

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

**Crl. Appeal No. S-1146-SB of 2012
Date of decision : 11.05.2016**

Rachhpal Singh @ Kali

..... Appellant

versus

State of Punjab

... Respondent

with

Crl. Appeal No. S-1272-SB of 2012

Ranjit Singh @ Rana

..... Appellant

versus

State of Punjab

... Respondent

and

Crl. Appeal No. S-1565-SB of 2012

Jagjit Singh

..... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MS. 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. R.S. Sekhon, Advocate
for appellant Rachhpal Singh @ Kali.**

**Mr. A.S. Manaise, Advocate
for appellant Ranjit Singh @ Rana.**

**Mr. Satish Sabharwal, Advocate
for appellant Jagjit Singh.**

**Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

In the afore-mentioned three appeals, common

challenge has been laid by the appellants to the judgment and order of conviction and sentence dated 10.02.2012 and 16.02.2012 respectively by which they had been held guilty under Sections 366-A and 376 IPC and sentenced to undergo five years' rigorous imprisonment with fine of Rs.5000/- each under Section 366-A IPC and in default they were required to undergo further rigorous imprisonment for six months. They were sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.10,000/- each under Section 376 IPC. In default whereof, they were to undergo further rigorous imprisonment for one year. Both the sentences were ordered to run concurrently. On recovery of fine, it was ordered to be paid to the prosecutrix as compensation.

The facts leading to the institution of present appeal are being noticed first.

Jagdish Singh, the complainant had two children, a boy, 18 years and a girl, 16 years old. She is the victim and is being referred to as the prosecutrix hereinafter. She had studied upto the 8th class and was helping in the household chores. In the night intervening 28/29.6.2010 the family was asleep in the courtyard. Jagdish Singh noticed that the prosecutrix was not on her cot. He and his wife Balwinder Kaur started searching for her. His newpnew

Amarjit Singh disclosed that at about 1:00 a.m. he had seen the prosecutrix in the company of Ranjit Singh @ Rana, Rachhpal Singh @ Kali and Jagjit Singh and they were going towards the railway station and on seeing him, they took a turn towards the fields. They went to the railway station to search but could not find them. The complainant suspected that those persons had taken his minor daughter on the pretext of getting married to her.

On the basis of complaint made by Jagdish Singh, FIR was registered under Sections 363 and 366-A read with Section 34 IPC. Investigations were carried out. On 02.07.2010 the accused were arrested and prosecutrix was recovered. Her medical examination was conducted. On the basis of her statement, offence under Section 376 IPC was added. On completion of investigation, final report was filed for trial.

Charge under Sections 366-A and 376 IPC was framed against the appellants, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined nine witnesses, including the prosecutrix and her father.

The incriminating circumstances led by the prosecution were put to the accused in their statements under Section 313 Cr.P.C., which they denied. Accused

Ranjit Singh pleaded false implication on account of party faction in the village, while Rachhpal Singh took the plea that his father was an employee of the electricity department and he stopped Jagdish from stealing electricity, due to which Jagdish started nursing a grudge and a story was concocted to falsely implicate them. Accused Jagjit Singh took the plea that he was related to accused Rachhpal Singh and had been implicated.

One witness was examined by them in defence.

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.

Dis-satisfied with the same, the instant appeals have been filed by the appellants, which are being disposed of by this common order.

I have heard the learned counsel for the parties and with their able assistance have gone through the record of the case.

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 the court below did not appreciate the inherent infirmities, contradictions and improbabilities of the prosecution case. They had further submitted that there was

no basis for the trial Court to conclude that the prosecutrix was less than 16 years of age and such a finding was recorded on the basis of school admission register and was not sustainable. Elaborating the arguments, they had submitted that the date of birth of the prosecutrix as 07.07.1994 was taken only on the basis of admission form filled by the complainant and in absence of any record of Chowkidar or from the Registrar, Deaths and Births, it could not be taken into consideration. They had urged that the prosecutrix was about 20 years of age, as per the ossification report.

It was urged that the inordinate and unexplained delay in reporting the matter to the police also casts a doubt on the story propounded by the prosecution. Elaborating their arguments, the counsel submitted that the prosecutrix was kidnapped on the night intervening 28/29.06.2010 and Amarjit Singh, the cousin of prosecutrix had seen them but still no action was taken by the complainant and the FIR was lodged on 30.06.2010. They had pointed out that the prosecution had failed to examine Amarjit Singh for the reasons only known to them.

Adverting to the conduct of the prosecutrix, it was urged that the story of kidnapping from the house was highly improbable because it was not possible to take the

prosecutrix away when she was sleeping with her family members and it cannot be accepted that in the process there was no sound and it did not wake up any one. According to them, the prosecutrix of her own had accompanied Ranjit Singh, to marry him, but later under the influence of her parents, she had deposed against the appellants. According to them, the story of kidnapping and rape, as propounded by the prosecution got negated from the fact that no external mark of injury was noticed on the body of prosecutrix and she travelled around 25 kms on foot, but at no point of time she had raised any hue and cry.

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

It is desirable to look at the evidence produced at trial.

PW1 Dr. Hans Raj had medicolegally examined the accused on 02.07.2010 and found no injury on their bodies; PW2 Dr. Daya Bhukkal had examined the prosecutrix on 02.07.2010. No external injury was noticed over the body. Hymen was torn and was old one; PW3 Subhash Chander,

ETT Teacher had brought the record regarding admission of prosecutrix, according to which her date of birth was 07.07.1994; PW4 Sanjiv Kumar had prepared the site plan on 20.08.2010; The prosecutrix appeared as PW5 and her father as PW6 and deposed as per the case of the prosecution; PW7 HC Ved Parkash tendered his affidavit in evidence; PW8 SI Kuldip Chand was the investigating officer of the case and PW9 HC Satpal was a formal witness who had tendered his affidavit.

In the first instance the age of the victim should be examined. It is to be seen, whether the prosecutrix was a minor as defined in Section 361 IPC, thereby whether it attracts the punishment under Section 366-A IPC. Besides the ocular version of the prosecutrix and her father, the prosecution had examined PW3 Subhash Chander. He deposed that the prosecutrix was admitted in the school on 01.04.2000 and as per entry in their school record, the date of birth was mentioned as 07.07.1994. In his cross-examination, he had admitted that at the time of admission of prosecutrix, neither the birth certificate from Registrar Births and Deaths nor any other certificate or document from any authority or Chowkidar was produced. He admitted that this entry was not made by him and showed ignorance as to who had made this entry in the register.

It is apparent that the date 07.07.1994 was mentioned only on the basis of information provided by the person who filled the form. There is nothing on record to suggest as to who filled the admission form. PW 6 Jagdish was silent on this aspect. The prosecution had failed to prove as to who had made that entry in the records and what was the source of information on the basis of which the date was entered in the school records. The best possible evidence i.e. record of Chowkidar or hospital was not produced by the prosecution. In absence thereof, no evidentiary value can be attached to the entry in the school record and it was not sufficient to conclude that her date of birth was 07.07.1994. Reliance can be placed on **Kala Singh Vs. State of Punjab 1996(3) RCR(Cr.) 343,**

Interestingly, PW2 Dr. Daya Bhukkal had referred the prosecutrix for ossification test for determination of her age. The ossification test was carried out and it was opined that her age would be between 19-20 yrs. The prosecution withheld this vital document for the obvious reason that it was against the prosecution case. The defence had proved it and had examined DW.1 Anita Rani.

In absence of any cogent and convincing evidence led by the prosecution as to the age of prosecutrix, the oral deposition made by prosecutrix and her father cannot be

taken into consideration especially when the ossification test proves her age to be 19-20 years. No doubt the ossification test is not a conclusive proof, but at the same time it cannot be ignored that when two views are possible, the view favouring the accused has to be accepted. Reference can be made to **Amrik Singh Vs. State of Punjab, 200(2) RCR (CrI.) 211** and **Raju @ Raj Kumar Vs. State of Haryana, 2010(3) RCR(CrI.) 1.**

The ossification report is the only evidence. It stands established that the prosecutrix was more than 18 years of age at the time of occurrence.

The prosecution case hinges on the testimony of prosecutrix and that of her father whose evidence is just hearsay. An improbable account was given by the prosecution and the conduct of prosecutrix was also unnatural. The conduct of her father also casts a shadow of doubt on the veracity of prosecution case.

The case set up by the prosecution was that on the night intervening 28/29.06.2010, the prosecutrix was sleeping with her family members in the courtyard, when she was kidnapped. Prosecutrix deposed that a piece of cloth was used to gag her. It is highly improbable that no noise was made nor anyone heard her. The victim had admitted in her cross-examination that her house was

surrounded by houses of her relatives. The act could only be accomplished with the consent of the prosecutrix.

It was the case of the prosecution that Amarjit Singh, cousin of the prosecutrix had seen her in the company of accused. On seeing them, they turned towards fields. It cannot be expected that a brother who had seen his cousin in the company of some persons in the late hours did not disclose to the family and kept mum. He even did not attempt to follow them. Amarjit Singh was kept away from the witness box and the reasons are obvious.

The improbability of prosecution case further gets strengthened from the fact that despite having knowledge of all the facts, the complainant kept quiet and lodged the report with the police on 30.06.2010 two days after the occurrence. This unexplained and inordinate delay in reporting casts a shadow on the prosecution version and strengthens the plea that the case was registered after due deliberations and consultations. The prosecutrix also demolished the case of the prosecution when she deposed that the police met her on 29.06.2010 and the police had sent her back with her father after recording their statements. The police again met them on 30.06.2010 when the case was registered and she was taken to the police station. There is another aspect of the matter. The

complainant while lodging the FIR had stated that his daughter was taken away by the accused on the pretext of marriage. In his cross-examination he admitted that his daughter told him about the intention of the accused to marry her on 02.07.2010 when she was recovered. The prosecutrix had stated that she knew Ranjit Singh before the occurrence and he had liking for her but she did not complain against him to her father and that is the reason the complainant had mentioned the factum of marriage in the FIR. The facts were distorted to give it the color of kidnapping and rape after due deliberations.

Silence on the part of the prosecutrix also lends support to the fact that she was a consenting party. She had deposed that she was kept in the fields on 29.06.2010 and was raped. She admitted that they had been roaming in the fields of the village on 29.06.2010 where people were sowing paddy. She never showed any resistance to the act of the accused nor raised any alarm nor sought help from the villagers. She admitted that village Tahliwal, from where they were apprehended, was about 20/25 kms from her village and they covered the distance on foot. She admitted that from Tahliwal they had to board a bus to Muktsar where the marriage was to be performed. She further admitted that they were on the bus stand for the last 15 to 20

minutes and people were there. She did not raise alarm there. She could get help. There is every possibility of intimacy between the prosecutrix and Ranjit Singh.

The medical evidence also belies the case of the prosecution. PW2 Dr. Daya Bhukkal, on examination, did not notice any injury on the body of prosecutrix. Her hymen was ruptured and the tear was old. Had she been subjected to rape, as alleged, there would have been some sign of violence, but the prosecutrix did not have any injury.

The law is settled that the court can 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.

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."

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.

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.

No reliance can be placed on the testimony of prosecutrix and her father.

It is a case of heinous crime of kidnapping and

rape, which carries grave implications. Therefore, for convicting any person for the said 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 a reasonable doubt. In the instant case, the prosecution has failed to prove the case against the accused beyond shadow of reasonable doubt. The evidence led by the prosecution is found to be suffering from serious infirmities, inconsistencies and improbabilities. In this view of the matter, it cannot be believed that the accused kidnapped and committed rape upon the prosecutrix. The testimony of the prosecutrix does not inspire confidence. Accordingly, the appeals are allowed. Judgment of conviction and sentence is set aside. The accused are acquitted of the charges. They be released forthwith, if not required in any other case.

May 11, 2016
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(ANITA CHAUDHRY)
JUDGE