

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1274-SB-2011 (O&M)
Date of Decision: 08.02.2016

Goldi Sharma

...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
- 2. To be referred to the Reporters or not? Yes
- 3. Whether the judgment should be reported in the digest?

Present: Mr. J.S. Saini, Advocate
for the appellant.

Mr. Surender Singh, AAG, Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. This appeal is against the conviction recorded by the Additional Sessions Judge, Panchkula dated 26.02.2011 in FIR No.150 dated 16.07.2010, registered at Police Station Chandimandir, under Sections 376(g), 365, 506, 120-B, 328 IPC. The appellant was sentenced to the following punishment:-

Under Sections	Rigorous Imprisonment for a period of	Fine	In default of payment of fine R.I.
365 IPC	5 years	Rs.5000/-	1 month
328 IPC	7 years	Rs.10,000/-	1 month
376(2)(g) IPC	10 years	Rs.20,000/-	2 months

All the sentences were ordered to run concurrently.

The complainant (name withheld), a married woman had left the house on 14.07.2010 and had gone to take medicines from Government Hospital, Sector-6, Panchkula. She travelled some distance on the scooter driven by Raj Kumar, her brother-in-law, who left her at Raipur Rani, Bus Stand and left for his work. The complainant had disclosed to the police that at 8:30 AM, she got into a Maxi Cab from Raipur Rani as the boy sitting in the vehicle claimed that they were heading for Panchkula. She boarded the vehicle and found that there was no other passenger and when she wanted to alight, the boys assured her that they would pick more passengers on the way and the vehicle sped away. The boys are said to have made her smell some intoxicant and she fell unconscious. The complainant was taken to a village near Manav Chowk, Ambala where both the accused Goldi and Chintu raped her and threatened her. The complainant returned on 15.07.2010 and narrated the matter to her husband on the next day. The FIR was lodged on 16.07.2010.

Both the accused were arrested. Investigation was completed and challan was presented. Charge was framed under Section 365, 376(2)(g), 328, 506 IPC.

The prosecution examined 15 witnesses, besides introducing the FSL report Ex.PR/1.

Statement of accused under Section 313 Cr.P.C. was recorded. The accused abjured the trial and pleaded false implication but failed to lead any evidence in defence.

The trial Court on examination of the evidence acquitted Ashok Kumar @ Kaka of all the charges whereas the appellant was convicted and sentenced to the imprisonment mentioned here-in-before.

I have heard counsel for both the sides. Record has also been summoned and perused.

Initiating the submissions, the counsel for the appellant had urged that the complainant was not a teenager but was a married woman and part of the journey she had covered on the scooter of her brother-in-law, from where she states that she was to board a bus but instead took a Maxi Cab for Barwala and from Barwala she was to go to Panchkula. It was urged that there are contradictions appearing in the statement and had she boarded a Maxi Cab at a busy area at 8:30 in the morning, it is difficult that her cries did not attract any person. It was urged that at the trial, she failed to identify the other accused and named Chintu who could not be arrested by the police. It was urged that the complainant had stated that she was taken to Ambala and on the next day she found herself in a 'Dharamshala' but she could not give the name or the place where it was situated and she was made to board a bus to Ambala on the next day. It was urged that strangely the ticket was arranged and she travelled some distance in a bus and from there she took another vehicle. It was urged that according to the complainant, she did not name Goldi earlier and Goldi and Ashok are cousins.

The counsel referred to the disclosure statement suffered by the accused Ex.PH and had urged that Ashok was related to the appellant and they had met the prosecutrix in the Primary Health Centre, Raipur Rani where she used to come for treatment and Ashok developed a liking for the prosecutrix and it was a case of consent. It was urged that the FIR was delayed and the medical evidence does not support the prosecution case and no DNA examination was got done. It was urged that the

appellant had already undergone almost five and a half years of actual custody and if the remissions are added, it is over eight years and the sentence be reduced to already undergone. Reference was made to ***Baldev Singh and others Vs. State of Punjab 2011(2) RCR (Criminal) 127 and Prem Kaur Vs. State of Punjab and others 2013(3) RCR (Criminal) 76.***

The submission on the other hand was that the appellant was relying upon the disclosure statement made by the appellant and has referred to a part of it, leaving the rest out and if the entire statement is read coupled with the statement of the prosecutrix, the evidence is not shaken. It was urged that the defence did not put their case to the prosecutrix nor such plea was taken by the accused in his statement under Section 313 Cr.P.C. and they had the opportunity to lead evidence in defence if the story projected was true.

The prosecutrix is a young married woman. She had made allegations of rape. She was taken away after she was made to smell an intoxicant. When she gained consciousness, she found herself in an uninhabited house in Ambala. The argument put forth on behalf of the appellant is that they were known to the prosecutrix and it was a case of consent. The prosecutrix has stated that she did not know the accused and she was subjected to rape. It is to be seen whether the evidence of the victim is reliable and probable and whether it inspires confidence.

Before venturing further, it is necessary to refer to the observations made by the Hon'ble Apex Court in ***State of Punjab Vs. Jagir Singh Baljit Singh & Karam Singh, AIR 1973 SC 2407***, which is as under:-

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

The prosecutrix in her deposition in the Court had stated that she was made to sit in the Maxi Cab and she was not taken to the destination which she wanted to go and was forcibly taken to another place by two persons sitting on the driver seat. She had stated that she would not have boarded the Maxi Cab as there was no passenger but assurance was given that they were taking up more passengers and that is why she hesitated but did not know that she would be waylaid to another destination. The incident took place on 14th July, 2010. The prosecutrix was detained that night and she returned the next morning. She came and narrated the incident to her husband and the matter was reported to the police the next day. The statement of the prosecutrix has to be accepted unless it is shown that it is improbable and belies logic.

From the side of defence, the argument put forth was that it was a case of consent. My attention was drawn to the disclosure statement made by the accused but I find that the theory of consent as put forth by the defence needs to be rejected outrightly. No questions were put to the prosecutrix in the cross-examination. The accused did not make any statement in his 313 Cr.P.C. statement nor any evidence was led to show the story which had appeared in the disclosure statement. There is no reason why the statement of the prosecutrix should not be accepted. The prosecutrix had categorically stated the manner in which she was taken away. The only question that remains to be answered is whether reliance on her solitary statement should be made. Question also is whether corroboration is essential in rape cases. This issue was considered by Hon'ble Supreme Court in ***Rameshwar Kalyan Vs. State of Rajasthan 1952 SC 54***. The Apex Court has observed that a victim of rape cannot be treated as a accomplice. The Evidence Act nowhere points that evidence cannot be accepted unless is it corroborated in a particular manner. A rape victim is a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as it attaches to the injured in case of physical violence and to insist corroboration would add insult to injury.

The evidence of the prosecutrix does not suffer from any basic infirmity and is accepted. The story put forward by the prosecution inspires confidence. It cannot be said that it was a case of consent. Since her statement is reliable and trustworthy, there is no reason to take a different view. The finding recorded by the Court below is affirmed. Considering the circumstances of the case, no case even is made out for reducing the sentence

which was the minimum sentence which was awarded.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

08.02.2016
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