

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

Crl. Appeal No. S-1503-SB of 2012

Date of decision : 21.09.2016

Lachhman Singh @ Lachhman Dass
versus

... Appellant

State of Punjab

... 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. Navdeep Chhabra, Advocate
for the appellant.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

By way of aforesaid appeal, a challenge has been laid to the judgment of conviction and sentence dated 20.01.2012 vide which the appellant has been held guilty under Sections 376 and 506 IPC. He had been sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs.22,000/- under Section 376 IPC. In default of fine, he was required to undergo further rigorous imprisonment for six months. He was sentenced to undergo rigorous imprisonment for 2 years and fine of Rs.1000/- under Section 506 IPC. In default whereof, he was to undergo further rigorous imprisonment for one month. Both the sentences were ordered to run concurrently.

The complaint Ex.PA dated 07.10.2009 was made by the prosecutrix, aged 15 years. She along with her mother and one Balwinder Singh met the police party and alleged rape and criminal intimidation by her

father Lachhman Singh i.e. the present appellant. On 05.10.2009 the victim's mother and the younger brother had gone to another village for labour. After serving dinner to her father the victim slept inside along with her sisters and brother. Her father slept in the courtyard. In the night at about 1:00 a.m. her father came in the room and asked for a top sheet, but she could not find it. Meanwhile, her father made her to sit on the cot and tried to commit rape. When she protested, he slapped her. In the meantime, Ramandeep Kaur, her cousin sister, who was sleeping woke up on hearing the cries and raised alarm. The accused then fled from the spot and criminally intimidated his daughter. Due to fear she did not disclose it to anybody and called her mother through her aunt Veerpal Kaur, who returned in the evening. Thereafter, they narrated the incident to Jarnail Kaur Sarpanch wife of Balwinder Singh, who took her to the police.

On the basis of aforesaid complaint, FIR No. 225 dated 07.10.2009 was registered under Sections 376 read with Section 511 IPC and 506 IPC and investigated. The prosecutrix was medically examined. Vaginal swabs and undergarment of the prosecutrix were sent for analysis. Rough site plan of the place of occurrence was prepared. Accused was arrested on 08.10.2009 and was medically examined.

Charge under Section 376 and 506 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

At the trial, prosecution examined eight witnesses. PW1 Dr. M.G. Sharma had medically examined the accused on 09.10.2009; PW2 Dr. Ranju Singla had examined the prosecutrix on 07.10.2009; prosecutrix stepped into the witness box as PW4; PW4 Mohinder Kaur was the mother of the prosecutrix; PW5 Bimla Devi had brought the record pertaining to

admission and withdrawal pertaining to the prosecutrix and gave the date of birth, as per record, as 10.12.1996; PW6 Ramandeep @ Namandeep Kaur was the eye-witness; PW7 HC Ashok Kumar was associated in the investigation with investigating officer ASI Kulwant Singh, who had since expired. He had deposited the samples with Chemical Examiner and had tendered affidavit Ex.PW7/F and PW8 ASI Major Singh had tendered his affidavit Ex.PW8/A.

The incriminating circumstances led by the prosecution were put to the accused in his statement under Section 313 Cr.P.C., which were denied.

In defence, the appellant examined Veerpal Kaur wife of Jarnail Singh as DW1.

On appraisal of the evidence produced on record, the trial Court rejected the defence and convicted and sentenced the appellant in the manner indicated above.

Dis-satisfied with the same, the instant appeal has been filed by the appellant.

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 appellant 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. Elaborating his arguments, he had submitted that Ramandeep Kaur, PW6, the eye-witness had not supported the case of the prosecution and denied having witnessed any occurrence. He had further urged that the court below did not appreciate the inordinate and unexplained

delay in reporting the matter to the police. According to him, the rape had been committed on the night intervening 04/05.10.2009, while the FIR was lodged on 07.10.2009 and this time was utilized for concocting a story. It was urged that initially the case of the prosecution was of attempt to rape, but later the version was changed to that of rape. He had further submitted that the trial Court had went wrong in rejecting the defence plea and discarding the testimony of DW1 Veerpal Kaur. According to him, the medical evidence on record belies the theory of rape. It was urged that there were inherent infirmities, contradictions and improbabilities in the testimonies of the prosecutrix and her mother, which cast a doubt on the prosecution case.

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

PW8 Bimla Devi, Principal Govt. Senior Primary School, Muktsar-I, the prosecution projected the date of birth of the prosecutrix as 10.12.1996, according to which she was little less than thirteen years at the time of incident. No contrary evidence was produced by the defence to show that the date of birth as mentioned in the school record was incorrect.

The star witness for the prosecution were PW3, her mother PW4 and Ramandeep Kaur @ Namandeep Kaur PW6. It was the case of the prosecution that Ramandeep Kaur was also sleeping with the prosecutrix when the accused raped her. A perusal of record reveals that Ramandeep was also of the same age group. She had given her age as 15 years. Certain questions were put to the witness to ascertain her capability. She stood the

test and her statement was recorded. She admitted that she knew the appellant. She deposed that Veerpal Kaur was a labourer. She was declared hostile and cross-examined. She denied that her mother had gone with the mother of the prosecutrix to other village for labour.

PW4 Mohinder Kaur is the mother, she was not present and was away that night. Similar is the version given by the prosecutrix. PW4 deposed that she had six children and the prosecutrix was the eldest of all. Her husband worked as a labourer. On 05.10.2009 she along with her son had gone to Mandi Jandoke for labour work and the rest of the family were home. She received a message through Veerpal Kaur and returned home on 06.10.2009 and her daughter (prosecutrix) told her about the incident. She had deposed that Namandeep Kaur @ Ramandeep Kaur, who was sleeping with her, woke up and raised alarm. The accused threatened not to disclose the matter to anybody. On the next day i.e. 07.10.2009 she along with the prosecutrix and Balwinder Singh, husband of Jarnail Kaur Sarpanch informed the police. She explained that due to shame they told the police about attempt of rape, but later disclosed that rape had actually been committed.

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.

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.

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. The Court must appreciate evidence in its totality with utmost sensitivity. It was held:

"20. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508)

Keeping in view the aforesaid legal enunciation, let us first advert to the statement made by the prosecutrix.

While appearing as PW3 she deposed that on 05.10.2009 her mother and one brother had gone for labour work. She along with her sisters and another brother were home. Her father had returned from work. She served dinner and went to sleep in the room while her father slept in the courtyard. At about 1:00 a.m., her father woke her up and asked for a top sheet. She could not find it. Her father made her lie on the cot and switched off the light. Accused opened the string of her salwar. She tried to save herself then accused slapped and asked her not to raise voice and threatened to kill her and raped her. She further deposed that her cousin sister Ramandeep Kaur @ Namandeep Kaur daughter of Veerpal Kaur was sleeping in the same room. She contacted her mother from Veerpal's mobile. Her mother returned the next day. Due to fear of the accused they did not disclose the incident to anyone. On the next day i.e. 07.10.2009 they disclosed the matter to Balwinder Singh, husband of Sarpanch Jarnail Kaur and they reported the matter to the police and her statement Ex.PA was recorded. She further disclosed that rough site plan was prepared by the police at her instance.

The version given by the prosecution does not get support from Ramandeep Kaur @ Namadeep Kaur, who denied that she was a witness to the occurrence. It is the case of the prosecution that the prosecutrix along with her sisters and a brother was sleeping in the room at the time of incident. and in their presence she was raped. There is only one room in the

house and it has no doors. It is highly improbable that accused would dare in presence of so many children who were in the age group of 8 to 12 years. The prosecutrix did not shout for help. She had explained that her father had extended threats to her other sisters and brother. None of them were examined. PW4 stated that she had been told that neighbourer had collected at the spot and had apprehended the accused, but surprisingly no one from the neighbourhood was examined.

The manner in which the incident had been narrated and post conduct casts a serious doubt. The occurrence took place on the night intervening 4/5.10.2009, but the matter was reported to the police on 07.10.2009. The explanation put forth was that the mother of prosecutrix had gone with her son and Veerpal Kaur to another village. The attempt made by the prosecution to cover up the delay suffers a setback when Veerpal appeared as a defence witness. She denied that she had accompanied Mohinder Kaur on 05.10.2009 to Mandi Jandoke. She even denied owning a mobile. It appears that the time was used for consultations and deliberations to cook up a story and it makes a serious dent in the prosecution case.

The initial version set up by the prosecution was that of attempt to rape. In her statement Ex.PA, on the basis of which FIR was registered, she categorically stated that the accused tried to rape. Even in the site plan, Ex.PW7/C, which admittedly was prepared at her instance, the point A was referred to as the place where rape was attempted. From the very beginning it was claimed to be a case of attempt to rape. Later, on receipt of the FSL report dated 03.11.2009 since spermatozoa was detected in the vaginal swabs, the investigating officer had recorded the supplementary statements

of the prosecutrix and her mother on 06.12.2009, wherein they made the improvement and came up with the allegations of rape. No doubt spermatozoa was detected on the vaginal swab and underwear, but the same was not sent to DNA examination to corroborate the plea that it was of the accused. This was a vital piece of evidence, but it was not resorted to by the investigating agency. The investigating officer had died during trial so he could not be produced at the trial. Even no attempt was made to produce the prosecutrix before the Magistrate to record her statement under Section 164 Cr.P.C. The investigation was done in a very casual manner and on each and every stage of investigation, an attempt was made to cover up the original story.

The conduct of the prosecutrix herself had not remained unblemished. There is another reason to discard her statement. She was medically examined by PW2 Dr. Ranju Singla on 07.10.2009 at about 3:15 p.m. She found that her hymen was broken and her vagina admitted two fingers. There were no external mark of injury. Had she been ravished by the accused for the first time, the position would have been different.

The question which arises is as to whether what prompted the prosecutrix to level such a wild allegation against her father. To find out the answer, a look at the plea taken by the defence and the evidence produced in this regard by defence in juxtaposition with the facts coming in the evidence of prosecution witnesses, are necessary. In his statement recorded under Section 313 Cr.P.C., the accused took the following plea:-

“I am innocent. I did not commit any offence as alleged in the FIR. Moreover I was not present at my home on the alleged date and time of occurrence as I was not on good terms with my wife for a long period and due to

this reason I have not been visiting my house for long period. Infact due to my absence as well as absence of my wife from the house, my daughter (victim) developed illicit relation with one son of Balwinder Singh of our locality and on the date of occurrence when the son of Balwinder Singh visited at night to meet my daughter then our neighbourers came to know this fact and they raise a alarm. So under the fear of my wrath my daughter(victim) in connivance with the son of above Balwinder Singh concocted the false story and falsely implicate me in the said case to save herself from my wrath. PW4 my wife also falsely deposed against me due to strained relations with me and to save the victim from my wrath. Infact victim performed intercourse with abovesaid son of Balwinder Singh on the date of occurrence as stated by the neighbourers. When I came to know this fact then I came my home where police arrested me.”

The prosecutrix and her mother both admit that the couple had strained relations. The mother of the prosecutrix admitted that her husband had been living separately. The prosecutrix had admitted that due to strained relations, her father had not been visiting the house for years together.

The appellant had alleged that the prosecutrix was in relationship with the son of Balwinder Singh, who was husband of Sarpanch of their village. It has come in the evidence of the prosecutrix that there had been a dispute between her father and Balwinder Singh. Irrespective of that, it is evident that Balwinder Singh right from the very first was in the picture even when the matter was reported to the police. It is this person who took the prosecutrix and her mother to the police. The prosecutrix admitted that

Balwinder Singh and his family had extended full help in her marriage after

the incident. DW1 Veerpal Kaur had deposed that she had heard that a boy had intruded in the house of the prosecutrix when she was alone. Though the prosecutrix denied having gone to the house of Balwinder Singh ever, but she had admitted that she knew the sons of Balwinder Singh by face. The plea taken by the defence seems to be more probable. Just to save herself from the wrath of the accused, the daughter has implicated the father by concocting a false and fabricated story.

In 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.”

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 he has been falsely implicated in this case. Allegations of rape and criminal intimidation 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 beyond shadow of reasonable doubt and the trial Court had erred in convicting and sentencing the appellant on the basis of untrustworthy and unreliable evidence. Accordingly, the appeal is allowed. Judgment of conviction and sentence is set aside. The accused is acquitted of the charges. He be released, if not required in any other case.

September 21,2016

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No