

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-12-SB-2014 (O&M)
Date of Decision: 10.08.2016

Bobby

...Appellant(s)

Versus

State of Haryana

...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. Gaurav Singla, Advocate
for the appellant.

Mr. Sanjay Kr. Saini, AAG, Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

This appeal is by the appellant who was convicted in FIR No.366 dated 02.06.2013, registered under Sections 363, 366A, 376 IPC and Section 4 of POCSO Act, Police Station Sector 55, Faridabad, District Faridabad and was sentenced to undergo the following punishment:-

Under Sections	Simple Imprisonment for a period of	Fine	In default of payment of fine
363 IPC	3 years	Rs.10,000/-	2 months
366 IPC	5 years	Rs.20,000/-	3 months
376 IPC	7 years	Rs.25,000/-	4 months
4 of POCSO Act	7 years	Rs.25,000/-	4 months

The facts need elaboration. A complaint was lodged by the victim wherein she disclosed that on 29.05.2013 she was returning to her Jhuggi after purchasing vegetables. She was in front of Hanuman Mandir when a three-wheeler came from behind and she was forced into the three-wheeler and the three-wheeler sped away. There were four persons who were sitting inside. Allegations were made that an injection was given and she became unconscious and was taken to Ghaziabad where Bobby (appellant) raped her. She regained consciousness on the third day at 4:00 AM on 01.06.2013 and found herself at Ghaziabad Railway Station. She took help from a woman on the railway station who led her to a train bound for Ballabgarh. The victim reached Ballabgarh – Sohna Road at 9:00 AM on 01.06.2013 when a person known to her helped her and he called her brother who came to take her. The victim was admitted in B.K. Hospital. Her MLR was conducted on 02.06.2013. On 13.06.2013 her statement under Section 164 Cr.P.C. was recorded and she named the appellant.

After completion of investigation, challan was presented and charge was framed under Section 363, 366, 376 IPC and Section 4 of POCSO Act. The accused pleaded not guilty.

The prosecution examined the prosecutrix, her brother Farid Mohammad, the Medical Officers and the police officials involved in the investigation of the case.

In the statement under Section 313 Cr.P.C. the accused pleaded innocent and took the plea of false implication. In defence the accused had examined Anita Sehrawat, a Legal Aid Counsel who was present when the victim gave her statement to the police.

The trial Court held that the girl was under 16 years of age and found the statement of the prosecutrix to be reliable and convincing and convicted the appellant to the sentence mentioned here-in-before.

The submission on behalf of the appellant is that the girl was missing from her house from 29.05.2013 but the parents or the family did not lodge a missing report. It was urged that the story projected by the prosecutrix was that she was gagged and forced into a three-wheeler which had four persons but the police could not find those four persons. It was urged that there are discrepancies in the time when the call was made to the family as Farid Mohammad – PW9 had stated that the call was made on 30.05.2016 whereas the girl says that it was made on 01.06.2013. It was urged that the statement of the girl was recorded before the Legal Aid Counsel and her statement demolishes the entire story. Referring to the statement made by the DW1, it was urged that while the statement of the victim was being recorded, the mother was interjecting and was asking her daughter to name some other persons as well. It was urged that there is a discrepancy in the first statement given to the Magistrate after her recovery as there no allegations of rape were levelled. It was urged that no semen was found in the FSL report. It was urged that the girl herself had admitted that her mother had asked her to name the accused to grab more money. It was urged that Mukesh who had called up the brother of the prosecutrix was not examined and in the light of this, it has to been seen as to whether the solitary statement of the victim can be accepted. It was urged that in the ossification report, the approximate bone age has been given as 14 to 16 years and if 2 years are added then she would be more than 16. It was urged that when the prosecutrix appeared in the Court and had given her age as 24 years.

On the other hand, the defence counsel supported the judgment and urged that the statement of the victim was reliable and the trial Court had correctly appreciated the evidence.

According to the prosecution the incident had taken place on 29.05.2013. The girl returned on her own on 01.06.2013. Her MLR was conducted on the next date while her statement under Section 164 Cr.P.C. was got recorded on 13.06.2013. No complaint was given to the police by the family members. No-one had seen the boys taking the girl away. According to the prosecution the girl was 14 years old. The law is settled that the Court can act upon the solitary statement of the prosecutrix provided the testimony is truthful and trustworthy but at the same time it cannot be mechanically applied to every case of sexual assault and the veracity of the story projected by the prosecution qua the allegations of rape must be examined.

The FIR had been lodged after the girl had returned and there is a delay of three days in lodging the FIR. The age of the girl has been challenged by the defence and the plea set up is that the girl had gone on her own and there were contradictions in the statements. Before proceeding further the salient propositions of the law laid down by the Apex Court need to be noted.

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.

Earlier also the Supreme Court in the case of [State of Maharashtra v. Chandraprakash Kewalchand Jain, A.I.R. 1990 Supreme Court 658](#), summarised the legal position with regard to corroboration of the statement of the prosecutrix. Justice Ahmadi as he was then, speaking for the Court, observed :-

"15. It is necessary at the outset to state what the approach of the Court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex-offences. It is essential that the evidence of the prosecutrix should be corroborated in material particulars before the Court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the Court should look for corroboration before acting on the evidence of the prosecutrix."

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime.....

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is

corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Our is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases, must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity".

In the case of [Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, A.I.R.](#) 1996 Supreme Court 922, S. Saghir Ahmad, J. speaking for the Bench observed as follows:-

"10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks

down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.”

To appreciate the rival contentions raised at the bar and after weighing and analyzing the evidence brought on record, it is necessary to first advert to the age of the victim. Suffice it to mention that the victim had given her age as 14 years. No certificate was produced on record. At the trial the victim had given her age as 24 years but the Court below had dealt with the matter saying that it could be a typing error. The only material available on record is the ossification report carried out by the Medical Officers, according to which the age was 14 – 16 years. The trial Court had held that the girl was minor. The issue gets prominence if the story set up by the prosecution is accepted to be credible. The age of the girl is relevant. The manner in which the incident is narrated and the post conduct raises doubt about the incident. The conduct of the prosecutrix is unusual. There is inordinate and unexplained delay which makes the matter more doubtful. After the girl is found to be over 16 years then the plea of consent can be considered not otherwise. The ossification test shows that the age was between 14 – 16. If two years are added that would make her over 16 years. The plea taken by the defence that she was over 16 seems quite probable.

In a criminal case, the prosecution has to prove its case beyond reasonable doubt. In the instant case the victim was over 16 years. There was no injury on her body. She remained away from home for 3 days. There is no witness who could vouch her return. The prosecution had failed to examine the person who had met her on her return. Interestingly the counsel for the Legal Aid was present at the time the statement was given. She had stated that the mother of the victim was present when the statement was being recorded and she was suggesting 3 – 4 names to be included. She had also mentioned that the name of the accused was got recorded by the victim at the instance of her mother. What completely nails the prosecution version is the candid admission made by the girl in her cross-examination. She had admitted that she had named the accused at the instance of her parents to grab money from Bobby.

The FSL report did not show any human semen. The story projected by the victim that she had been drugged and an injection was given could not be proved by the prosecution. The prosecution failed to examine Mukesh who had helped the victim on her return. All these factors indicate that the story of the prosecution is not true. The fact remains that the victim was away from home for three days and the family did not report the matter to the police, it is difficult to believe the story nor it commands acceptance under the circumstances. The medical evidence gains significance. In the examination the doctor had found no sign of any external injury on the body. There was no semen in the FSL report. The story put forth by the prosecution is improbable and belies logic.

The degree of proof in the rape case is expected to be of higher standard. The prosecution was unable to prove its case beyond reasonable

doubt. Resultantly the appeal is accepted. The judgment of conviction & 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

10.08.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No