

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

**Crl. Appeal No. S-1633-SB of 2004
Date of decision : 06.09.2016**

Sukhjit Choudhary

... Appellant

versus

State of Haryana

... Respondent

and

Crl. Appeal No. S-1640-SB of 2004

Mahavir @ Bittu

... 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? 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. T.S. Sangha, Senior Advocate with
Mr. Sudhir Sharma, Advocate and
Mr. Ram Krishan Rana, Advocate
for appellant Sukhjit Choudhary.**

**Ms. Aditi Girdhar, Amicus Curiae
for appellant Mahavir @ Bittu.**

Mr. S.K. Saini, AAG Haryana.

ANITA CHAUDHRY, J.

The aforesaid appeals lay challenge to the common judgment of conviction and sentence dated 19.07.2004 and 21.08.2004 respectively vide which the appellants have been held guilty under Sections 363, 366-A, 343, 376(2)(g) and 120-B IPC. They had been sentenced to undergo

rigorous imprisonment for five years and to pay a fine of Rs.500/- under Section 363 IPC. In default of fine they were required to undergo further rigorous imprisonment for three months. They were sentenced to undergo rigorous imprisonment for ten years and fine of Rs.2000/- each under Sections 366A, 376(2)(g) and 343 IPC. In default whereof, they were to undergo further rigorous imprisonment for one year. They were also sentenced to undergo rigorous imprisonment for six months under Section 343 IPC. All the sentences were ordered to run concurrently.

The prosecution case finds its origin in the statement, Ex.PC dated 20.03.2000 made by Mukesh, wherein he informed that his 13 years old niece, hereinafter referred to as the prosecutrix was missing since the evening of 19.03.2000. He mentioned that Surinder told him that when he was present at Pataudi Chowk, Gurgaon and had seen the prosecutrix sitting with Bittu @ Mahavir and Mahavir Dahiya on a scooter, driven by Bittu @ Mahavir and he had tried to stop them, but in vain. It also came to light that 10-15 days earlier, Sukhjit Choudhary, a teacher at Panchgaon, Gurgaon had given Rs.200/- to the prosecutrix and allured her to continue meeting Mahavir Dahiya and Bittu @ Mahavir. He suspected that his niece had been enticed away by Mahavir Dahiya and Bittu @ Mahavir in conspiracy with Sukhjit Choudhary and Bhagwan Singh son of Ramsharan Lal Aggarwal, a tenant of Mahavir.

On the basis thereof, FIR, Ex.PF, bearing No. 175 dated 20.03.2000 was registered under Sections 363, 366 and 120-B IPC. Special report was sent to the high authorities. Accused Bhagwan Singh was arrested on 21.03.2000. The story further unfolded by the prosecution was that on 22.03.2000 the police received information that the prosecutrix was

being taken in a DTC bus towards Delhi side by two persons. The police party found prosecutrix in the company of her father Narain Singh and his brother Ran Singh. She was weeping. Her medical examination was conducted. She narrated to the police that on 19.03.2000 Mahavir Dahiya and Bittu @ Mahavir took her on a scooter to some distance where a car was parked, wherein Parveen and Sukhjit Choudhary were already sitting and she was forcibly taken to a house where she was confined and raped by Mahavir Dahiya, Bittu @ Mahavir and Parveen whereas Sukhjit Choudhary used to remain outside the room. The prosecutrix took the police party to house No. 119, Sector 14, Gurgaon, and demarcated the room where she was kept confined and raped. Covers of two quilts and a pant was taken into possession, which were sent to FSL for analysis. Offence of rape and illegal confinement was added. Accused Sukhjit Choudhary was arrested on 23.03.2000 and a Maruti car bearing registration No. HR24-G-0002 was taken in possession. Accused Bitu @ Mahavir was arrested on 06.04.2000 and his disclosure statement was recorded. Accused Parveen was arrested on 25.04.2000 and his disclosure statement was recorded. Accused Mahavir Dahiya could not be arrested and P.O. proceedings were initiated. On completion of investigation, final report was filed against Bhagwan Sarup, Sukhjit Choudhary, Mahavir @ Bittu and Parveen.

Charge under Sections 363, 366-A, 343, 376 and 120-B IPC was framed against the accused.

At the trial, prosecution examined 16 witnesses.

PW1 was the prosecutrix, PW2 Dr. Suman Bishnoi had medically examined the prosecutrix on 22.03.2000, PW3 HC Samsuddin had tendered his affidavit, Ex.PC, PW4 Const. Prem had taken into

possession the school certificate regarding age of the prosecutrix, PW5 Sarwan Kumar, Draftsman had prepared the scaled site plan, Ex.PE, PW6 had deposed about delivery of special reports, PW7 SI(Retd.) Dayanand had deposed about registration of the FIR and arrest of accused Bhagwan Saroop and Sukhjit Choudhary and taking of car in possession, PW8 Bimla Chauhan had proved the school certificate, Ex.PK, PW9 Mukesh was the author of the FIR, PW10 Const. Subhash Chand had tendered his affidavit, PW11 Surender had deposed that he had seen the prosecutrix in the company of Bitu @ Mahavir and Mahavir Dahiya on 19.03.2000, PW12 SI Saroj Bala was associated with the investigation, PW13 Inspector Rajender Singh had prepared the final report PW14 Inspector Mir Singh had arrested the accused Bitu @ Mahavir and he proved the disclosure statement, Ex.PN, PW15 SI Ramesh Kumar was the investigating officer of the case, PW16 Const. Dhan Singh had deposed about interrogation of accused Bitu @ Mahavir.

During trial, accused Parveen was released on interim bail and he absconded and was declared a proclaimed offender on 04.01.2003.

After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C.

Accused Bhagwan Swaroop took the stand that he was not named and it was a false case.

Accused Mahavir took the plea of alibi. He had further stated the prosecutrix was having relations with Mahavir Dahiya with whom he was working as driver and she was a consenting party and due to enmity between the father of prosecutrix and Mahavir Dahiya, he was named in the case, whereas he had done nothing wrong with the prosecutrix.

Accused Sukhjit Choudhary had stated that Mahavir @ Bittu was her driver and she had no role in the case and she had been falsely implicated.

In defence the accused examined two witnesses.

It is apposite to mention here that vide order dated 14.02.2004 on an application the charge was amended and Section 376(2)(g) was incorporated in the statement of allegations instead of Section 376 IPC.

After framing of charge witnesses namely Sarwan Kumar, Draftsman, HC Samsuddin, the prosecutrix, complainant Mukesh, Surender Singh son of Jagmal Singh, SI Saroj Bala and SI Daya Nand were again examined as PW1 to PW7 respectively, while the statements of other witnesses recorded earlier was read as per the statement made by counsel defence counsel.

The incriminating evidence was again put to the accused and in their statements under Section 313 Cr.P.C. they reiterated the stand taken earlier.

On appraisal of the evidence produced on record, the trial Court rejected the defence and convicted and sentenced the appellants in the manner indicated above. However, Bhagwan Swaroop was acquitted by the Court for want of evidence.

Dis-satisfied with the same, the instant appeals have been filed by the appellants.

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 appellants have assailed the findings of the learned trial court inter-alia on the ground that the case of the

prosecution was extremely weak and rested solely on the uncorroborated testimony of prosecutrix and the court below did not appreciate the inordinate and unexplained delay in reporting the matter to the police. Elaborating the submissions, it was urged that the prosecutrix was kidnapped on 19.03.2000 and the incident was noticed by PW Surender who admitted that he conveyed it to PW Mukesh, still the matter was reported to the police the next date i.e. on 20.03.2000 at night around 9:00 p.m.. According to them, time was utilized for consultations and deliberations by the father and uncle of the prosecutrix who was in Haryana Police.

It was further urged that the prosecutrix was more than 16 years of age and was a consenting party and her date of birth mentioned in school certificate Ex.PK could not be taken into consideration in absence of source of information. According to them, only on the basis of stray entry in the school register, it cannot be concluded that her date of birth was 12.11.1985, especially when neither her parents stepped into the witness box nor the record pertaining to birth of prosecutrix was summoned from any Governmental authorities. The prosecutrix did not undergo any ossification test though the doctor had referred her to the radiologist for age verification.

They further urged that the act and conduct of the prosecutrix also makes the prosecution case doubtful as neither on 19.03.2000 when she was taken away on scooter by Mahavir Dahiya and Bittu @ Mahavir nor on 22.03.2000 when she was found sitting in a DTC bus, any resistance was shown by her. Only when a acquaintance of the prosecutrix had noticed her in the bus with two persons(later came to known as Mahavir Dahiya and Bittu @ Mahavir), she got down from the bus and her father, who was working in the Police Department, was called. Had she been kidnapped, she

would have raised alarm in the bus itself.

It was further urged that the medical evidence belies use of any force on the prosecutrix as no injury was noticed on her person, rather she was found habitual to sexual intercourse and hymen had healed edges. According to them, the sequence of events suggest that she was a consenting party and being more than 16 years of age, she was legally eligible to give consent.

It was also urged on behalf of the appellant Sukhjit Choudhary that she being a lady cannot be convicted for the offence of gang rape and reliance was placed on **Priya Patel Vs. State of M.P. & Anr. 2006(3) RCR (Crl.) 545** and **Shanti Devi Vs. State of Punjab, 2007(3) RCR(Crl.) 294**.

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

Before dealing with the submissions made at bar by learned counsel, it is desirable to take note of the evidence of witnesses of fact produced by the prosecution.

In the case in hand, the occurrence started on the evening of 19.03.2000 when the prosecution had gone to the back side of the house where PW Surender had noticed her going on the scooter with Mahavir Dahiya and Bittu @ Mahavir and he reported it to Mukesh, uncle of the prosecutrix.

PW Surender while appearing in the witness box as PW11 and PW5 deposed on similar lines that on 19.03.2000 at about 7:00 p.m. he was standing at Pataudi Chowk, then he saw Bittu @ Mahavir and Mahavir

Dahiya taking the prosecutrix on scooter No. UP-12/6406. He called the prosecutrix, but Mahavir Dahiya slapped and gagged her mouth. Then he boarded the bus for home and on the way Mukesh met him and he disclosed the incident to him. They searched for the prosecutrix the whole night and gave statement to the police.

PW Mukesh when appeared in the witness box deposed that on the festival of Holi he had come to the house of his sister in Gurgaon. On 19.03.2000 her niece had gone to the back side of the house for Holi Pujan, but did not return and search was carried out. On the next date Surender told him that Mahavir Dahiya and Bittu @ Mahavir had taken the prosecutrix on a scooter. His sister i.e. mother of the prosecutrix disclosed to him that 10-15 days earlier Sukhjit Choudhary had given Rs.200/- to the prosecutrix and had asked her to meet Mahavir and Bittu. He informed the police vide statement Ex.PC and the case was registered.

As per the facts narrated above, the prosecutrix was recovered on 22.03.2000 and it is on her statement on which the whole case hinges.

The prosecutrix deposed that she was a student of Class-IX at the time of occurrence. Sukhjit Choudhary initially told her that she is a teacher and would help her clear the exams and used to meet her after the school. Sukhjit Choudhary showed love for her as she claimed that she was not having any child. Sukhjit Choudhary gave Rs.200/- to her for eatables and she told it to her mother, who asked her to return the amount. Sukhjit Choudhary met her 5-6 times during February, 2000.

On 19.03.2000 she got a telephonic call from Mahavir Dahiya, who threatened her to come to the back side of the house otherwise he would kill his father. At about 4.30 p.m. Mahavir Dahiya repeated the threat

on telephone. At about 7:30 p.m. she went to the back side of the house, then Mahavir Dahiya and Bittu @ Mahavir met her. They forcibly caught hold of her and took her on a scooter to Pataudi Chowk. A maruti car was already parked there, wherein Parveen Tyagi and Sukhjit Choudhary were sitting. They took her to a building in Sector-14, Gurgaon where Bittu @ Mahavir, Parveen Tyagi and Mahavir Dahiya raped her. Sukhjit Choudhary was present there. Mahavir Dahiya asked for a ransom of Rs.2 lacs from her father. She was kept there upto 21.03.2000 and continuously raped during that period. She had further stated that all the four accused took her to the bus stand to take her to Muzzafarnagar in a bus, where his brother(in relation) was also present and made her to sit with him. Accused Bittu and Parveen Tyagi alighted from the bus. Her brother gave message to her father on phone and her father along with police officials came there.

PW Dr. Suman Bishnoi medicolegally examined the prosecutrix on 22.03.2000 at 6:00 p.m. She had deposed that there was history of abduction and sexual assault four days back. However, no mark of injury was noticed and as per FSL report human semen was not noticed on her underwear and vaginal swabs. According to her, the prosecutrix was habitual to sexual intercourse.

In the backdrop of the testimonies of witnesses of fact, the first question which arises for determination is the age of the prosecutrix.

There is contradiction in the ocular and documentary evidence produced by the prosecution as to the age of prosecutrix. Complainant Mukesh while lodging the FIR gave the age of the prosecutrix as 13 years. Similar age was given by Surender in his statement under Section 161 Cr.P.C. The prosecutrix while deposing before the Court had stated that she

was 14 years of age on the date of occurrence i.e. 19.03.2000. The date of birth of the prosecutrix, as per certificate Ex.PK was 12.11.1985 meaning thereby, she was more than 14 years of age at the time of occurrence. This certificate was issued on 12.05.2000 i.e. after about one and a half month of the occurrence. It appears that an attempt was made to show the prosecutrix as a minor. It is evident from the testimony of PW8 Mrs. Bimla Chauhan, who proved the certificate Ex.PK that she merely produced the record of the school, but nothing was deposed about the source of information. Neither the Principal who issued the certificate Ex.PK was examined by the prosecution nor the parents of the prosecutrix stepped into the witness-box. She admitted that there would be a certificate authenticating the age of the prosecutrix with the school. No such record was produced. Even she was not certain about the correctness of the date of birth as mentioned in the Board Certificate. She only produced the record pertaining to 9th class. She admitted that the prosecutrix took admission in their school in 6th class and the school leaving certificate issued by her earlier school was not produced. In the circumstances, the certificate Ex.PK issued only on the basis of stray entry in the school record, without proof of its source, cannot be relied upon.

In Law of Evidence by Sir John Woodroffe and Syed Amir Ali, 17th Edition Vol.2 at page 2099 it is stated as follows:

"An entry relating to date of birth made in the school register is relevant and admissible under s.35 of the Evidence act, but entry regarding the age of a person in a school register is not of much evidentiary value to prove the age of a person in the absence of material on which the age of was recorded. An entry in a school register is not of much evidentiary value, when there is no evidence to show on what materials the entry

in the register about the age of the scholar was made.

The date of birth mentioned in the scholar's register of a school has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined. Much reliance cannot be placed on entries in the school admission registers which are not proved to have been made on the basis of the statement made by a person eg, the father of the boy, who knew the date of his birth. Since the name of the school from which the transfer certificate is obtained itself is absent from the certificate no reliance can be placed on the said certificate for determining the age of the accused."

In the decision reported in [Sunil v. State of Haryana](#) 2010(1) SCC (Cri.) 910 it was held as follows:

"25. The prosecution also failed to produce any Admission Form of the school which would have been primary evidence regarding the age of the prosecutrix. The School Leaving Certificate produced by the prosecution was also procured on 12.9.1996, six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by Ashok Kumar, her brother. The said Ashok Kumar was not examined. The alleged School Leaving Certificate on the basis of which the age was entered in the school was not produced."

In the case of **Court Vs. By Adv. Sri Blaze K. Jose, Crl. Appeal No. 438 of 2006**, Kerala High Court had an occasion to evaluate the evidentiary value attached to a school certificate. Taking into account catena of judgments, it was summed up as follows:-

29. If the extract of the school admission register is produced and it is proved in accordance with law by examining the person who issued the same and also by producing the register and also by examining the person who gave the date of birth when the ward was admitted, then it becomes an item of evidence which can be accepted as a conclusive evidence regarding the date of birth of the person concerned. More authentic is the entry in the register kept by the local authorities with regard to the date of birth and death of any person concerned.

30. Normally, the law accepts the entries in school records are proof of age, but the extract of the school admission register of the school where the ward was first admitted should be produced and proved. It is very seldom that the court accepts the extract of the school admission register where the ward had studied subsequently and the entries in that register is based on the entries in the transfer certificate issued from the school. In such circumstances, as could be seen from the decisions cited above, on facts it can be seen that there were other items of evidence to prove the date of birth of the victim. That would either be the oral evidence furnished by the person who gave information about the date of birth or the parents of the victim or through medical evidence in support of the age of the victim concerned.”

In the instant case, no attempt was made by the prosecution to produce the birth certificate issued by any governmental authority or to produce the father or mother. The documentary evidence in the shape of certificate, Ex.PK produced by the prosecution is not enough to conclude that the prosecutrix was infact born on 12.11.1985. Even Dr. Suman Bishnoi had referred her to a radiologist for age opinion, but she did not undergo the ossification test. Even the application filed by the accused for getting her

ossification test conducted was dismissed by the Court below by observing that the certificate issued by the school was available on record. But at that juncture, there was no occasion for the trial Court to evaluate the evidentiary value of the certificate, which, in view of the discussion above, fall short of the requirement of law.

As noticed above, there are contradictions in the ocular version as to the age of prosecutrix and the documentary evidence does not fulfill the legal test and the parents of the prosecutrix did not step into the witness box and in absence of any other evidence on record regarding her age, the stand taken by the defence that she was more than 16 years of age, seems to be probable.

The manner in which the incident had been narrated and post conduct casts a serious doubt. The story propounded by the prosecution was that PW Surender had seen the prosecutrix going with Mahavir Dahiya and Bittu @ Mahavir on scooter on the evening of 19.03.2000 and he on next day informed PW Mukesh about it and then FIR was lodged. But from the statement of PW Surender it is evident that on the same day i.e. 19.03.2000 he disclosed it to PW Mukesh, the maternal uncle of the prosecutrix. But, surprisingly the FIR was lodged next date after a delay of about 24 hours. Inordinate and unexplained delay coupled with the facts and circumstances, referred to above, makes a serious dent in the prosecution case. Even there was no mention of use of any force by the accused upon the prosecutrix in the FIR, whereas while appearing in the witness box he made improvements and deposed that when he called the prosecutrix while going with the accused, her mouth was gagged by Mahavir Dahiya and he gave a slap to her. The testimony of the prosecutrix does not suggest the presence of

Surender behind her house on the evening of 19.03.2000.

This Court has no hesitation to conclude that PW Surender was introduced to strengthen the story of kidnapping on 19.03.2000 and in view of the circumstances mentioned above, his testimony cannot be accepted. PW Mukesh was only the informant and he mentioned whatever was told to him by his sister and Surender. He himself was not the eye-witness and no reliance can be placed on his testimony especially when his sister i.e. mother of the prosecutrix was not examined by the prosecution.

The unnatural conduct of the victim also speaks volume about the genuineness of her statement and indicative of the fact that there was no allurements and she had left the home at her own and stayed with her consent. She admitted about presence of many persons in the street on 19.03.2000 but she did not resist nor raised alarm at the time she was picked up or at the time when she was shifted to the car. She admitted that the house where she was taken was surrounded by other houses, but no alarm was raised by her. Not only this, she admitted that on 21.03.2000 she was taken to Shankar Chowk in a car from where they boarded a bus. During all this journey, no help was sought from the persons who were present there. She admitted that she had not made any complaint to the passengers sitting in the bus. She was identified by a neighbourhood brother, who was sitting in the bus. She admitted that the accused were standing behind her in the bus. This time also no attempt was made by her to get the bus stopped. Rather her evidence suggests that the bus was got stopped by a neighbour of the prosecutrix who identified her and called her father. The said person was not examined by the prosecution for the reasons best known to it.

The version given in the FIR was that Sukhjit Choudhary had allured the prosecutrix by giving Rs.200/- about 10-15 days earlier and had asked her to meet Mahavir Dhaiya and Bittu @ Mahavir, whereas the prosecutrix in her statement before the Court nowhere stated so. No evidence was produced to connect Sukhjit Choudhary with the other accused. The car in which the prosecutrix had travelled was not owned. A close examination of the statement of prosecutrix reveals that the same also falls short of requirement to prove the complicity of the accused. The version given by the prosecutrix that she was raped in the presence of Sukhjit Choudhary seems to be highly improbable. The prosecutrix had exaggerated to show the involvement of Sukhjit Choudhary in her first statement by deposing that Sukhjit Choudhary called her father on phone and demanded Rs.2 lacs for ransom, whereas in her second statement ransom call was attributed to Mahavir Dahiya. This version only came in the first statement of prosecutrix whereas earlier it was nowhere the case of the prosecution that Sukhjit Choudhary had demanded ransom. As noticed earlier, the father of the prosecutrix was not examined and he was a police official. It appears that the true genesis of the occurrence was hidden by the prosecution and a story was fabricated by twisting the true facts to give it the shape of kidnapping and rape. The facts narrated above strengthens the defence plea that the prosecutrix had gone out of her own. Once it is concluded that the prosecutrix had gone out of her own will and was a consenting party, there is no need to dwell into the contention raised by the defence that Sukhjit Choudhary being a lady could not be held guilty for the offence of rape or gang rape or even for abetment.

The things do not rest here. The medical evidence produced on

record belies the version of rape. PW Dr. Suman Bishnoi had medically examined the prosecutrix on 22.03.2000. On examination, she found that patient was menstruating for the last two days. No mark of injury on the noticed on her person including thighs. Her hymen was torn with old healed edges and her vagina admitted two fingers easily. She was found to be habitual to sexual intercourse. No semen was detected on the undergarment and vaginal swabs.

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.”

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. As noticed above, her testimony 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 concerned, the evidence of a 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. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

In Tameezuddin alias Tammu Vs. State (NCT of Delhi), (2009) 15 SCC 566 it has been held that though evidence of 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. It had been

held as follows:

"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 story is indeed improbable.

In Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC

171 Hon'ble Apex Court has 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.

For the reasons recorded above, it is found that the evidence led by the prosecution suffers from serious infirmities and inconsistencies. The circumstances referred to above lend support to the plea of accused that the prosecutrix had left home on her own and she was neither confined, abducted or raped. Allegations of kidnapping, abduction and rape carry

grave implications. Therefore, for convicting any person for the offence, the degree of proof has to be of a higher standard and not mere possibility. In a criminal case, the prosecution has to prove its case beyond reasonable doubt. In the instant case, the prosecution has failed to prove the case against the accused Sukhjit Choudhary and Bittu @ Mahavir beyond shadow of reasonable doubt and the trial Court had erred in convicting and sentencing the appellants on the basis of untrustworthy and unreliable evidence. Accordingly, both the appeals are allowed. Judgment of conviction and sentence is set aside. Accused Sukhjit Choudhary and Bittu @ Mahavir are acquitted of the charges.

September 06 ,2016

Jiten

(ANITA CHAUDHRY)

JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No