

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

**CRM No. 3698 of 2016 in
CRA -D- 836-DB of 2015 (O&M)
Date of Decision : August 03,2016**

Sushma.....Appellant

Versus

State of Haryana and others.....Respondents

**CORAM : HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MRS. JUSTICE LISA GILL**

.....

Present: Mr. Jasdev Singh Mehndiratta, Advocate
 for the appellant.

 Mr. Vishal Garg, DAG
 for respondent No.1.

 Mr. Rahul Vats, Advocate
 for respondent No.2.

 Mr. Mannat Anand, Advocate for
 Mr. Deepak Saini, Advocate
 for respondents No. 3 and 4.

...

LISA GILL, J.

Applicant/appellant prays for leave to appeal to impugn
judgment dated 9.3.2015 passed by the learned Additional Sessions Judge,
Sonipat, whereby Rahul @ Akash-respondent No.2, Tuniya-respondent
No.3 and Bhateri-respondent No.4 have been acquitted of the charges

against them. All the respondents were charged for the commission of offences punishable under Sections 366, 506 read with Section 34 IPC. Respondent No.2-Rahul @ Akash was additionally charged for the offence punishable under Section 376 IPC and Section 6 of the Protection Of Children from Sexual Offences Act' 2012 (POCSO Act). Respondent Tuniya and Batheri were charged with the offences punishable under Sections 366, 376-D IPC read with Section 120-B IPC and Section 17 of the POCSO Act.

As per the prosecution version, FIR No. 9 dated 19.1.2014 was registered under Sections 363, 376D, 120-B, 506 IPC and Section 66A of Information Technology Act against the respondents on the basis of the statement (Ex.DA) made by the prosecutrix on 19.1.2014. The prosecutrix stated that she was married with Sita Ram on 24.11.2012. Prior to her marriage she had gone to visit her maternal uncle at village Gwalra, District Panipat. She came in contact with Tuniya and Batheri who resided in the neighbourhood of her maternal uncle. The prosecutrix and both the abovesaid respondents started interacting with each other. The prosecutrix visited their house and both of them visited the house of the maternal uncle of the prosecutrix to meet her. The prosecutrix stayed at village Gwalra for about 10 days before returning to her village Guhna. Respondents Tuniya and Batheri continued to talk to the prosecutrix on the mobile phone of the prosecutrix's father. One day, (no date specified, even approximate date or time is not mentioned) respondent Batheri called the prosecutrix and told her that she had gone to Sonipat and was now standing at the bus stand of the village of the prosecutrix. Batheri asked

the prosecutrix to collect her from the bus stand. Family members of the prosecutrix were not present at home. Therefore, the prosecutrix went alone to the bus stand to bring Batheri. She found both Batheri and Tuniya present at the bus stand along with one Akash @ Rahul who was introduced as a brother of the said respondents. Respondent -Batheri tied up the prosecutrix's mouth, hands and legs and forced her into a car parked there. The prosecutrix was taken to an abandoned place at Delhi in the said car driven by Akash. Prosecutrix was confined in a room and respondents Tuniya and Batheri took an amount of ₹50,000/- each from Akash and left the place proclaiming that they have completed their work. Three other boys were present in the room. Akash and the remaining three boys are stated to have committed rape upon the prosecutrix for a period of four days after injecting her with some intoxicant. A video film was prepared and on the 5th day she was left by the said boys at Gurudwara, Bangla Sahib Delhi, . The prosecutrix called her brother Monu from the Gurudwara. Her brother, Monu, along with her cousin brother Vicky reached there to take her back.

The prosecutrix did not reveal any thing regarding the above said incident to her family members. Her parents had lodged a report at the Police Station when she went missing. On her return, she made a statement before the police that she had left her home voluntarily and had stayed at Gurudwara Bangla Sahib, Delhi, for the said period. It is stated that the prosecutrix, thereafter, expressed her desire to get married. Her marriage was accordingly performed with Sita Ram on 24.11.2012. Even after her marriage Akash kept following her for about two months. One

day (no time or date specified) Akash, Tuniya and a girl called Tannu, resident of village Bad Sikri, arrived at her matrimonial home in a vehicle. Father-in-law of the prosecutrix met them and Akash introduced himself as a cousin brother of the prosecutrix. The prosecutrix did not deny this assertion. On the said day, the prosecutrix gave her gold chain, gold locket and a silver locket to Tuniya. Tuniya hit her with a knife but the prosecutrix did not reveal any thing to her in-laws and lied to them that she sustained the said injury with a blade. Twenty or twenty five days thereafter, Akash along with another person came to her matrimonial home. She was alone at that time. On demand made by Akash and the other person accompanying him, she handed over her gold, silver jewellery as well as some gold jewellery belonging to her in-laws to both of them. While leaving, Akash and the other boy told her to collect the remaining jewellery of her in-laws family and hand it over to them next time. The prosecutrix once again did not reveal any thing about the said occurrence to her husband or in-laws. Thereafter, the above said persons did not visit her home for about eight or nine (8-9) months though she continued to talk to Akash on telephone. About 15 days prior to the recording of her statement she disclosed these facts to her husband and on the basis of her statement the above said FIR was registered.

The prosecutrix was medico-legally examined on 21.1.2014 and her statement under Section 164 Cr.P.C. was also recorded on 21.1.2014. Respondents Rahul, Batheri and Tuniya were arrested and Rahul was subjected to medico-legal examination. On completion of the investigation, challan/report under Section 173 Cr.P.C. was presented.

Charge for the commission of the offences under Sections 376 IPC and Section 6 of POCSO Act, 2012 were framed against accused Rahul @ Akash and against accused Tuniya and Bhateri under Sections 120-B IPC read with Sections 366 and 376-D IPC and Section 17 of POCSO, Act. Charge under Sections 366, 506 read with Section 34 IPC was framed against all the three accused on 23.4.2014. The prosecution examined 21 witnesses and tendered certain documents as well to prove its case.

Statements of the accused under Section 313 Cr.P.C. were recorded and all the respondents while denying the incriminating evidence put to them, pleaded innocence and false implication. Respondents Tuniya and Batheri stated that they had been falsely implicated due to enmity in the village with the maternal uncle of the prosecutrix. Respondent Rahul stated that he was earlier working as a driver with one Shamsher. There was a dispute regarding Rahul's salary with Shamsher. Rahul had been thrown out of employment by Shamsher and later on the said respondent was roped in the present case due to collusion of Shamsher with the police and the complainant. Three witnesses were examined by the respondents in defence. DW1-SI Bijender Singh brought the summoned record of roznamcha pertaining to June, 2012 and proved DW1/A i.e. the report regarding missing of the prosecutrix and Ex.DW1/B DD No. 19 dated 28.6.2012 regarding recovery of the prosecutrix. She went to the police station along with her father and disclosed that she had voluntarily gone to the house of Premo, her aunt (father's sister 'Bua') at Delhi. DW-2 Chander Bhan disclosed that Rahul worked as a driver upto 12.1.2012 for driving a van belonging to

Shamsher resident of village Piple Kheri. He drew a salary of ₹5000/- per month. Salary for five months was not paid to Rahul by Shamsher. Rahul had no concern with Tuniya and Batheri. DW3-Ram Kishan stated about the dispute between Tuniya, Batheri and the family of Pala i.e. maternal uncle of the prosecutrix. It is stated that the said two respondents had been falsely implicated and had no concern with the incident in question or with the co-accused Rahul.

Learned trial court on consideration of the facts and circumstances of the case as well as the entire evidence on record concluded that the prosecution failed miserably to prove the commission of the offences as above, by the accused, beyond reasonable doubt. Thus, extending the benefit of doubt to the accused, they were acquitted of the charges framed against them. It was observed by the learned Additional Sessions Judge, Sonipat that there is an undue delay of over one and a half year in lodging the FIR. The testimony of the prosecutrix herself did not inspire confidence. The parents of the prosecutrix herself, had not supported the prosecution version and they were declared hostile. Prosecutrix had made inconsistent and discrepant statements at different stages, thus casting a definite shadow of doubt on the prosecution story. Thus, all the accused were acquitted of the charges against them. Aggrieved from the decision dated 9.3.2015, the applicant seeks leave to appeal against this decision.

Learned counsel for the applicant/appellant vehemently argues that the prosecutrix was a minor at the time of the incident, her date of birth being 24.1.1996. She was abducted by the respondents and

subjected to gang rape. The question of delay in such cases is not material. The prosecutrix has fully supported the prosecution version which in itself is sufficient to convict the accused, therefore, the learned trial court has grossly erred in acquitting the respondents of the charges framed against them. It is further submitted that in response to a question put to PW12 Jagdish, by the defence in cross-examination, after he was declared hostile, Jagdish has deposed that he entered into a compromise with Tuniya and Bhateri in 2012 and the prosecutrix also appended her signatures thereon. Thus the incident of abduction and rape of the prosecutrix is duly proved by this fact itself. Learned counsel for the applicant additionally contends that complicity of respondent No.2, Rahul, is buttressed by the testimony of PW18, Pawan who has deposed that the Maruti Van used in the commission of the offence was purchased by him from Rahul in 2012. It is, thus, prayed that in view of the ample evidence on record, the impugned judgment dated 9.3.2015 be set aside. Consequently, respondents No. 2, 3 and 4 be convicted for the offences as charged and be awarded the maximum punishment.

Learned counsel for respondents No. 2, 3 and 4 while refuting the said arguments submit that the present is a case of no evidence at all. There is nothing on record which connects the respondents with the commission of the offences. They, while supporting the reasoning recorded by the learned Additional Sessions Judge, Sonipat, pray for upholding the impugned judgment dated 9.3.2015.

We have heard learned counsel for the parties and have gone through the record.

The prosecutrix appeared as PW8 and supported the prosecution version. However, PW7-Smt. Darshan wife of Jagdish i.e. the mother of the prosecutrix did not support the prosecution version. She deposed that during winter season her daughter had gone to stay with Darshan's brother (uncle of the prosecutrix) at Gawalra for about ten days. The prosecutrix became friendly with Tuniya and Batheri who were residing in the vicinity of her brother's house. After returning home the prosecutrix remained in touch with Tuniya and Batheri through telephone. One day when the prosecutrix was alone at home Tuniya and Batheri called her on telephone, asking her to fetch them from the bus stand at village Guhna. PW7 Darshan, thereafter stated that she could not reveal what happened next, as it was in the exclusive knowledge of her daughter alone. Darshan denied the contents of her statement Ex.PW7/A. Darshan PW7, was declared hostile.

PW12-Jagdish son of Sher Singh, father of the prosecutrix, who was also declared hostile, deposed that his daughter was born in January 1996. She had studied upto 10th class and was married with Sita Ram in November 2012. Five or six months prior to her marriage, she visited her maternal uncle at village Gawalra and stayed there for 10 days. On coming back from her maternal uncle's home, the prosecutrix revealed that she had come in contact with Tuniya and Batheri. She remained in touch with the said persons through telephone. He stated that his daughter narrated these facts to him and she also informed him regarding respondents Tuniya and Batheri calling her to the bus stand to fetch them. When she went to fetch them, she was forced into the car by

Tuniya, Batheri and respondent-Rahul after tying her hands and legs with a piece of cloth. All of them took her to an uninhabited place in Delhi near a Gurudwara. Batheri and Tuniya took ₹50,000/- each from two or three boys present there. His daughter, the prosecutrix, further revealed that these boys including Rahul committed rape upon her after administering intoxicants to her. A video film was also prepared by them. When his daughter was not traceable, he lodged a report about her missing from home at Police Station Mohana. They received a telephonic call from his daughter from a STD booth four or five days after lodging of the above-said report that she was in a Gurudwara at Delhi. She requested them to bring her back. He brought back his daughter and reported the entire matter to the police but did not pursue it to protect his dignity in society. PW12 Jagdish has revealed that relations between his brothers-in-law and the respondents Tuniya and Batheri were strained. Jagdish has not supported the prosecution version.

PW15-Dr. Abhilasha Choudhary, Medical Officer CHC Badkhalsa, who examined the prosecutrix on 21.1.2014, has testified that the prosecutrix at the time of her medical examination revealed a history of sexual assault about one and a half years prior to the examination and then continuously till date, with the last incident being about three or four months back at District Kaithal. No mark of injury was found on any part of the body or genitalia. It was opined that possibility of prosecutrix being subjected to sexual intercourse could not be ruled out.

In the instant case there is not much of a controversy regarding the age of the prosecutrix. She states her date of birth to be

24.1.1996 in her testimony before the court and as per the Birth Certificate (Ex.PW13/A), her date of birth it is 22.1.1996. Therefore, the learned trial Court has rightly concluded the prosecutrix to be over 16 years and under 18 years of age at the time of the alleged incident.

A perusal of the evidence on record reveals the prosecution case to be extremely doubtful, riddled with discrepancies and material inconsistencies. Even the parents of the prosecutrix i.e. PW7 Darshan (mother) and PW12 Jagdish (father) have not supported the prosecution case. They have been declared hostile. It is not in dispute that the specific date and time of the alleged incident/incidents were never mentioned by the prosecutrix or any other witness. The incident of abduction and rape was stated to have occurred four to five (4-5) months prior to her marriage with Sita Ram. Her marriage with Sita Ram was solemnized on 24.11.2012. There is no explanation as to why no action was taken for initiating proceedings against the accused for such a long time. Though it is not necessary that delay by itself, in every situation, would be fatal to a prosecution case, but, in the given factual matrix it was imperative that at least a semblance of an explanation should have emanated in this respect. There is no mention of even a precipitating factor which prompted the initiation of the present proceedings. This is so especially keeping in view the statement of the prosecutrix that the respondent-Rahul or others had not visited her matrimonial home for about eight or nine months prior to her approaching the police authorities for registration of a case. It is only in her deposition in Court that she states that the respondent Rahul had demanded a sum of ₹one lac, when he had come eight or nine months

prior to the lodging of the FIR. When she could not collect this amount, the prosecutrix tried to commit suicide but was saved by her husband. The prosecutrix then revealed everything to her husband who promised to help her. Consequently, action was taken by her. However, neither the husband of the prosecutrix or any other member of her in-laws family has been examined. The entire sequence of events as detailed by the prosecution raises serious doubt and suspicion upon the prosecution version.

Contention of the learned counsel for the applicant that the incident of abduction and rape of the prosecutrix in June 2012 is proved by the evidence on record is incorrect. By a mere reference to the cross-examination of PW12 Jagdish who has been declared hostile, it cannot be said, that the incident in question stands proved. No such document which is stated to have been signed by PW12 Jagdish or the prosecutrix has been proved on record. Furthermore, this argument is self-contradictory for the reason that the prosecutrix in her testimony asserts, that she never disclosed the incident of her abduction and rape to anyone, when she returned home from Delhi. PW12 Jagdish, however states that the prosecutrix had revealed the incident to him, but he did not pursue the matter with the police authorities to protect his dignity. PW12-Jagdish had reported on 23.6.2012 (Ex.DW1/A) that his daughter (prosecutrix) aged about 16 years, had left home at about 6:30 p.m. on 22.6.2012 without informing any family member. They had searched for but were unable to locate her. Ex.DW1/B, DDR No. 19, dated 28.6.2013 was recorded when PW12-Jagdish along with the prosecutrix went to Police Station Mohana. Jagdish stated that his daughter had left home on 23.6.2012 without

informing any family member out of her own free will. She had gone alone to her paternal aunt (Bua), namely Premo wife of Rajpal. She had since returned and was living with her father. There is nothing on record to suggest that there was any compromise between the prosecutrix and the accused persons at that time, as is argued by learned counsel for the applicant.

The prosecutrix's brother Monu whom she has stated to have telephoned from Delhi in June 2012 has not been examined. She has stated that her brother Monu and her cousin brother had come to Delhi to take her back. The said persons have not been examined by the prosecution. Jagdish PW12, in contradiction to the prosecutrix has stated that he brought her back from Delhi.

The medical evidence on record also does not aid the prosecution in any manner. Learned counsel for the applicant/appellant has vehemently argued that Dr. Abhilasha Choudhary, PW15, has stated that possibility of the prosecutrix being subjected to sexual intercourse cannot be ruled out, therefore, this evidence in itself is conclusive of rape being committed upon the prosecutrix. This argument does not hold any weight. Even if the version of the prosecutrix is accepted, the incident in question had taken place in June 2012. The medical examination was conducted in 2014. The prosecutrix was admittedly married at that time. There is nothing on record to suggest the commission of the offence of rape upon the prosecutrix.

Another peculiar fact to be noted is that the prosecutrix admits that she continued to be in touch with the respondent Akash, on

telephone, even after her marriage with Sita Ram. She did not inform her in-laws about handing over of jewellery etc. to the accused respondents. The father-in-law of the prosecutrix or her husband have not been examined to prove that the accused persons had visited her matrimonial home at any point of time. It is also not in dispute that video clips, jewellery etc. alleged to have been given by the prosecutrix to the accused was never recovered. The prosecutrix has herself given inconsistent statements. At the first instance, she stated that she was raped by the respondent-Akash, as well as the other two boys. Thereafter, in her supplementary statement (Ex.DB) she stated that she was ravished by the respondent Akash only and not by the other two boys. She had initially stated that the accused after kidnapping her, had taken her to an abandoned godown near the railway line and she was ravished there. Thereafter she was taken to Delhi. However, this fact is not mentioned in her supplementary statement (Ex.DB). While testifying before the trial Court she stated that when the respondent Rahul @ Akash lastly visited her matrimonial home with an unknown boy, both the said boys attempted to commit rape upon her. This fact was never mentioned by her at any point of time while recording her earlier statements Exs. PW8/A (statement under section 161 Cr.P.C. dated 19.1.2014 on the basis of which FIR was registered) and PW6/D (statement under section 164 Cr.P.C. dated 21.1.2014). The testimony of the prosecutrix does not inspire confidence and is neither corroborated by the evidence on record.

It is a settled position of law that a finding of acquittal of the accused is not to be interfered with lightly. Learned counsel for the

appellant is unable to point out any strong or compelling reasons to interfere in the well reasoned judgment passed by the trial court. Merely because another view is possible is not a ground to set aside the acquittal of the accused. The Hon'ble Supreme Court in ***Mahamadkhan Nathekhan v. State of Gujarat (2014) 14 SCC 589*** has reiterated the basic principles of dealing with an appeal against acquittal. In case of acquittal there is a double presumption of innocence in favour of the accused as it stands reinforced, re-affirmed and strengthened by acquittal, by the trial Court.

In view of the facts as discussed above, we find no illegality, perversity or infirmity in the impugned judgment dated 9.3.2015 passed by the learned Additional Sessions Judge, Sonipat, which calls for any interference by this Court. Accordingly, leave to appeal is declined.

03.08.2016
rupi

(S.S.SARON)
JUDGE

(LISA GILL)
JUDGE

Note: Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No