

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

Crl. Appeal No.2995-SB of 2012(O&M)
Date of Decision: 23.11.2016

Baldev Singh

...Appellant

Versus

State of Punjab

...Respondents

with

Crl. Appeal No.3130-SB of 2012 (O&M)

Surjit Singh

...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?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? No

Present: Mr. N.S. Dandiwal, Advocate
for appellant-Baldev Singh.

Mr. S.S. Salar, Advocate
for appellant-Surjit Singh.

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

ANITA CHAUDHRY, J.

1. These are two appeals arising out of common judgment dated 15.09.2012, passed by the Additional Sessions Judge, Ludhiana who convicted both the appellants in FIR No. 32 dated 10.02.2010, registered under Sections 376, 506, 34 IPC, Police Station Sidhwan Bet. They were sentenced to the following punishment:-

Under Sections	Rigorous Imprisonment for a period of	Fine	In Default RI.
376 IPC	10 years	Rs.5000/-	3 months
506 IPC	6 months	Rs.500/-	1 month

2. The police received a message regarding the admission of a rape victim in Civil Hospital, Sidhwan Bet on 11.02.2010. The police reached the Hospital and took the opinion of the doctor and recorded the statement of the victim. She deposed that on 10.02.2010 at about 8:30 PM she left her house to attend the call of the nature and went towards Satluj river and had reached the fields of Sulakhan Singh when Mangal Singh, Baldev Singh and Surjit Singh whom she knew came out suddenly and caught hold of her and took her in the fields and raped her. Her maternal uncle Amar Singh, Hakam Singh and her mother had been looking for her and they reached the spot. On seeing them all the accused fled away. The police registered the FIR and arrested Baldev Singh and Surjit Singh. Mangal could not be arrested and was declared proclaimed offender. Challan was presented only against Surjit Singh but thereafter, Baldev Singh was summoned under Section 319 Cr.P.C.

3. Charge under Sections 376(2)(g) and 506 IPC was framed.

Both of them pleaded not guilty.

4. The prosecution examined the victim, Hakam Singh, the Medical Officers, the Magistrate and the police officials.

5. In the statement recorded under Section 313 Cr.P.C, both the accused abjured the trial and pleaded false implication. Six witnesses were examined in defence.

6. The trial Court convicted both the appellants to the sentence mentioned here-in-before.

7. I have heard the counsels of both the sides.

8. Commencing his submissions the counsel for the appellants urged that it was a false case and the statement of the victim could not have been accepted and there are discrepancies and contradictions, which make the whole case not worthy of credence. It was urged that birthday celebrations were going on in the house of Munsa and the victim as well as the accused had attended that party which went on till about 10:30 PM. It was urged that the victim had admitted that the accused were present in that party and therefore, the allegations that she had been raped at 8:30 PM stands falsified. Referring to the photographs, it was urged that they show the presence of the victim and the accused at the party. It was urged that the house of the victim is just close to the place where the party was going on and the mother and brother of the victim were also there and the victim had

left with her brother and the place where the incident had occurred is three kilometers away from the house and it was winter night and it belies logic that the family would have permitted the girl to go out at that hour to ease herself. It was urged that the fields where the incident had occurred are not owned by Sulakhan and a story has been concocted. It was urged that the statement of the victim before the Magistrate was given after two months and the case had been registered on account of enmity. It was urged that both the appellants are related and in fact it was a case of elopement with Mangal who could not be arrested. It was urged that contradictory statements were given with respect to the age of the victim and the story is improbable and the father was not cited as a witness and the uncle did not support the prosecution version. It was urged that the family did not take the victim to the hospital but it was a police official who took the girl as it was the Sarpanch who was interested and the medical was got done on 11.02.2010 at 6:00 PM and there is delay in lodging the FIR.

9. On the other hand, the State counsel has supported the judgment and had urged that the statement of a rape victim should be accepted and conviction can be based only on her solitary statement and corroboration is not required.

10. The fact that the solitary statement of the prosecutrix is always to be considered as truthful 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. Before the evidence is evaluated, the salient propositions of 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 following registered propositions of law were 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.”

11. The case of the prosecution before the Court below was that on 10.02.2010 the victim left her house to attend the call of nature and went to the fields where she was over-powered by three persons and was gang raped. She was threatened. The family meanwhile was searching for her and reached the spot and the mother helped the victim wear her clothes and she was taken to the hospital where her statement was recorded.

12. It would be necessary to refer to the statements given before the Court. The victim was examined as PW1. She made the same statement as given to the police and added that she was familiar with all the persons named by her. She stated that her mother, her two maternal uncles had reached the spot and on seeing the family, the

accused managed to escape. She stated that she narrated the matter to her mother and she was taken to the police and statement Ex.PA was recorded and she was 17 years old at the time of incident. She stated that after one month of the incident she was called to the police station and she identified Surjit Singh. In the cross-examination she admitted that on 10.02.2010 (the date of incident) they were at the birthday party in the house of Munsa Singh and the party had started at 9:30 AM and it continued up to 10:30 PM and she remained there through out the day. She stated that Baldev Singh accused was also there. She admitted that Baldev Singh was son of Tara Singh and the police had declared him as innocent. She stated that she had left her studies in the year 2005.

The defence counsel had shown a mark-sheet Ex.D1 to confront her with the statement. She admitted that she had passed her 5th class in February 2006. She stated that Munsa Singh's house was four houses away from their house. She admitted that there was a toilet and a bathroom in their house. She admitted that Surjit and Mangal were also present at Munsa's house through out the day. She stated that fields of Sulakhan Singh were at a distance of 200 meters from her house. She admitted that her mother and the maternal uncles also attended the party. She denied that she left the house on her own along with Mangal Singh. She denied that she was having an affair with Mangal Singh. She stated that she did not receive any injury on her back and her clothes were not torn but her clothes were forcibly

removed by the accused. She stated that she did not cause any injury to Surjit Singh and she had reached the hospital at 9:00 PM. She stated that the hospital was at a distance of 10 kilometers. She admitted that Mangal Singh was related to Baldev Singh. She admitted that Jit Singh was her paternal uncle and Amar Kaur was her 'Bua' being the sister of her father. She stated that Amar Kaur had given a complaint against his uncle (Fufa of accused) Darshan Singh and allegations were levelled that Darshan Singh had murdered Jit Singh. She admitted that the police had found the complaint to be false. She admitted that due to that reason they were not on speaking terms with the family of Baldev and Surjit Singh.

The above statement was made by the victim before the additional accused was summoned. Subsequently the victim was examined on 04.11.2011 and there were some contradictions in the examination-in-chief with respect to the identification carried out by the police. The witness had stated that no identification was carried out by the police. The witness was turned hostile on that point and thereafter, the victim admitted that she had identified Surjit Singh and identification parade was held. She stated that her date of birth was 18.12.1995. In the cross-examination, she admitted that the birthday party started on 9:30 AM but it was over at 7:30 PM. She was confronted with the earlier statement and she stated that the statement which she had given earlier that the party went on up to 10:30 PM was

wrong and the fact that she was in Munsa's house till 10:30 PM was also wrong. She stated that the fact disclosed by her in the first statement that Baldev Singh remained in the party till the end was also wrong. She stated that Taro, mother of Baldev Singh was the Panch of the village and Shankar Singh was the present Sarpanch and Shankar Singh, Sarpanch had accompanied her to the hospital. She admitted that Taro Bai had got a case registered against Shankar Singh regarding the abetment of suicide of the brother of Baldev Singh. She, however, denied that there was political rivalry in the village. She admitted that there was a dispute regarding the passage between Taro Bai and Shankar Singh, Sarpanch. She admitted that Hakam Singh was her maternal uncle but feigned ignorance that Hakam Singh had given an affidavit in favour of Baldev Singh. She stated that there was no bathroom or toilet in her house. She was confronted with her statement made earlier and she stated that her first statement was incorrect. In the cross-examination she again admitted that the accused remained in the party up to 10:30 PM. She stated that the fields of Sulakhan Singh were at a distance of three kilometers from her house. She stated that she returned from the party along with her brother. She admitted that a video was prepared at the birthday party.

13. Hakam Singh – PW2 stated that the victim and her family and all the accused had attended the birthday of grand son of Munsa Singh on 10.02.2010 and the victim left with Mangal Singh and went to

the fields and he along with others had gone to the place of incident after he heard a hue & cry and it was Mangal Singh who was raping his niece and accused Surjit Singh and Baldev Singh were not present at the spot. The witness was turned hostile and was cross-examined at length but he stood-by his statement. Disclosing the relationship, he stated that the victim was the daughter of his sister and she was the eldest amongst the children and his sister was married in November, 1990 and the victim was born one year after the marriage and the victim was 20 years old and she had accompanied Mangal Singh out of her own sweet-will.

14. Amar Singh – PW5 deposed that his sister Mohinder Kaur informed him that her daughter had gone out and had not returned and therefore, they went out and started searching for her and went towards the road leading to Satluj river and when they reached near the fields of Sulakhan Singh, they heard some noise and saw Mangal Singh, Baldev Singh and Surjit Singh running away and all the three accused had committed rape and Mohinder Kaur helped her daughter in putting her clothes on. In the cross-examination, the witness was confronted with a photograph in a newspaper. He admitted that he was his photograph and he was apprehended by Ek Noor Khalsa. He could not say that the complaint was made by Taro Bai. He admitted that Taro Bai was Baldev Singh's mother. He admitted that relation between Taro Bai and Shankar Singh were strained. He could not say whether there was

litigation between them. He admitted that a party was going out at the house of Munsa Singh and Baldev Singh & Surjit Singh were also present and the party continued through out the night. He denied that there was a bathroom and a toilet in the house of Mohinder Kaur. He stated that he had heard that Taro Bai had given a complaint to the police that Sukhdev Singh had died due to Shankar Singh. He could not say whether any FIR had been registered.

15. Dr. Kamaljit Kaur, Medical Officer – PW6 had examined the victim. She found no mark of injury on the body or on the private parts. The hymen was found to be absent and there was no bleeding and the vagina admitted two fingers. She stated that the victim was admitted in the hospital at 11:00 PM and she was discharged on 11.02.2010 after examination. She stated that the victim had not disclosed any history to her and her clothes were not handed over. She stated that no foreign body was found on the nail tips.

16. FSL report Ex.PW6/C was tendered in evidence wherein spermatozoa was detected.

17. Harbans Singh, Patwari – PW7 proved the scaled site plan of the field. He stated that as per the documents, Sulakhan Singh was not the owner of the field where the incident had taken place.

18. ASI Jasbir Singh – PW8 was the Investigating Officer. He stated that Baldev Singh was found to be innocent and they had received information regarding the incident on 11.02.2010 at 2:00 PM.

19. Mohinder Kaur was given up as unnecessary.
20. On the other hand, the accused examined Balwinder Singh as DW1. He is a photographer and had taken photographs of the birthday party at Munsa's house. He stated that he had prepared a DVD Ex.D1.
20. Bakha Bai DW2 wife of Munsa Singh stated about the celebrations at their house. She stated that party had started at 10:00 AM and continued up to 10:00 PM and the victim left the function alone while both the accused stayed back.
21. Balbir Singh HC -DW3 proved the DDR Ex.DB.
22. Puran Singh – DW5 deposed about the function that had taken place at Munsa's house. He stated that the accused had remained at the function till the end and there was a lot of hue & cry by the children and they were saying that Mangal Singh had taken the girl forcibly and they went to look for her.
23. The incident had taken place on 10.02.2010 at about 8:30 PM. The victim was taken to the hospital and was accompanied by Head Constable at 11:00 PM the same night but as per the MLR Ex.PW6/A, her medical was conducted on 11.02.2010 at 6:00 PM and there is a note that it was incomplete. The Medical Officers had noted that there was no mark of injury external or internal. The hymen was absent and the vagina admitted two fingers easily. The statement of the victim was taken at about 5:20 PM and the FIR was lodged on

11.02.2010 at 5:20 PM. The special report reached the Magistrate at 7:00 PM the same evening. As per the chemical examiner's report spermatozoa was detected. No DNA test was carried out. The statement of the victim was recorded after 19 hours of the incident and there is no explanation for the delay. The victim had reached the hospital within two hours of the incident. Ruka was also sent to the police but there is no explanation why the victim did not make a statement to the police that night or the next morning. The victim had named three persons namely the appellants and Mangal Singh. Mangal Singh could not be arrested.

24. The place of incident is said to be a field which was quite far from the house of the prosecutrix. It is necessary to mention here again that the statement of the victim was recorded twice as an additional accused was summoned. The police had challaned only one of the accused and it was Baldev who was summoned subsequently. There are number of contradictions in the statement of the victim and the most glaring one was the denial by the prosecutrix that there was a toilet in their own house. In the first statement, she had stated that there was a toilet and a washroom in their house and she was unable to explain why she had left her house in the dead of the night all alone to answer the call of nature. She improved upon her statement when she stepped into the witness box the second time. It is apparent from the statement of the prosecutrix and other witnesses produced by the

prosecution that the relations between the appellants and the family of the prosecutrix were not good. Both the appellants are related to each other. So it is to be seen whether the story put forward by the prosecution was probable, specially when the father failed to step into the witness box and was not cited as a witness. The uncle of the victim turned hostile and made a statement against the victim and his own sister.

25. The victim has made contradictory statement. In the first statement, she had stated that the birthday party went on till 10:30 PM and both the appellants stayed back till the end of the party but when she appeared for the second time she stated that the party had ended much earlier. The house of the victim is very close to the house where the party was going on. At one place it has appeared that it is just four houses away while the other witness stated that it was 10 houses away. The victim left the party along with her brother. There is a toilet in their own house. Therefore, the statement that the victim had left the house to ease herself on a winter night, all alone, is doubtful. The victim and her mother have admitted that both the accused were at the party and a video was prepared. The CD was also placed on record. The photographer who took the photograph was also examined. Munsa's wife also stepped into the witness box to support the appellants. The defence had taken the plea that the victim had left the house of her own and had eloped with Mangal and there was a lot of

hue & cry and the family on coming to know of it managed to reach the place. A number of persons had reached the site of incident but they could not catch the accused that also appears to be strange. In the light of this statement it was necessary for the prosecution to get the DNA test. The police was unable to arrest Mangal but they had arrested the appellants and it was very easy to get at the truth had the prosecution got the DNA sample verified to find the source. The victim did not give any statement or history to the Medical Officer. Usually a history is given which is recorded in the MLR. In this case no history was given. The silence on the part of the victim and the fact that her statement was made after a delay goes to show that the time had been used up to concoct a story and introduce more people. Had the girl been ravished by three men, there would have been some marks of injury on her back, on her body. The victim had stated that her clothes were torn but those were not handed over to the police.

26. Normally mere delay in lodging the FIR is not enough to throw out the prosecution case but the Court has to seek an explanation for the delay and test the truthfulness and possibility of the reason assigned and if the delay is explained, it cannot be counted against the prosecution. In the present case, delay has not been explained. The circumstances and the manner in which the incident has been narrated throws a doubt on the prosecution case. The prosecutrix had made contradictory statements at different point of time which goes to the

root of the matter and I find that her statement is not worthy of credence and a story has been concocted to frame the appellants and probably to shield the main person. The victim's solitary statement is not enough for convicting the accused.

27. Keeping the totality of the circumstances into view, I find that it is a fit case in which benefit of doubt should be granted to the appellants. Both the appeals are accepted and the appellants are acquitted.

(ANITA CHAUDHRY)
JUDGE

23.11.2016

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : *Yes/No*