

Crl. Appeal No.502-SB of 2001 (O&M)
with
Crl. Appeal No.533-SB of 2001 (O&M)

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

Crl. Appeal No.502-SB of 2001(O&M)
Date of Decision: 24.02.2016

Dharmbir

...Appellant

Versus

State of Haryana

...Respondents

with

Crl. Appeal No.533-SB of 2001 (O&M)

Babli @ Karnail

...Appellant

Versus

State of Haryana

...Respondent

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? No

Present: Mr. Deepinder Singh Brar, Advocate
for appellant-Dharminder.

Mr. Ram Chander, Advocate
for appellant-Babli @ Karnail.

Ms. Dimple Jain, AAG, Haryana.

ANITA CHAUDHRY, J.

1. Two separate appeals have been filed against the judgment dated 03.02.2001, passed by the Additional Sessions Judge, Faridabad who convicted both the appellants in

FIR No.171 dated 06.08.1999, registered under Sections 343, 376(2)(g), 342, 323, 506 IPC read with Section 34 IPC and were sentenced to the following imprisonment:

Under Sections	Simple Imprisonment for a period of	Fine	In default of payment of fine further imprisonment
342 IPC	3 months	-	
376(2)(g) IPC	10 years	Rs.5000/-	6 months
323 IPC	3 months	-	
506/34 IPC	3 months	-	

It is necessary to mention herein that there was one more person, who was named by the prosecutrix, he was a juvenile and a separate challan was filed before the Juvenile Justice Board, Faridabad.

2. The facts as they appear from the record may now be exposited. The victim, a married woman having four children left the hut to answer the call of nature at 8:30 PM on 05.08.1999. She went near the railway track when a person holding a danda was standing, he came up to her, shut her mouth and dragged her across the railway track towards village Ajroni. There were two more persons along with him. She was taken to a hut, situated in the fields and gang raped. The accused fled when they noticed that some lights were approaching the railway track. The victim raised alarm which attracted the villagers. The victim stopped those persons from entering the hut as she had been disrobed and had no clothes on her. The persons who came to help her, gave her some clothes and brought her to the police station. A complaint was

lodged. The prosecutrix was got medically examined. The accused were arrested. Their medical was got done. After completion of investigation, challan was filed against three persons.

3. Charge was framed against the appellants. They pleaded not guilty.

4. Babal Gulati – PW1 brother-in-law of the victim, was at his house when Samunder Singh, father of the victim came and told him that his daughter had not returned. Babal Gulati along with few other persons left in search of the victim. The witness had deposed that when they were near the railway tracks, they heard the shrieks coming from a hut and they reached that place and found the prosecutrix who narrated the incident and they brought her to the police station. The victim and the witnesses also accompanied the police to the hut situated in the fields where they found whisky bottle and some glasses and a gunny bag and clothes of the prosecutrix, which were taken into possession. He stated that his sister-in-law had sustained injuries.

5. Dr. Meenu Kappor – PW3 had found following injuries:-

- i. There was diffused swelling 3 cm x 2 cm present on the posterior aspect of left elbow. Underline bone was tender.
- ii. There was bruise 6 x 1 cm on left knee joint red in colour. A diffused swelling 4 x 2 cm was present below it.
- iii. Pubic hair were present. Labia majora and labia minora were well developed. Vagina admitted two fingers easily. Vaginal swabs were also taken.

6. Subhash Chand – PW5 stated that his grand-mother had died and he had gone to Dehradun and when he returned on 08.08.1999, his wife told him about the incident.

7. The victim was examined as PW7. She gave a detailed account of the incident. She had stated that accused Dharamvir had shut her mouth, accused Babli raised her legs and dragged her across the railway track. She had deposed that all the three accused (including the juvenile) consumed liquor and committed rape turn by turn and she was laid on gunny bag on the floor. She stated that the accused left her when they heard noises and light appearing on the track and as she was naked she requested the villagers to give her clothes and a lungi and a shirt was given and she accompanied them to the police station.

8. Ram Phal – PW9 had stated that the accused were arrested on 10.08.1999 and 25.08.1999.

FSL report was tendered in evidence. Dr. Sudhir Khurana - PW10 had medico legally examined Dharamvir. He proved his report Ex.PK.

9. In the statement recorded under Section 313 Cr.P.C., the accused pleaded false implication. Accused Dharamvir took the plea that he was handicapped and was taking treatment for the last one year and due to his injury, he was physically incapable.

10. Dr. Suresh Arora- DW2 stated that he had treated Dharamvir in 1997 for infection of the left tibia and he was taking regular treatment since 06.10.1997 and he was unable to walk. DW3 - Dr. S.N. Sardana, Medical Officer of Sub Jail, Ballabgarh stated that Dharamvir had a mal-united fracture of both bones of the left leg and he was referred to B.K. Hospital, Faridabad on various dates.

11. The trial Court after examination of the evidence convicted the accused to the sentence mentioned here-in-before.

12. The submission on behalf of the appellants was that the story put forward by the prosecutrix was unbelievable and none of the persons who had accompanied the brother-in-law were examined and even Babita, who was lone woman and who could have supported the prosecutrix, was given up. It was urged that there is no medical evidence to corroborate the statement of the prosecutrix. It was contended that the prosecutrix had claimed that she was dragged for over one kilometer and if that was so, there would have been more injuries. The counsel further contended that the accused were not known to the prosecutrix but she had stated that they were calling each other by their names and that is how she came to know their names. It was urged that the police had arrested the accused but no identification parade was held and if they were unknown people, it is indeed surprising how the police could

arrest them. It was urged that it could be a case of consent as no injuries were found and if the woman had been gang raped by three men, there would have been some fresh tear or redness which was missing and the statement of the prosecutrix should not be accepted and the story was not believable. It was urged that the accused would not be so naive that they would call each others' names in the presence of the victim.

13. The trial Court has placed implicit reliance upon the testimony of the prosecutrix and the brother-in-law of the victim. There is no independent corroboration that the family members and the villagers had found the prosecutrix in a hut. The trial Court had referred to the fact that there was no injury but rejected the arguments on the ground that the lady was married and absence of injuries by itself was not a ground to reject the statement of the prosecutrix and absence of an injury did not cause any doubt on her veracity.

14. In the case of **Munna Vs. State of Madhya Pradesh, 2014(10) SCC 254**, the Hon'ble Apex Court held:-

"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."

Hon'ble Supreme Court in **Raju and others Vs. State of Madhya Pradesh, (2008) 15 SCC 133** had 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.

In ***Tameezuddin v. State (NCT of Delhi), [(2009) 15 SCC 566]***, the Apex Court observed thus:-

" 9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."

In ***Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171***, the Hon'ble Apex Court had held that minor or insignificant inconsistencies, discrepancies or contradictions in the statement of prosecutrix are inconsequential. However, if the statement of prosecutrix suffers from serious infirmities, inconsistencies and deliberate improvements on material points, no reliance can be placed thereon. It has further been held that onus of proof is on the prosecution to establish each ingredient of offence beyond reasonable doubt on basis of cogent evidence and material on record. The sole testimony of prosecutrix can be relied for the purpose of conviction without any corroboration if the same inspires confidence, but if court finds it difficult to accept version of prosecutrix on its face value, it may look for corroboration by other evidence, direct or circumstantial. The

Court must appreciate evidence in its totality with utmost sensitivity.

In ***Dinesh Jaiswal v. State of Madhya Pradesh, [(2010) 3 SCC 232]***, the Apex court referring to the principle that the evidence of the prosecutrix is liable to be believed save in exceptional circumstances had observed thus:

"10. Mr C.D. Singh has however placed reliance on Moti Lal case to contend that the evidence of the prosecutrix was liable to be believed save in exceptional circumstances. There can be no quarrel with this proposition (and it has been so emphasised by this Court time and again) but to hold that a prosecutrix must be believed irrespective of the improbabilities in her story, is an argument that can never be accepted. The test always is as to whether the given story prima facie inspires confidence. We are of the opinion that the present matter is indeed an exceptional one."

15. A perusal of the above would clearly show that the evidence of the prosecutrix in so far as the allegations of rape are concerned, should be taken as that of an injured witness but it can never be presumed that her statement should without exception be taken as gospel truth and under these principles, the statement of the prosecutrix has to be seen.

The prosecutrix had stated that she had left the house to ease and had travelled about a kilometer and was near the railway line when she was manhandled and dragged

inside a Jhuggi. The three men disrobed her and committed rape. According to her, when the accused saw a lantern appearing, they fled. She did not know any of them but knew their names as they were addressing each other. The brother-in-law of the prosecutrix alongwith other men reached the hut, gave her clothes and took her to the police station. The prosecution failed to examine any independent witness. The only witness examined by them is Babal Gulati brother-in-law of the victim. The remaining witnesses were given up.

According to the prosecutrix, she was dragged on the railway track and taken to the hut. The Medical Officer did not find any traces of violence internally or externally. There was no redness. They had noted two injuries, one was a swelling on the left elbow and the other a bruise on the left knee. The clothes of the prosecutrix were found by the police the next day from the same hut. There was no semen on her clothes. The medical evidence does not support the prosecution. The absence of injury on the private parts throws a doubt about the veracity of the statement.

No identification parade was held. It is doubtful as to how the police came to know the names of the persons who were involved. It cannot be ignored that rape causes greatest stress and humiliation to the victim but at the same time if the allegations are false, it can cause equal distress and damage to the accused and therefore, the Courts have to be careful while

examining the statement of the prosecutrix. The statement of the prosecutrix alone is not sufficient and the Courts have to look for some corroboration medical or otherwise. The statement of the prosecutrix cannot be universally and mechanically be accepted.

The story projected by the prosecutrix appears to be improbable. She would not have travelled such a long distance to ease herself. She was alone at home that night, her husband was away. She would not gone so far leaving her small children behind. No independent person came forward to support her statement that she was found in the Jhuggi. Her statement suffers from serious infirmities. I am of the view that the sole testimony of the prosecutrix cannot be relied upon for the purpose of conviction. It is difficult to accept her version on its face value. Therefore, some direct or circumstantial evidence was necessary, which is missing in this case. There were no signs of struggle. If she had been dragged over the railway track, there would have been more injuries. There was no injury on the private part and therefore, the statement of the prosecutrix alone is not sufficient to base the conviction. Therefore, both the appeals are accepted and the judgment of the Court below is set aside. Both the accused are acquitted of the charges.

(ANITA CHAUDHRY)
JUDGE

24.02.2016
'Sunil'