

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

CRA-S-2597-SB-2011 (O&M)

Date of Decision: 24.09.2016

Soni

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

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

Present: Mr. Jag Nahar Singh, Advocate
for the appellant.

Mr. Deep Singh, AAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

The appellant had been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years along with fine of Rs.2,000/- under Section 376 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of 10 years along with fine of Rs.2,000/- under Section 450 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of 1 year under Section 506 IPC. All the sentences were to run concurrently.

The prosecutrix is married to Raju. She was sleeping along with her three children in her one room tenement. Her husband was away to Ropar. He used to come home twice a week. In the intervening night of 13/14.05.2010 at about 1:00 PM, the accused who lived in the neighbourhood criminally tress-passed into the house and forced

himself upon the prosecutrix and stuffed her Chunni in her mouth and raped her. The prosecutrix wore her clothes and came out of the house and complained to her neighbour Darshan Singh and then to the neighbour on the other side of the house. A call was made to the husband who reached at 7:00 AM. The incident was reported to the police around 1:30 P.M. The investigations were completed and the accused was arrested and challan was presented under Section 450, 376, 506 IPC.

In order to substantiate its case, the prosecution examined as many as 11 witnesses namely the prosecutrix PW3, Darshan Singh PW4, Jasbir Kaur - PW5, the Medical Officer Dr. Sudha Rani – PW6 and the police officials.

When examined under Section 313 Cr.P.C., the accused denied the incriminating evidence appearing against him and did not lead any evidence in defence.

The trial Court convicted the accused and sentenced him to the punishment mentioned here-in-before.

Learned counsel for the appellant had urged that the story was improbable and there was a delay in lodging the FIR and occurrence took place at about 12:30/1:00 AM and the complainant had gone to the house of the Sarpanch at night and there was no reason why the matter could not be reported at night. It was urged that there is a contradiction as the allegations of rape were not disclosed to Darshan Singh – PW4 and the time has been used up to concoct a version and there is no injury neither any sign of force nor the door had been broken and the story is not probable. It was urged that there is a team of 8 – 9

persons who patrol in the village at night and nobody had seen the accused roaming and mere presence of semen in the FSL report would not be enough to convict him and the DNA test was not carried out and when the husband was with the prosecutrix for over six hours.

On the other hand, the State counsel supported the judgment and urged that no woman would falsely make such allegations and there was no enmity and the neighbours have come out to support the version and mere fact that there was no injury, would not be enough to reject her story.

The occurrence took place at about 12:30 A.M. on 14.05.2010. Medical was got done at 3:15 PM, the same after-noon. The Medical Officer did not find any fresh mark of injury on any part of the body including the private parts. The prosecutrix had alleged that she had been raped against her wishes and force was used and she had inflicted injuries upon the accused. No mark of injury was noted by the Medical Officer on the body of the accused.

The law is settled that in the case of sexual offences, the testimony of the victim is vital and unless there are compelling circumstances, which necessitate looking for corroboration of her statement. The Court should find no difficulty to act on the testimony of the victim and that alone would be sufficient to convict but while appreciating the evidence, the Court would also look for some assertions of her statement to satisfy its judicial conscious since she is a witness who is interested in the outcome of the charge levelled by her but there is no requirement to insist upon corroboration to base a conviction.

The counsel for the appellant had taken three primary grounds of defence. Firstly that there was no sign of injury on the body of the victim and she had grappled for about half an hour and she had scratched the accused and Chunni was stuffed in her mouth but there were no visible signs of any struggle on any part of the body. The medical record is available, which does not show any injury on any part of the body. The FSL report shows presence of spermatozoa but the police failed to link the semen with that of the accused. No DNA test was carried out and it would not be sufficient to link it with the accused specially when the prosecutrix is a married woman and the husband was home and in her company for a number of hours before the woman presented herself before the police.

The next ground of defence taken by the accused was that there is a contradiction in the version as there was no break in, the police did not find the door broken or sign of forced entry into the house. The statement of the victim is silent in this regard. The victim along with her three children were at home. The incident is in the middle of the night. She would not have slept without securing the main door. It has been urged that the door had been left open and the entry was not forced, which throws a doubt.

The last ground of defence was that there is a contradiction in the statement of the witnesses. Darshan Singh - PW4 had no doubt stated that the prosecutrix had knocked at their door in the middle of the night and had told them that Soni had come to her house and had assaulted and harassed her. He was categorical that the prosecutrix did not disclose that she had been raped. It appears that this was the reason

that the neighbours did not accompany the prosecutrix to the police. Darshan Singh also did not see any sign of injury. They had not seen the accused roaming around her house that night. He did not hear any hue & cry in the neighbourhood. Though, the statement of the victim gets support from Jasbir Kaur – PW5 a Member Panchayat who lives in the neighbourhood. She stated that prosecutrix had come to her house at about 12:00-1:00 at mid night and she and her husband went to the house of the prosecutrix along with Darshan Singh and the prosecutrix made a call from her mobile to her husband who came in the morning. She stated that they did not hear any noise at night. She also admitted that there was a night patrol in the village.

The victim had stated that she and her children were on the same cot and were fast asleep when she found Soni, her neighbour standing in the room. She had deposed that he had forcibly entered her room after pushing the door and when she switched the light on, she saw him and he assaulted and raped her for half an hour and she raised alarm but the accused put a Chunni in her mouth and caught hold of her legs. She stated that the children were sleeping with her on the same cot. She stated that there was only one cot and there was no bed. She denied that she was on visiting terms with Soni. The prosecutrix denied that she knew the accused prior to the occurrence. She stated that she had attacked the accused to save herself and she had given scratches with her nails. She stated that she had called up her husband from a mobile phone taken from the neighbour namely Darshan Singh. She stated that she did not go to the police station. She stated that her eldest child was 4 years old. She admitted that her husband reached home

about 7:30 A.M. She denied that she had lodged the FIR to extract money.

The manner in which the incident had been narrated and post the conduct, I find that the statement given by the prosecutrix is not convincing. There are inherent contradictions in the story. There was no sign of forced entry in the house. There was no reason for her to leave the main door open. If the victim had been pinned down on the cot then there was no occasion for her to get up and switch on the light. There is a contradiction as to when the husband was informed. One of the neighbours is a Member Panchayat but they did not accompany her to the police Station to lodge the FIR at night.

In ***State of Punjab Vs. Gurmit Singh and others, AIR, 1996 S.C. 1393*** the Hon'ble apex Court had laid down the following propositions of law which may be summed up as follows:-

- 1. The delay in lodging of the First Information Report, if properly explained should not matter in sexual offences.*
- 2. The testimony of the victim in cases of sexual offences is vital and unless there are compelling circumstances which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of a victim of sexual assault alone to convict.*
- 3. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury.*
- 4. The Court while appreciating the evidence of the prosecution may look for some assurance of her statement to satisfy its judicial conscience, since she, is a witness who is interested in the outcome of the charge*

levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

5. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness.

6. The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding,

7. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

8. Even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of "lose moral character" is permissible to be drawn from that circumstances alone.

9. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in Court.

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)."

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."

There are lots of inconsistencies in the prosecution case.

The statement of the victim is not convincing. The story put forward by the prosecutrix is improbable and belies logic. In the given facts, the DNA test was necessary. The police did not find any forced entry.

The degree of proof in rape cases is expected to be of a higher standard. The prosecution was unable to prove its case beyond a reasonable doubt. Resultantly the appeal is accepted. The judgment of conviction and order of sentence are set aside. The appellant is in custody. He be released forthwith if his custody is not required in connection with any other case.

(ANITA CHAUDHRY)
JUDGE

24.09.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No