garden and she was of the firm belief that their daughter had been abducted by both of them. The couple went to the house of Tej Parkash who assured that the daughter would come back within a day or two. The complainant had also mentioned that Tej Parkash was the relative of Shyam Sunder. The complainant suspected Shyam Sunder of enticing his daughter with the help of Tej Parkash. The girl was recovered on 3.9.2000. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded and both Tej Parkash and Shyam Sunder were challaned.

Charge under Section 363, 366, 376 IPC was framed. They pleaded not guilty. The trial Court relied on the statement of the prosecutrix, statements made to the Magistrate and the father, besides the medical officers and convicted both the accused under the Sections mentioned hereinbefore.

I have heard both the sides.

The submissions made on behalf of the appellants was that the trial Court on the basis of the material adduced before it had concluded that the girl was over 18 years and it has only to be seen whether the incident could occur in the manner spoken by the victim or it was a case of consent. It was urged that the trial Court had rejected the birth certificate projected by the prosecution as the name of the victim or her mother did not tally with what was recorded in the certificate. It was urged that before the medical officer, the prosecutrix had given her age as 18 years and the ossification test was not produced before the trial Court. It was urged that it was not a case of abduction and the victim had left on her own with Shaym Sunder. It was urged that the charge framed against Shyam Sunder is of rape on the night of 3.9.2000 whereas the parents had stated that the girl had been recovered in the morning of 3.9.2000 and had been intercepted by the police. It was urged that the prosecutrix had travelled by bus from Ropar to Naina Devi and she had worked in the community kitchen in the Mandir but did not complain nor there were injuries on her body and the medical evidence suggests that she was habitual to sexual intercourse. It was urged that there was absolutely no evidence against Tej Parkash and the complainant had gone to his house on 1.9.2000 and had found him to be present in his house and, therefore, the whole story gets falsified. It was urged that the trial Court had acquitted Tej Parkash for the offence of rape but there was no evidence to record his conviction under Section 366 IPC. The counsel had further submitted that it was a case of consent and there could be no enticement and the mother had seen the boys loitering in that area which shows that there was something between the two.

The State counsel on the other hand supported the judgment of

the trial court and it was urged that the statement of the prosecutrix should be accepted.

It is now to be seen whether the statement of the prosecutrix should be accepted. Before that it is necessary to notice the following.

In '***State of Maharashtra v. Chandraprakash Kewalchand Jain AIR 1990 SC 658***', the Apex Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under:-

“A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. [The Evidence Act](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under [Section 118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the [Evidence Act](#) similar to illustration (b) to [Section 114](#) which requires it to look for

corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

In '**State of U.P. v. Pappu @ Yunus and Anr. AIR 2005 SC 1248**', the Apex Court held that even in a case where it is shown that the girl is of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the *accused* from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. The Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The

Court held as under:

“It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

Having examined the legal position, it is now to be seen as to whether the statement of the prosecutrix is convincing and reliable.

The victim in her statement in the Court had stated that at about 10/11.00 A.M., both the accused came to her house and were wandering around her house and on seeing her alone, they came inside. She stated that both of them belonged to her village and, therefore, she knew them and they asked her to accompany but she refused but they took her forcibly on the scooter. She stated that Tej Parkash was driving the scooter and she was made to sit behind and Shyam Sunder sat behind her. They threatened to kill her if she raised any alarm and she was taken to Naina Devi and during the day she was made to work in the temple and at night she was taken to the hilly area. She stated that Tej Parkash left them after dropping them at Naina Devi and Shyam Sunder raped her and threatened to kill her if she

disclosed it to anyone. She stated that for three successive nights she was violated and on the third day Tej Parkash came to Naina Devi and he also committed rape upon her. She stated that Tej Parkash also informed her that the parents were looking for her and, therefore, Tej Parkash sent her to Kharar in a bus and then to Landran where she saw her father and she narrated the occurrence and he brought her back. In the cross-examination, she admitted that Shaym Sunder was her neighbour and she knew him for the past two months but he had never come home nor she had ever gone to his house and he had never teased her. She denied that she had any relations with any person prior to the occurrence. She denied that she had not had sexual relationship with any other person. She admitted that she had disclosed her age as 18 years to the medical officer. She stated that the accused came to her house around 10/11.00 A.M. She admitted that village abadi adjoins Phase-8, Mohali. She admitted that she was taken on a scooter from Sohana Garden and then they went to Kharar Bus Stand. She admitted that the police officials remained on duty at the bus stand and they did not stop there and came to Ropar and took a bus for Naina Devi. She stated that Shyam Sunder purchased two tickets one for himself and the other for her. She stated that she did not talk to anyone on the way to Naina Devi as she was under fear. She deposed that she was kept at Naina Devi for three nights and she did not complain to anybody and she was working happily at the Langar. She admitted that she did not make any complaint to anybody regarding forcible abduction. She stated that she met her father by chance at Kharar and was caught at the bus stand when Shaym Sunder was with her. She stated that she was kept at the Police Station on the night of 3.9.2000.

The above would show that the girl had been visiting different

places on scooter and on public transport. She had the opportunity to ask for help but she did not seek help. The prosecutrix was happily working in the Mandir which is frequented by a large number of devotees. The victim had stated that she had not engaged in any sexual activity prior to the incident but the MLR shows that the victim was habitual. The medical officer did not see any signs of any force. There was no internal or external injuries. The statement given by the girl exposes the falsity of the story projected by her. She had been taken from a busy residential area. She did not raise alarm. She does not say that the accused were armed. The girl was over 18 years. A specific finding in this regard was recorded which was not assailed by the victim or the State. The girl had the occasion to seek help at the Mandir. The devotees throng this famous temple and if force had been used or the girl had been kidnapped the accused would not have taken her there. The girl had gone on her own and it was a case of consent and Tej Parkash had been named in the case as he was a friend of Shyam Sunder. The girl was major and of a mature mind and with full understanding, she had accompanied the accused. It is difficult to accept her statement as her statement is untrustworthy. It was not a case of kidnapping nor there was any threat but a consensual act.

Both the appeals are allowed. Appellants are acquitted of the charges framed against them. Consequently, the impugned judgment/order of conviction and sentence of the appellants dated 3.5.2004, are set aside.

(ANITA CHAUDHRY)
JUDGE

August 03, 2016
Gurpreet

Whether speaking/reasoned : **Yes**
Whether reportable : **Yes**