

1. **Crl. Appeal No. S-1161-SB-2002**
Date of Decision: 16.11.2016

Versus

2. **Crl. Appeal No. S-1226-SB-2002**

Versus

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- Present: Mr. R.S.Khaira, Advocate
for the appellant.
(In CRA-S-1161-SB-2002)

Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate
for the appellant.
(In CRA-S-1126-SB-2002)

Mr. Apoorv Garg, DAG, Haryana.

ANITA CHAUDHRY, J(ORAL)

These two appeals arise out of a common judgment. The appellants were convicted and sentenced to five years rigorous imprisonment along with fine of Rs. 2,000/- each under Section 366 IPC. In default of payment of fine, they were to further undergo imprisonment for

two months. The appellants were also convicted and sentenced to 10 years rigorous imprisonment along with fine of Rs. 5,000/- each under Section 376 (1) (G) IPC. In default of payment of fine, they were to further undergo imprisonment for five months.

A resume of the facts first:- The victim was 17 years old and was living with her parents in Gurgaon. She was a trainee and had joined a beautician course. Few days prior to 21.12.1996, both the appellants met her on the way and proclaimed that they had contacts and could arrange a job for her and a high salary. The victim informed her parents. Both of them were called home. The allegations are that on 21.12.1996 at about 10.00 A.M. when the victim was going to attend her course, both the accused met her. She asked them to meet her father, they agreed and made her sit on the rear seat of the car. Ved Sharma was on the driver's seat. As soon as the victim entered the car, Ved Dua placed a knife on her chest and threatened that if she raised noise she would be cut to pieces. The victim got frightened. She was taken to Sultanpur lake and to a room where she was raped by both of them. She was left on the roadside. She returned home at 7.30 P.M. and narrated the occurrence to her parents. On hearing about the incident, the victim's father became unconscious. On the next day, a panchayat was convened by the parents and brother of the prosecutrix. The victim was deliberating whether the matter should be reported to the police or not as the honour of the family was involved. The allegations are that on coming to know that a panchayat was being convened both the accused along with Gurbachan, his son and 1-2 other persons came to the house of the victim at 9.30 P.M. and forcibly tried to take the victim in the car. The victim's brother, Anil and her mother Wanti Devi tried to stop

them. Ved Dua gave a knife blow to Anil. Threats were extended that if the matter was reported to the police, the whole family would be wiped out. The victim mustered courage and lodged the report that night. The police registered FIR No. 1108 dated 23.12.1996 under Section 452, 354, 323 read with Section 324 IPC which was later on cancelled. A complaint was given to the DIG on 29.12.1996. The present FIR was registered on 2.2.1997. Accused Ved Parkash Dua and Ved Parkash Sharma were arrested and put to trial.

Charge was framed under Section 366 and 376 2(G) to which the accused pleaded no guilty.

The prosecution examined the victim PW-2 who is the main witness, besides her mother and brother, the medical officers and the police officers and also the manager of Sultanpur lake PW-12. He proved the entry made on 21.12.1996 with respect to room booking at 4.00 P.M.

Ved Dua in his defence took the plea that the victim and her mother were indulging in prostitution and the victim's father was a alcoholic and was not earning. He had stated that both of them (accused) were cousins and dealing in property and they shared a bitter relationship with another cousin Ved Batra and litigation was pending between them. He stated that Ved Sharma used to side with him and Ved Batra was always on the look out to involve him in false cases and he was into a relationship with the mother and daughter. He had stated that Ved Batra had moved the High Court against them when the police did not find any truth in the allegations and he had financed a three-wheeler for the brother of the prosecutrix. He had also stated that on account of the illegal activities, the victim and her mother were thrown out by their landlord and they had been changing their

houses at frequent intervals.

Accused Ved Parkash Sharma in his statement recorded under Section 313 Cr.P.C. had stated that he was not in Gurgaon that day and had gone to village Khubru district Sonapat and was working as a Patwari and was in Halqa Khubru and had visited village Naya Bans in Tehsil Ganaur in connection with his official duties along with the Reader to the SDO Irrigation and had done crop inspection and had submitted the field book at 2.30 P.M. and the crop inspection went on till 23.12.1996 and this fact had been verified by the investigating officer.

The accused had examined Kapil Batra son of Ved Parkash Batra who had deposed that the victim and her mother had got a case registered against him and his friend Ashok under Section 354 IPC and he had paid a sum of Rs. 80,000/- by way of cheque to the brother of the victim. He had stated that his father used to go to the house of the prosecutrix and because of that there had been quarrels in the family.

Mahinder Singh retired Inspector DW-2 deposed that a case bearing FIR No. 1108 dated 23.12.1996 was registered under Section 452, 354, 323, 34 read with Section 61 of the Excise Act was lodged by the victim against six persons including the accused and four more persons and Ved Dua and Ved Parkash were found innocent while the rest of them were found to be involved.

Gulshan Kumar DW-3 spoke about the victim and her mother and that they were indulging in immoral trafficking and used to sell illicit liquor during the prohibition days in Haryana.

DW-5 Dhara Singh, Reader attached with SDO, Irrigation

stated that Ved Parkash was called for temporary rice shoot duty. He

brought the official record pertaining to that period and stated that spot inspection of the fields was done and they used to remain in the village from 10.00 A.M. to 4.00 P.M. He proved the certificate Ex. DJ.

Mohd. Ashraf DW-6 a Cashier with a bank in Gurgaon stated that there was an account in the name of Anil son of Madan Lal and a sum of Rs. 1,00,000/- was credited in his account by transfer on 20.5.1997 by Ved Parkash. He has proved the account statement.

DW-7 Abhay Jain proved the newspaper published in Hindustan Times. He stated that it was reported that there was no evidence of rape and the information was supplied by Kulvinder Singh, the then DSP Gurgaon.

I have heard both the sides.

Before the case is evaluated on merits, it is necessary to notice the judgments of the Apex Court.

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

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 statement of the prosecutrix is important. It is necessary to notice what she had stated in the Court. She had given her age as 19 years when she was examined in the Court on 25.7.1998. She had stated that she had gone to attend the course at 10.00 A.M. when both the accused met her on the way and they offered her a job and proclaimed that they were highly connected and she asked them to speak to her father and they agreed and asked her to sit in the car. The prosecutrix sat in the car, Ved Sharma was on the driver's seat and Ved Dua sat on the back seat along with her and showed her a knife and threatened her and asked her to remain silent and was taken to Sultanpur lake. She stated that Ved Dua kept his hand on her mouth and she did not know what was in the handkerchief and she had no control over herself and she was taken to a room and raped by both of them and she returned home at 7.30 P.M. She stated that the accused left her back at her house and she narrated the incident to her father. She stated that her father usually remained ill and had a heart problem. She stated that her mother narrated the incident to Anil and both of them went to Ved Dua's house and when her mother questioned him then Ved Parkash asked for pardon and asked his mother to accompany him to his house. She immediately corrected herself and stated that he asked to discuss the matter somewhere else and thereafter went to a nearby temple and asked for pardon and thereafter ran away and sent his brother Satish Kumar and brother-in-law Siri Bhagwan to their house to ask for pardon and asked them not to disclose the incident to anyone. She stated that they assured him that they would not discuss it anywhere and those persons left their house at 10.00

P.M. She further disclosed that on 22.12.1996, Satish and Siri Bhagwan again came to their house at 8.00 A.M. and her father told them that they will not take any action and they went back after five minutes. She stated that the accused were keeping a watch on their house. The same night, they heard abuses being hurled outside their house at 9.30 P.M. and someone knocked at their door and Gurbachan, brother-in-law of Ved Dua and son of Gurbachan and one or two more persons entered the house and Ved Dua caught her hand and tried to pull her in the car but her brother came to her rescue and Ved Dua gave a knife blow on her brother's hand and Ved Parkash started the car and drove on her mother and he took out a revolver and threatened that if the matter was reported, the family would be finished and all of them sped from the spot. She stated that initially they had lodged the report with the police about the beating given on 22.12.1996 and thereafter about the incident of rape and the police did not take the complaint regarding rape and they had been going to the police for 2/3 days and after 1½ month at the instance of the High Court a case was registered. She stated that whenever they went to the police, they used to threaten them.

In the cross-examination she gave her date of birth as 14.1.1978. She stated that they had lived in a house of the Tehsildar as a tenant for about a year in 1997. She stated that they were not on visiting terms with any of the neighbours. She stated that they had good relations with the landlord but the relations became strained as they used to pay the rent on the 10th of the month but he was insisting it to be paid on the 5th of the month. She stated that a scuffle took place and all of them went to the police and they were admitted to bail but they were not sent to the lock-up.

She denied that Devat Ram asked them to vacate the house as she and her

mother were leading a immoral life. She admitted that while they were living in that house, Ved Parkash and his son Kapil Batra, Harish and Gajender Sharma used to visit them. She admitted that Ved Batra and Ved Dua were related and they were in property business and they had good relations but differences arose later on. She stated that at the time of the incident they had differences with Ved Batra because of a pending case but later the matter was compromised. She admitted that they had lodged a case against Kapil Batra under Section 354 IPC. She denied that she had levelled allegations against Kapil Batra of kidnapping. She admitted that her brother was plying an auto rickshaw and that had been purchased only 15 days ago. She denied that Ved Batra had purchased the three wheeler for them. She admitted that they had lived as a tenant in the house of Ved Dua. She admitted that they used to borrow money from him but claimed that they had returned the money. A photograph was shown to the victim in the Court and the witness admitted that she had got engaged to him at the instance of Ved Dua. She stated that later on the engagement was broken due to Ved Batra and they had asked the boy's side to return Rs. 30,000/- but she immediately corrected herself and stated that they did not ask the amount back but took some pronotes executed in favour of Ved Dua 10-15 days before the engagement because he had borrowed some money from them. She admitted that they had changed 2-3 houses in the last six years.

Wanti Devi PW-5 made a similar statement as made by her daughter.

Dr. Rekha Yadav PW-10 had examined the victim. She stated that the age of the girl was given by the mother and had been recorded in the MLR as 17 years and she had referred the victim for age verification to

the Radiologist. She found no external mark of injury on any part of the body or any injury over the vulva and vagina. She noted the following:-

“Pubic hair well developed and not matted. Hymen absent. Present as old tag or tissue (Carcunculae Hymenalis). Vagina admit one finger easily and two finger snugly. There is no external mark of injury over vulva and vagina. LMP 3.2.1997.”

The medical officer was shown the FSL report Ex. PJ and thereafter she gave her opinion that the victim was not subjected to sexual intercourse at that time or recently. She stated that the tear of the hymen was old and she had sexual intercourse previously also.

Gobind Sharma, Manager at Sultanpur Lake PW-12 brought the booking register and stated that hut No. 1 had been booked in the name of Jai Pal at 4.00 P.M. and they did not take any proof regarding their identity and the hut was vacated at 6.10 P.M.

Anil PW-13 brother of the victim supported the prosecution. In the cross-examination, he admitted that his sister had been engaged three years ago but later on the engagement was cancelled. He could not say as to who had suggested the boy. He admitted that some photographs of the engagement were taken. He admitted that Ved Batra's photographs were there. He denied that any money was borrowed from Ved Batra for the ceremony. He could not say whether Gurbachan was present at the time of the engagement. He admitted that he had a bank account in Jammu and Kashmir Bank but claimed that he had never deposited any amount in his account. He could not say whether Ved Batra had deposited Rs. 80,000/- in his account. He denied that the three wheeler had been purchased out of that

amount. He denied that his sister had borrowed money from Ved Dua. He added that his mother used to borrow money from Ved Dua. He admitted that they had changed their house 6-7 times. He stated that his father was a heart patient for the last 20 years and he stopped working two years earlier.

Shakuntla Devi PW-14 is the investigating officer. She stated that a complaint Ex. PB was received and the FIR Ex. PB/3 was registered and the girl was medically examined on 8.2.1997. She also deposed about the steps taken for the investigation. In the cross-examination she stated that the victim had given an application on 23.12.1996 and she had registered FIR No. 1108 and no other complaint was given and she had partly investigated the case that was registered on 23.12.1996 and later the file was sent to CIA staff and further investigation was conducted by Inspector Mahender Singh who did not challan the accused. She stated that she knew this fact because later on she had prepared the challan and the names of the appellants were shown in column No. 2.

In the statement under Section 313 Cr.P.C. both the accused abjured the trial and pleaded false implication.

In defence DW-1 Kapil Batra son of Ved Parkash Batra has stated that Ved Dua was his mother's sister's son and they were partners in business but the partnership was dissolved and their relations were strained and civil and criminal litigation was pending between them. She stated that he knew the prosecutrix and her mother Wanti Devi and the prosecutrix had got a case registered against him and his friend Ashok Gulati under Section 354 IPC and there were allegations of kidnapping and he was arrested and later a compromise was effected and they had paid money to the victim vide

favour of the victim's brother.

Mahinder Singh retired Inspector DW-2 had investigated FIR No. 1108 of 23.12.1996. He stated that the case was registered under Section 452, 354, 323 read with Section 34 IPC and 61 of the Excise Act. He stated that those were the days of prohibition in Haryana and he had investigated the complaint and had found Ved Dua and Ved Sharma innocent and the remaining accused were challaned.

Coming to the question of the age of the victim first. In the statement given to the police the victim had given her age as 17 years but when she stepped into the witness box and her date of birth was put to her in the cross-examination, the victim had admitted her date of birth to be January 1978 and she was held to be more than 18 years of age and rightly so. The medical officer had directed a radiological test to determine the age of the victim. The report was held back by the prosecution but the defence had tendered the report Ex.DE according to which the age of the victim was 18-19 years.

It is now to be seen whether the story put forward by the prosecution can be accepted or we have to look for corroboration considering the fact that there are significant discrepancies in the statements which are glaring.

The incident is said to have taken place on 21.12.1996. The victim had stated that she was going to attend her course at 10.00 A.M. when she was lured into the car and taken to Sultanpur lake which is about 15 kilometers away and raped in one of the huts. She had claimed that she had been sedated and carried inside and raped by both of the accused.

Sultanpur lake is a resort which has number of huts. None of the staff

working at the resort had seen the victim being carried into the room. An entry was produced to show that a hut was booked around 4.00 P.M. and was vacated at 6.30 P.M. The initial statement given to the police was a written complaint where there is no reference to the rape. It is necessary to notice here that a written complaint signed by the victim was presented to the police on 23.12.1996 and FIR No. 1008/96 was registered under Section 452, 354, 323, 34 IPC. It has been proved that both the appellants were not challaned in that case and their names were placed in column No. 2. Therefore, the first version which comes out from the mouth of the victim is that the victim and her family were home at night on 22.12.1996 at 9.30 P.M. and these persons came and tried to grab her and in the process her brother sustained injuries with a knife and her mother was mowed by the car. There is no reference to the fact that the victim was taken when she was going to attend her course. In the later version there is a discrepancy with respect to the time when the victim was picked up. In that statement she had stated that she was returning after attending the course at 3.30 P.M. when she met Ved Parkash Sharma and Ved Dua. This statement is Ex. DA and is attested by the DSP. The statement given by Wanti Devi is Ex. DC. In the complaint subsequently given on 29.12.1996 the time given is 10.00 A.M.

The manner in which the facts were presented by the victim shows that she had concocted a version that the two accused met her for the first time and proclaimed that they could get her a good job but on going through the cross-examination, the facts present a totally different account.

She knew both the accused for the last several years and they had been regular visitors to her house. She had lived as a tenant along with her

family in the house of Ved Dua. She had admitted that they used to borrow money from Ved Dua. Therefore, both the accused were not strangers and were known to the family and regular visitors. Therefore the delay in making the charge of 376 IPC after eight days of the incident throws a doubt on the story. I find the story to be improbable and it belies logic. It could not be shown that the brother of the victim had sustained any injury or any knife blow was given to him.

The victim had earlier lodged an FIR against Kapil Batra and the matter was settled after receiving Rs. 80,000/- which was deposited in the account of the brother of the victim. The accounts statement was proved. The complainant side have not been able to deny that fact or give any explanation. There is no explanation as to why the incident of rape was not reported in the first complaint given to the police. The complainant's family was well versed with the procedures as earlier a complaint was given to the police. From the evidence which has come on record it becomes clear that the allegations had been subsequently made at the behest of Ved Batra. The police did not find any truth and did not register the FIR. The complainant then approached the High Court and it is subsequently that the FIR was registered. The medical evidence does not support the victim nor it could have as the medical was got done after almost two months of the incident. The FSL report also did not show the presence of semen.

In the given facts, it is necessary to seek corroboration to the statement of the victim. Normally no corroboration would have been required but here it is difficult to act on her statement alone. There is no support to her statement. The statement of the victim cannot be evaluated at

mechanically. The story put forward is improbable and belies logic.

Taking the circumstances as a whole, I find that there are doubts about the correctness of the prosecution version and the prosecution had failed to prove the charges.

Resultantly, both the appeals are accepted. The judgment of conviction and order of sentence passed by the Court below are set aside and both the accused are acquitted of the charges.

(ANITA CHAUDHRY)
JUDGE

November 16, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No