

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

**Crl. Appeal No. S-1884-SB of 2011
Date of decision : 01.06.2016**

Bohar Singh	versus	... Appellant
State of Punjab		... Respondent
with	Crl. Appeal No. S-2117-SB of 2011	
Gurpreet Singh	versus	... Appellant
State of Punjab		... Respondent
and	Crl. Appeal No. S-3348-SB of 2013	
Navdeep Singh @ Babbi		... Appellant
	versus	
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. S.P.S. Sidhu, Advocate
for appellant Bohar Singh.**

**Mr. Daldeep Singh, Advocate
for appellant Gurpreet Singh.**

**Mr. Nakul Sharma, Advocate
for appellant Navdeep Singh @ Babbi.**

Mr. A.S. Aulakh, AAG Punjab.

ANITA CHAUDHRY, J.

Aforesaid appeals are being disposed of by this judgment as

challenge therein has been laid to the common judgment of conviction and

sentence dated 08.07.2011 vide which the appellants have been held guilty under Sections 363, 366, 344 and 376(2)(g) IPC. They had been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2000/- under Section 376 IPC. In default of fine they were required to undergo further rigorous imprisonment for one month. They were sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.1000/- under Sections 363 and 366 IPC. In default whereof, they were to undergo further rigorous imprisonment for one month. They were also sentenced to undergo rigorous imprisonment for three years with a fine of Rs.500/- under Section 344 IPC. In default of fine, they were to undergo further rigorous imprisonment for fifteen days. All the sentences were ordered to run concurrently.

On 29.05.2009 the prosecutrix along with her father Jaspal Singh and grandfather Basant Singh met the police party and got a statement recorded. The victim disclosed that she had pain in her right leg and on 27.04.2009, she started for Amritsar in the morning to get medicine. She had to meet her brother Maninder Pal Singh who had also gone to a place near Amritsar. At about 5:30 a.m. she reached Talwandi Bhai railway station. From there she was going on foot to the bus stand to catch a bus for Amritsar. After covering some distance, a car came from behind and stopped near her. Gurpreet Singh son of Lakhbir Singh of village Sulhani came out and forcibly dragged her inside the car. She raised alarm. Gurpreet Singh made her inhale something and she fell unconscious. On regaining consciousness, she found herself at an abandoned place near Harike river from 27.04.2009 to 12.05.2009, Gurpreet Singh and his three companions, who had covered their faces, raped her turn by turn. During this period she

was kept confined in a room in the fields. They used to give her food and fruits. She was given some medicine due to which she had wounds on her body. Lastly, the accused threw her at Bengali Wala bridge in an unconscious state. She called her father after taking the mobile from a passerby. Due to shame they kept quiet, but when Gurpreet Singh started defaming them in the village, the complaint was made to the police.

On the basis of aforesaid statement, FIR was registered and investigated. The prosecutrix was medically examined. Navdeep Singh and Bohar Singh were arrested on 09.08.2009 by Inspector Nachhatar Singh and challan was filed against them. Gurpreet Singh was found innocent by the police and his name was placed in column No.2 of the challan.

Charge under Sections 344, 363, 366 and 376(g) IPC was framed against Navdeep Singh and Bohar Singh, to which they pleaded not guilty and claimed trial.

Prosecutrix appeared as PW1 and after her statement, on an application filed under Section 319 Cr.P.C., Gurpreet Singh was also summoned as an additional accused to face trial.

Charge was framed afresh under the aforesaid heads against all the three accused.

The prosecution produced six witnesses. PW1 was the prosecutrix, PW2 Inspector Nachhatar Singh had arrested the accused and had prepared the final report of the case; PW3 ASI Jagdish Singh recorded the formal FIR; PW4 ASI Satnam Singh partly investigated the case; PW5 Jasbir Singh, the uncle of the prosecutrix saw the accused kidnapping the prosecutrix on 27.04.2009 and PW6 Dr. Sonia Gulati had medically examined the prosecutrix.

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 Bohar Singh pleaded false implication. Accused Gurpreet Singh took the stand that on account of political rivalry with Angrej Singh, Sarpanch of the village, he had been falsely implicated in the case and the prosecutrix had named him at the instance of Angrej Singh and the police had found him innocent. Accused Navdeep Singh took the plea that he was having an affair with the prosecutrix and they had solemnized the marriage against the wishes of her parents as per Sikh Rites and cohabited as husband-wife. Due to this, the parents of the prosecutrix along with police raided their house and took his wife i.e. the prosecutrix and later she falsely implicated him.

In defence, the appellants examined DW1 HC Jaswinder Singh who proved the enquiry report prepared and submitted in the matter by SHO Nachhatar Singh vide which accused Gurpreet Singh was declared innocent; DW2 Sukhjot Singh, Photographer proved photographs mark A to C; DW3 Jaswinder Singh Sarpanch of the village Gehri Mandi deposed that prosecutrix lived at the house of Navdeep Singh as his wife for 14-15 days. He saw them together in the village 2-3 times. He visited the house of Navdeep Singh and blessed them and gave shagun. DW4 HC Balwant Singh proved DDR No.8 dated 30.04.2009 lodged by Jaspal Singh and Angrej Singh, wherein the informant had lodged the complaint as the prosecutrix was missing since 6:00 a.m. of 27.4.2009 after she had gone to Gurudrawa to pay obeisance and had not returned.

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.

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 when the prosecutrix was kidnapped on 27.04.2009 and she returned to the house on 12.05.2009 and the matter was reported to the police on 29.05.2009. They had further urged that Gurpreet Singh was found innocent by the police during investigation and the other appellants were not named by the prosecutrix in her statement given to the police and were referred as persons with muffled faces and in that situation their identification in the Court for the first time, carried no legal sanctity. It was urged that there were inherent infirmities, contradictions and improbabilities in the testimonies of the prosecution witnesses, which cast a doubt on the prosecution case. According to them, as per DDR dated 30.04.2009, the prosecutrix had gone to pay obeisance at Gurudwara in the morning of 27.04.2009, but had not returned and they did not doubt anyone, whereas the prosecution had introduced the uncle of prosecutrix as PW5 and he had deposed that he had seen Gurpreet Singh kidnapping his niece on 27.04.2009. It was further submitted that the medical evidence was in conflict with the ocular testimony of the prosecutrix. The learned Counsel have further submitted

that the court below did not consider the defence evidence produced on behalf of the appellants.

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.

There is no dispute as to the age of prosecutrix that she was major on the date of incident. The veracity of the story projected by the prosecution qua allegations of kidnapping, rape and illegal confinement must, thus, be examined.

The prosecution had relied upon the testimony of prosecutrix (PW1) and her uncle Jasbir Singh (PW5). The statement of the prosecutrix was recorded at two stages, viz., firstly after framing of charge against Navdeep Singh and Bohar Singh and secondly, after summoning and appearance of Gurpreet Singh by means of Section 319 Cr.P.C. In both the statements, the prosecutrix had deposed that on 27.04.2009 she was going to Amritsar and at about 5:30 a.m. she reached Talwani Bhai and she was going on foot towards the bus stand when Gurpreet Singh son of Lakhbir Singh, resident of village Sulhani alighted from a car and pushed her inside the car. She raised protest. Gurpreet Singh made her inhale some intoxicating substance due to which she became unconscious. After regaining consciousness, she found herself at an abandoned place. Gurpreet Singh and his companions who were in muffled faces, namely, Navdeep Singh, Bohar Singh and Jaspreet Singh committed rape upon her from 27.04.2009 to 12.05.2009. During that period, she was locked in motor room in different fields and the accused used to bring fruits and food in the

car. Whenever she felt pain, the accused provided her some medicine, due to which she sustained wounds on her body. The accused threw her in unconscious condition at Bengali bridge. She informed her father who took her to the house and out of shame, they kept quiet for few days but when Gurpreet Singh disclosed the incident in the village, then she came forward and made the complaint Ex.P1 to the police.

As per the story propounded by the prosecution, the incident occurred in the morning of 27.04.2009 at about 6:00 a.m. when the prosecutrix claimed that she was kidnapped by Gurpreet Singh with the help of his three companions. Their identity was not disclosed even when the FIR was registered with a delay and it was mentioned that they were in muffled faces. The prosecution had examined PW5 Jasbir Singh, her uncle. He deposed that on 27.04.2009 he saw his niece i.e. the prosecutrix coming from the side of railway station and in the meantime, Gurpreet Singh and his companions, who were in muffled faces, kidnapped her. He along with his helper followed them upto some distance, but in vain. He further stated that he immediately brought this fact to the notice of his brother Jaspal Singh, father of the prosecutrix. He also deposed that the prosecutrix came back home on 29.05.2009 and revealed the names of companions as Navdeep Singh, Jaspreet Singh and Bohar Singh.

The manner in which the incident had been narrated and post conduct casts a serious doubt and the version of the prosecution gets falsified from the fact that DDR No.8 dated 30.04.2009(Ex.DW4/A) was lodged by none else but the father of prosecutrix and Angrej Singh, Sarpanch of the village. He had informed the police that on 27.04.2009 the prosecutrix had gone to the Gurudwara to pay obeisance and had not

returned. He had no suspicion on anyone. Had PW5 been a witness to the kidnapping, the family would have immediately lodged the case against them. Rather they kept quiet and lodged the report on 30.05.2009. It appears that the incident did not occur in the manner disclosed. Even otherwise, the story of kidnapping in broad day light is highly improbable. There is no hesitation that PW5 Jasbir Singh was introduced by the prosecution only to strengthen and corroborate the story put forward by the prosecutrix by twisting the true facts and 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 sweet will.

A close examination of the statement of prosecutrix reveals that the same also falls short of requirement to prove the complicity of the accused. In her statement, Ex.P1 the prosecutrix named Gurpreet Singh of her village as a person who had pushed her inside the car. PW5 Jasbir Singh also deposed on the same lines and he had informed the father. The father of prosecutrix lodged a missing report Ex.DW4/A on 30.04.2009 mentioning that the prosecutrix had gone to Gurudwara to pay obeisance and had not returned. He did not suspect anyone. Had Gurpreet Singh been instrumental in the kidnapping, as disclosed by prosecution witnesses, his name would have figured in the DDR (Ex.DW4/A). Gurpreet Singh was not challaned in the case and was declared innocent despite of the fact that he alone was named in the FIR as the prime accused. The prosecution withheld the DDR, Ex.DW4/A and it was produced and proved by the defence. Not only this, the prosecution failed to examine Jaspal Singh probably because he would not have been able to face the cross-examination.

The plea set up by the defence was that the prosecutrix had run

away from home and had married Navdeep Singh and remained in his house for all these days and her parents took her back forcibly and implicated them in a false case. The defence had examined DW2 Sukhjit Singh and DW3 Jaswinder Singh, but the trial Court disbelieved the defence version by observing that the photographs had not proved nor the factum of marriage was established.

In the considered opinion of this Court, no cogent and convincing evidence was produced by the prosecution to prove the identity and complicity of accused Navdeep Singh and Bohar Singh in the crime. It is relevant to mention here that the statement of the prosecutrix was not recorded under Section 164 Cr.P.C. and in her statement Ex.P1 given to the police she did not disclose about the identity of Bohar Singh and Navdeep Singh as the companions of Gurpreet Singh, rather she had herself mentioned that they were in muffled faces. She tried to improvise by stating that she had given names of all the three companions of Gurpreet Singh to the police, but they had not written it in her statement. But that cannot be accepted as she herself admitted that no complaint had been made to the higher authorities. She stated that she came to know the names of the accused as they were calling each other with their names. In her further cross-examination she specifically admitted that she had never seen accused Navdeep Singh and Bohar Singh earlier to the incident and had seen them for the first time in Court. She admitted that she named Navdeep Singh at the instance of the police. She admitted that she never made any incriminating statement against Navdeep Singh. She admitted that she was not aware of residence of Navdeep Singh and Bohar Singh and that the police gave their names to her. No identification parade of the accused was

got conducted by the police after their arrest and their names were disclosed to her by the police. The testimony of PW5 is in conflict with the testimony of prosecutrix about the test identification of accused Bohar Singh and Navdeep Singh. As per PW5 the test identification of the accused was conducted whereas PW1 had denied it.

There is another reason to discard her statement. The prosecution set up the case that from the period 27.04.2009 to 12.05.2009 the prosecutrix was kept in different fields. Surprisingly, she kept quiet for all these days and had not raised any alarm. It cannot be believed that during this period, no one had come to the fields. Her statement is not suggestive of use of any force, threat or coercion when she was allegedly raped. Her unnatural conduct also speaks volume about the genuineness of her statement.

As per prosecutrix, she had been left by the accused on 12.05.2009 and she returned home the same day. Still, the prosecutrix took 17 days to report the incident to the police. The FIR was lodged on 29.05.2009. Inordinate and unexplained delay coupled with the facts and circumstances, referred to above, makes a serious dent in the prosecution case.

The medical evidence produced on record belies the version of rape. PW6 Dr. Sonia Gulati had medically examined the prosecutrix on 29.05.2009. On examination, she found multiple crusted oozing coin shaped lesions on both legs. She further deposed that there was no mark of external injury on her person. No bleeding or swelling was found on the vulva and her vagina admitted two fingers. Four vaginal swabs were taken for medical examination and DNA testing. In her cross-examination she had stated that

multiple clusters mentioned in the MLR were due to chronic skin problem. She admitted that the prosecutrix did not disclose to her that she had been given any intoxicating substance. The swabs were sent for DNA analysis, but no opinion was given as proper procedure was not followed while taking the samples and the same were returned. The MLR available on record does not lend any support to her claim of rape.

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 any 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. 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)

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 her 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 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, the appeals are allowed. Judgment of conviction and sentence is set aside. The accused are acquitted of the charges. They be released, if not required in any other case.

June 01,2016

Jiten

(ANITA CHAUDHRY)
JUDGE