

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-831-SB-2013 (O&M)
Date of Decision: 24.9.2016

Baljinder @ Joginder

.....Appellant

Versus

State of Haryana

.....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: Mr. R.S.Mamli, Advocate
for the appellant.

Mr. Sanjay Kr. Saini, AAG, Haryana.

ANITA CHAUDHRY, J(ORAL)

Appellant was convicted and sentenced to undergo rigorous imprisonment for 07 years along with fine of Rs. 10,000/-. In default of payment of fine he was to undergo further rigorous imprisonment for six months under Section 376 IPC.

Elaborating the facts the prosecutrix, aged 16 years, along with her uncle approached the police and lodged a complaint. Her elder sister had married to Ramesh in village Jathlana. On the fateful day at about 10:00 A.M., the prosecutrix left home to visit her sister and was going on foot. She had reached the canal bridge when Rahul son of Tilak Raj, resident of village Alahar came on a motor cycle and offered lift upto village Jathlana. Since he was a co-villager, the prosecutrix accepted the offer and sat on the motor cycle. After covering some distance, Baljinder

(appellant) met them. Rahul stopped the motor cycle. Allegations are that Baljinder dragged the prosecutrix from the motor cycle and dragged her to the sugarcane fields and raped her. When the prosecutrix tried to raise alarm, he stuffed her *chunni* in her month. Her alarm attracted Raj Pal Kamboj and Anil who ran to help her. The prosecutrix returned home and narrated the incident to her uncle.

Investigations were initiated. The prosecutrix was medically examined. She was produced before the Magistrate for her statement under Section 164 Cr.P.C. and the FIR was registered on 4.9.2011. On completion of investigation, challan was presented against Baljinder and Rahul. Rahul was a juvenile. His challan was presented before the Principal Magistrate of the Juvenile Justice Board, Yamuna Nagar.

Charge was framed under Section 376 IPC against Baljinder Singh to which he pleaded not guilty and claimed trial.

The prosecution examined the victim, her uncle Samay Singh, medical officers, Patwari Halqa, Raj Pal, Anil, police officials and the Magistrate who recorded the statement under Section 164 Cr.P.C. besides the Head Teacher of the Government Primary School, Alahar to prove the age of the victim.

In the statement under Section 313 Cr.P.C., accused pleaded false implication and stated that he has been falsely implicated. He also deposed that the father of the prosecutrix and her uncles had taken money from his father for getting him employed in government service and they had cheated them and an FIR was got lodged at P.S. Radaur in 1997 against the family members of the prosecutrix and they were sent behind bars and their family was nursing a grudge and he had been implicated to settle

scores.

By way of defence, copies of the documents pertaining to the FIR were tendered in evidence.

The trial Court on the basis of the evidence before it concluded that on the day of incident the prosecutrix was more than 18 years and was major but accepted the statement of the prosecutrix and held him guilty and sentenced him to the punishment mentioned hereinabove.

I have heard the submissions of both the sides.

The contention made by the counsel for the appellant was that the incident is alleged to have taken place at 10:00 A.M. when the victim was going on foot to meet her sister who lives in the adjoining village and the distance is not much and on the way Rahul, a co-villager, offered lift on his motor cycle and offered to drop her at Jathlana and they had covered some distance when the accused was seen coming. It was urged that Rahul is said to have stopped the motor cycle and the appellant dragged the girl and took her to the sugarcane field and raped her. It was urged that at the trial, the prosecutrix denied this version and instead stated that Rahul had offered *prasad* which was spiked and the accused came and took her to the sugarcane field. It was urged that such an incident could not have occurred in broad daylight. It was urged that there was old enmity between the two families and it is the uncle who accompanied the girl and not the parents for lodging the FIR. It was urged that Raj Pal who is said to have rescued the victim, turned hostile and did not support the prosecution and the parents have not come forward to depose as they could not have stood the test of cross-examination and it was a false case and the medical evidence also does not support the prosecution as no spermatozoa was found in the

vaginal swabs.

The State counsel supported the judgment of the trial Court and urged that the statement of the victim should be accepted and the incident set-up was 15 years old.

It is necessary to refer to the statement of the prosecutrix first.

The victim, PW-15, stated that she was going from village Alahar to Jathlana to her sister's house. At 10:00 A.M., she met Rahul on the canal bridge who offered *prasad* and she was forcibly made to sit on the motor cycle and on the way Joginder met them. She stated that he was also known as Baljinder and he stopped the motor cycle and Rahul pushed her and Joginder caught hold of her and took her to the sugarcane field near the canal *patri* and she was raped. She stated that she tried to raise alarm and Raj Pal and Anil came to the spot and rescued her and she went home and disclosed the incident to the paternal uncle Samay Singh and then they went to the police station. She stated that she made the statement before the Magistrate and police recorded her statement twice. In the cross-examination, a number of questions were put to her relating to her age but the victim avoided giving the answers. She admitted however that village Jathlana was at a distance of 2½ kilometers from village Alahar and the bridge was very close to the village and it takes 10 minutes from her house to the bridge. She asserted that she had told the police that Rahul had offered *prasad* and had forcibly made her sit on the motor cycle. The victim was duly confronted with the statement Ex.PQ where it was not so recorded. In her statement there was no reference also to the fact that she was pushed by Rahul. She was also confronted with the statement made before the Magistrate where it was recorded that it was Joginder who gave her *prasad*.

The witness had also admitted that there was no other approach to the village except the bridge. The place where she was raped was about four kilas from the canal. The witness had also disclosed that meantime Rahul was standing on the bridge and it was Raj Pal and Anil who took her home and her mother was at home and the incident was narrated to her and she also narrated the incident to her uncle. She admitted that there was litigation pending between Samay Singh and father of Baljinder but her uncle had won the case. She stated that she could not say whether her uncle had taken money from Baljinder's father to send him abroad. She stated that she was small at that time and she did not know about the litigation. She admitted that the father was also party to that litigation.

Samay Singh, a government employee and a resident of village Kansapur, deposed that his niece came to his house and told him as to what had occurred and they went to the police station to lodge a report. He stated that his niece had come to his house between 11.00 A.M. and 12.00 noon and was accompanied by Anil and Raj Pal who brought her on a motor cycle. She was not taken to the police station immediately. He stated that there was no litigation between him and the father of Baljinder but then corrected himself and admitted that a case under Section 420 IPC had been lodged by Baljinder's father 15 years ago for the reasons that he (witness) had taken money for procuring a government job for Rakesh Kumar. He denied that on account of that litigation, the relations between the families were strained.

Dr. Manju Singh PW-3 proved the MLR Ex.PF and noted the following:-

“1. That on 4.9.2011 at 8.00 P.M. on police request, I medico

legally examined Raj Kali d/o Jai Kishan, 16 year female, r/o Alahr, P.S.Jathlana, Yamuna Nagar brought by police with alleged h/o assault. She was accompanied by her uncle Samay Singh.

2. That on examination, I found that she was fully conscious, oriented and vitals were stable. Secondary sex characteristics were well developed. Her LMP was 16.8.2011.

3. That there was complaint of pain and slight swelling on right forearm, skin colour was normal and there was no restriction of movement. Nature of injury was simple and kind of weapon was blunt but duration could not be ascertained.

4. That no external injury was seen on any other part of the body.

5. That no external injury was seen on breast, pubic region, vulva and perineal region.

6. That on PV examination, one finger can be introduced through vagina. Slight amount of blood was present on examining finger. She was referred to Gynaecologist for needful.

7. That the possibility of sexual intercourse cannot be ruled out.”

In the cross-examination, the medical officer had admitted that there was no tenderness on vaginal examination.

Raj Pal PW-4 refused to support the prosecution story. He stated that he had not made any statement to the police.

Anil PW-5 also chose to make a statement against the

prosecutrix and was turned hostile.

Santosh Kumari, Head Teacher PW-8 brought the register and proved the date of birth recorded in their register which was 15.4.1992.

The investigating officer had deposed that Rahul was challaned and since he was a juvenile, his case was presented before the Juvenile Home.

In the 313 Cr.P.C. statement, the accused pleaded false implication and stated that the father of the prosecutrix and her uncle had taken money from his father for getting him employed in government service and had cheated them and an FIR was lodged in 1997 and Samay Singh and father of the prosecutrix were taken in custody and they were nursing a grudge.

In defence, the accused had produced the documents relating to FIR No. 295 dated 23.7.1997 registered under Section 420, 506, 120-B IPC at Police Station Radaur. The documents Ex. D-1 to Ex. D-13 were tendered in evidence.

The incident had taken place at 10.00 A.M. at a place which is near the canal bridge. The victim was going on foot from her village to her sister's village and the distance between the two villages was about 2½ kilometers. The canal bridge is the only connecting bridge which connects these two villages. The incident occurred at 10.00 A.M. but it was reported to the police at 7.00 P.M. in the evening. The prosecutrix returned home and narrated the incident to her mother but no report was lodged. The complaint as well as the FIR is silent as to the presence of the father. The prosecutrix did not explain whether she had gone to her uncle's house or he came to her house. The trial Court had examined the evidence with respect

to the age and had given a categorical finding that the prosecutrix was more than 18 years of age and it placed implicit reliance upon the testimony of the prosecutrix and her uncle to conclude that the accused had committed rape upon the prosecutrix. It rejected the other evidence.

The medical evidence does not refer to the state of the hymen. No injury external or internal on any part of the body was found. There was complaint of pain on the fore-arm. No redness or any swelling was found. FSL report did not find any traces of semen on the vaginal swabs, though, semen was detected on the clothes of the victim. The forensic experts had recommended a comparison for DNA profiling. The DNA was not carried out.

The prosecutrix had given a slightly different version in the statement recorded under Section 164 Cr.P.C. The parents did not come forward to make a complaint and since there is a delay, the evidence has to be scrutinized to ascertain whether the statement given by the prosecutrix is truthful and trustworthy specially when the two independent witnesses have not supported the prosecution version. 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 proceeding further, 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 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.”

The prosecutrix is major. The manner in which the incident is narrated and the post conduct raises doubts about the incident. The manner in which the incident has been stated is not convincing for the reason that the incident occurred in broad daylight in the morning hours when the roads are busy and people are out. This stretch is the only connecting road to the village. The medical officer did not find any signs of violence on the body. Therefore, evidence of the prosecutrix has to be examined more than carefully and cannot be mechanically accepted as the truth.

The two independent witnesses denied the fact that they were present or had gone to help the victim. There is a contradiction in the statements of the victim as in the complaint, her narration was that Rahul offered a lift and after covering some distance, Baljinder met them and Rahul stopped the motor cycle and Baljinder dragged her from the motor cycle to the sugarcane field. Before the Magistrate, she had stated that when she was near the canal, Joginder son of Ramesh who lives close to their house gave her *prasad* and then threw her on the bricks and caught her while Rahul pushed her and she was raped by Joginder and her chunni was

stuffed in her mouth and Raj Pal and Anil came to her rescue. The story that she had been given something to eat has been introduced in the 164 Cr.P.C. statement. It was not possible for one person to drag the girl from the motor cycle. Therefore, a role was also attributed to Rahul. The incident could not have occurred in the area where it is suggested. The medical evidence also does not support the prosecution. There is no corroboration to the statement of the prosecution and I find it difficult to accept the testimony of the victim. Though, corroboration as a rule is not necessary but when the evidence of the victim appears to be shaky and not convincing, then the Court has to look for corroboration before acting on the evidence.

It is difficult to accept the story projected by the prosecution. Considering the medical evidence coupled with the FSL report and the delay in lodging the FIR, it leaves a mark of doubt to treat the testimony of the prosecutrix as natural so as to inspire confidence. The story put forward by the prosecution is improbable and belies logic.

The degree of proof in rape cases is expected to be on a higher side. The prosecution was unable to prove the case beyond 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 appellant is in custody. He be released forthwith if his custody is not required in connection with any other case.

(ANITA CHAUDHRY)
JUDGE

September 24, 2016

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes