In the High Court of Punjab and Haryana at Chandigarh

1. **Crl. Appeal No. S-897-SB-2005 (O&M)**
Date of Decision: 29.8.2016

Arvinder Singh alias Lucky .....Appellant

Versus

Balwinder Kaur alias Jaswinder Kaur and another .....Respondents

2. **Crl. Revision No. 1994 of 2005 (O&M)**

Balwinder Kaur alias Jaswinder Kaur .....Petitioner

Versus

Arvinder Singh alias Lucky .....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

Present: Ms. Aditi Girdhar, Advocate
Amicus Curiae for the appellant.

Mr. J.B.S.Gill, Advocate
for respondent No. 1/Revisionist.

Mr. K.S.Aulakh, AAG, Punjab.

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ANITA CHAUDHRY, J(ORAL)

Arvinder Singh-appellant was convicted and sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs. 5,000/- and in default of fine to undergo further rigorous imprisonment for six months under Section 376 IPC in a complaint case. Balwinder Kaur complainant had filed the complaint against two persons. Gurdeep Singh

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was declared proclaimed offender. The revision has been filed by Balwinder Kaur seeking enhancement of the sentence and she also claims compensation.

It is necessary to exposit the essential detailed in the complaint.

Balwinder Kaur @ Jaswinder Kaur wife of Amrik Singh was married and had four children. She claimed that she was being looked after by Surjit Kaur wife of Avtar Singh and she was her God Mother. On 17.11.2000 her son fell ill. She tried to contact Surjit Kaur and went to Nangal Khurd, Mahilpur to seek monetary help. At 6.30 P.M. she reached near Harbans Gate, Mahilpur but could not get any vehicle to go to the village and she started her journey on foot. In the meantime, on the pucca village link road, a motor cycle driven by two boys came near her and the boys started teasing her, finding her alone. The complainant recognized one of them as Babbi, resident of Mehna and Lucky, resident of Mahilpur who were known to her by face and they had teased her earlier also (she did not disclose that Babbi was her landlord). Lucky alighted from the motor cycle and offered to drop her on his motor cycle. The complainant refused to accompany them but she was forcibly taken to a tubewell room and was raped by both of them. The complainant raised alarm and she was threatened and later they left on their motor cycle. The complainant went to the house of Sardara Singh in village Nangal Khurd but could not meet him but met his son. She asked for Surjit Kaur and came to know that Surjit Kaur had gone to Hoshiarpur. The complainant returned to Mahilpur and from there she called up Surjit Kaur who came to her village and the occurrence was narrated. Surjit Kaur took her to Civil Hospital where the doctor informed the police. On the basis of the statement, FIR No. 120

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dated 18.11.2000 under Section 376, 506, 34 IPC was registered. Balwinder Kaur filed a Criminal Miscellaneous No. 5306-M of 2001 seeking transfer of the enquiry and for directions to submit the challan within 90 days failing which the persons who had been arrested could be released. The State filed its reply stated that the investigation was complete and the final report had already been submitted on 15.2.2001 recommending cancellation of the case. The petition was dismissed as infructuous and liberty was granted to the petitioner to take the steps necessary. A complaint was filed in 2003 with the same allegations. The trial Court summoned both the accused. However, Gurdeep Singh did not appear and he was declared proclaimed offender. The case was committed on 10.7.2003.

At the trial, the complainant examined herself, two medical officers, ASI Sukhwinder Singh and Pushpinderjit Singh.

The accused took the defence that he had been falsely implicated because he was a witness in a murder case registered in March 2000 and he had appeared as a witness against the accused persons and the prosecutrix's real name was Tripta Devi and he was being pressurized not to appear as a witness but he did not succumb to the pressure and made his statement and a false story had been concocted through the complainant and he was innocent.

Four witnesses were examined in defence.

Balwinder Kaur in her statement had deposed that she was married to Surinder Kumar in 1984 and earlier her name was Tripta Devi and she had four children and she lived with Surinder Kumar for a number of years but he was a drunkard and used to beat her and she was turned out

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of the house in 1997 and she came to Punjab along with her youngest child. She stated that Babbi was her landlord and Surjit Kaur was his relative and Surjit Kaur had asked her to be her daughter and she started visiting her at Islamabad in Hoshiarpur. Recounting the incident she stated that her child fell ill and she needed money and she called up Surjit Kaur but she was not there and she was told that Surjit Kaur had gone to Nangal Khurd. She boarded a bus from Phagwara for Mahilpur and alighted at 6.30 P.M. She was going on foot when Lucky and Babbi came on a motor cycle and offered a lift but she refused. She was forcibly taken to the tubewell kotha and was ravished. She gave a detailed account of what happened subsequently till she was medically examined. She stated that the police brought her to the place of occurrence and her *dupatta* and broken bangles were picked up from the spot. She admitted that she knew both the accused and after this incident she started living with Surjit Kaur and she stayed with her for 15 days and Surjit Kaur asked her to accompany her to the Courts as she had to get her widow pension and on her asking she signed some papers in the Court regarding widow pension and she was not aware what was written and on the asking of Surjit Kaur she had given her name as Jaswinder Kaur widow of Amrik Singh. She stated that she was never married to Amrik Singh. She stated that Surjit Kaur offered Rs. 2,00,000/- for compromise but she refused. She stated that both the accused were arrested but the police did not file the challan and they were released on bail.

Dr. Renu Kumari PW-4 noted that there was no external mark of injury on her body nor on the private parts. The hymen was absent. Two swabs were taken for chemical examination.

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The trial Court after hearing both the sides rejected the defence evidence and convicted Arvinder Singh under Section 376 IPC and sentenced him to the punishment mentioned hereinabove.

The submission made on behalf of the appellant is that Balwinder Kaur was married and had four children and a unusual story had been prepared to implicate Arvinder Singh who was a witness in a murder case. It was urged that the police did not find any truth in the story and had submitted cancellation report and thereafter a complaint was filed. It was urged that the complainant had given different names and she was known by the name of Balwinder Kaur, Jaswinder Kaur and Tripta Devi. It was urged that in the petition filed in the High Court, she had given her name as Jaswinder Kaur widow of Amrik Singh and the police found holes in her story. It was urged that Surjit Kaur was relative of Babbi and she had stated that Surjit Kaur was her God Mother but she could not give her phone number and she (complainant) did not join the enquiry and both the accused were known to her as she was a tenant in the house of one Babbi. It was urged that according to the complainant, she was ravished by two men but there is no injury and there is no mark of violence and no spermatozoa was found and the complainant purposely did not introduce the FSL report in her evidence and they had produced it in defence evidence. It was urged that Arvinder Singh in his statement under Section 313 Cr.P.C. had stated that he was a witness in the murder case and the Court had recorded conviction and out of vengeance, the accused of that case had introduced the petitioner. The counsel had referred to the judgment Ex. DB. It was urged that the story put-forward by the complainant is highly improbable and the *kotha* is on a pucca road and she did not inform any person and her statement is

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completely unreliable and not convincing.

The counsel appearing for the revisionist had urged that the statement of a victim of rape has to be accepted as there was no reason for her to make a wrong statement and spermatozoa was found on the *chunni* which was recovered from the scene of incident. It was urged that merely because there was no injury would not be a good ground to reject her testimony. It was urged that it is a case for enhancement of sentence and the complainant should have been awarded compensation.

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*

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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*

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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

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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

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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.

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Keeping in view principles, we have to first go through the

medical evidence.

Dr. Renu Kumari-PW4 had found no mark of violence, internal or external. Hymen was found absent. Two swabs were taken which were sent for chemical examination. In the FSL report (PL) the experts did not find spermatozoa in the vaginal swabs. However, semen was found on the *dupatta*. The origin was not mentioned nor any DNA test was carried out.

The main witness for the prosecution would have been Surjit Kaur to whom the incident was only narrated. She was not cited as a witness nor examined. The medical evidence does not support the prosecution. There is no injury. No spermatozoa was found in the vaginal swabs, though, the examination was carried out on the next day.

The police had earlier investigated the complaint and had filed a cancellation report. A perusal of the record shows that the complainant had given different versions at different point of time with respect to her status. At some place she had disclosed herself to be a widow and at others, she stated that she was still married. She had four children who are grown up. The story propounded by her was that her child was sick and she had no money and had, therefore, gone to another village to take help from Surjit Kaur. Surjit Kaur was stated to be a relative of Babbi. The complainant did not disclose in her complaint that Babbi was her landlord and she was living in his house as a tenant. The complainant had tried to hide facts from the very initial stages. Surjit Kaur did not lend support to the statement of the prosecutrix. On the other hand, the complainant had given an affidavit that the complaint made by her was false. The complainant had wanted to clarify that it was Surjit Kaur who took her for getting widow pension and had got the affidavit signed. No complaint was

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made by Balwinder Kaur against Surjit Kaur, if in fact, any fraud had been played. The complainant had given a different name for claiming widow pension. The name of the husband was also different.

The accused had taken a defence that he was the main prosecution witness in the murder case registered against those accused in March 2002 and he was being pressurized to change his statement and when he did not agree, the complainant was introduced but he made a statement against the accused and it led to their conviction and the judgment Ex. DB was placed on record.

The complainant had given different names in the proceedings filed before the High Court. She had disclosed her details as Balwinder Kaur widow of Amrik Singh. The complainant is also known as Tripta and at other places her name is Jaswinder Kaur. The occurrence had taken place at a place which is connected by a pucca road. The complainant did not call for help or inform any person in the vicinity. She went to the house of Sardara Singh to meet Surjit Kaur but could not meet her. She did not disclose that fact to anyone. She explained that she did not meet Sardara Singh but met his son but out of fear she returned to her village and called Surjit Kaur and narrated the occurrence to her who took her to the civil hospital. The complainant did not examine Surjit Kaur knowing well that she would not support her at the trial. Her name is reflected in the list of witnesses filed by her. On the contrary, had she been examined, she would have exposed the falsity of the case. The complainant had presented herself before the medical officers and had handed over torn clothes. Had the complainant been violated in the manner that was suggested there would have been some tell-tale signs on her body.

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There is a delay in lodging the report. The story set-forth by the complainant does not appear to be credible. The manner in which the incident is narrated and the post-conduct raises doubts. The conduct of the prosecutrix is unusual.

Ordinarily the evidence of a prosecutrix is not suspected and is believed but where the allegations of rape are made, the statement of the prosecutrix has to be examined to see whether it is reliable and where the allegations appear to be inconsistent. It has to look for support from the medical evidence which is missing in this case. The statement of the prosecutrix cannot be relied upon for the purposes of conviction as it does not inspire confidence.

The degree of proof in rape cases is expected to be on a higher side. The prosecution was unable to prove the case beyond the reasonable doubt. Resultantly, the appeal is accepted and the judgment of conviction and order of sentence passed by the Court below are set aside and the accused is acquitted of the charges. The revision filed by the complainant is dismissed.

(ANITA CHAUDHRY)
JUDGE

August 29, 2016
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes

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