

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

Crl. Revision No. 3300 of 2015

Date of decision : 22.12.2016

Juber

... Petitioner

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Saleem Ahmed, Advocate
for the petitioner.**

Mr. Apoorv Garg, DAG Haryana.

ANITA CHAUDHRY, J.

The aforesaid revision lays challenge to the judgment dated 22.01.2015 passed by the Principal Magistrate, Juvenile Justice Board, Nuh (for brevity, the Board) vide which the petitioner-juvenile in conflict in law was held guilty for the offence under Section 376 IPC and order dated 13.02.2015 made on the mode of disposition by virtue of which he had been ordered to be kept in Special Home for three years. The petitioner has also questioned the legality and impropriety of judgment dated 06.06.2015 vide which the appeal filed against the judgment and order of Board was dismissed by the Addl. Sessions Judge, Mewat.

FIR No. 386 dated 16.09.2012 was registered under Section 376 IPC against Jumma son of Santar at Police Station Punhana on the statement made by Reena to the effect that on 13.09.2012 her daughter (hereinafter referred to as the prosecutrix) was on the roof of her maternal aunt (Mausi) Soni's house. Jumma son of Santar, resident of Singar was also roaming there. On hearing the shrieks of the prosecutrix, she and Soni rushed to the roof and noticed that her Salwar was removed and she was

bleeding. Jumma ran away. She was given medicine and on arrival of her mother Ajmeri and husband Iqbal they reported the incident to the police for taking action against Jumma.

The case was investigated. Rough site plan was prepared. The prosecutrix was medically examined. Statements of witnesses were recorded under Section 161 Cr.P.C. In their statements, Ajmeri, Iqbal, Reena and Soni disclosed to the police that the prosecutrix was raped by Juber and not by Jumma. On 16.09.2012 Juber was arrested and his disclosure statement was recorded. He was found to be a juvenile. His medical was also conducted. On completion of investigation, challan was filed before the Juvenile Justice Board.

Notice of accusation was served under Section 376 IPC. He claimed trial. The prosecution examined twelve witnesses.

PW1 Dr. Deepak Puri had examined the juvenile on 18.09.2012; PW2 Const. Pinki Rani accompanied the prosecutrix for her medical examination; PW3 SI Brij Bhan had recorded the formal FIREx.PW3/B, PW4 Reena is the mother of the prosecutrix; the prosecutrix was examined as PW5; PW6 Ajmeri is the maternal grandmother of the prosecutrix; PW7 Dr. Asha had examined the prosecutrix; PW8 ASI Laxman had investigated the case and had arrested the juvenile; PW9 Soni, the maternal aunt of the prosecutrix did not support the case of the prosecution; PW10 Insp. Devender Singh had prepared the final report under Section 173 Cr.P.C.; PW11 Yashpal @ Jaspal had delivered the special report to the higher authorities; PW Dharmender(re-numbered as PW11) tendered affidavit in evidence and PW12 HC Chanderpal had deposed about arrest of the juvenile and disclosure statement suffered by

him. .

In his statement under Section 313 Cr.P.C., the juvenile pleaded false implication. One witness, namely Chhutki @ Rashida was examined in the defence. She deposed that the prosecutrix sustained injuries accidentally.

On appraisal of the evidence produced on record, the Board rejected the defence and convicted and sentenced the petitioner in the manner indicated above. The petitioner failed in appeal.

Dis-satisfied, the instant revision has been filed by the petitioner.

I have heard learned counsel for the parties and with their able assistance gone through the record of the case very carefully.

To prove its case, the prosecution mainly relied upon the testimonies of the complainant Reena (PW4), the prosecutrix(PW5) and Ajmeri (PW6), the maternal grandmother of the prosecutrix. PW4 Reena deposed that on 13.09.2012 her daughter had gone to the roof to remove the bedding. At that time, no one was there in the house. Jumma and Juber raped her one after the other. She further deposed that her sister Soni told her about the occurrence and they took the prosecutrix to the doctor as she was bleeding. She admitted that she was not present at the time of occurrence and she was given information about the occurrence by her sister Soni on telephone.

PW6 Ajmeri deposed that her maternal grand daughter i.e. the prosecutrix and her father were sent to the house of her aunt Soni to take care of the child of Soni at village Singhar. On the fateful day, Soni had gone to fetch water. The prosecutrix went to the roof to take the clothes.

When she was urinating, Jumma came there and raped her. The prosecutrix raised alarm, then Juber gagged her mouth. Juber also committed rape with her. On receipt of message about the incident from Soni, she along with her daughter Reena came to village Singhar and took the prosecutrix to the hospital.

The tenor and manner of deposition made by these witnesses, it is apparent that both of them were not present at the time of incident and on receipt of information from Soni, they reached there after two days of the occurrence. Their evidence is hearsay. PW9 Soni, the sister of the complainant and the maternal aunt of the prosecutrix had not supported the case of the prosecution and denied that any occurrence had taken place in her presence.

The prosecution case hinges only on the solitary testimony of the prosecutrix. Her testimony does not inspire confidence and she was tutored to depose in a particular manner. The manner in which the incident had been narrated and post conduct casts a serious doubt.

The prosecution was launched on the basis of statement given by complainant Reena, in which she had asserted that on 13.09.2012, on hearing the noise of prosecutrix she and her sister Soni had come to the roof and noticed that the prosecutrix was bleeding and her Salwar had been removed and Jumma ran from the spot. The FIR was registered after two days of the occurrence. No attempt was made to lodge the FIR immediately after the occurrence. It has come on record that father of the prosecutrix was in the village, still he also made no effort to lodge the FIR. He was not even produced in the witness-box. Interestingly, the FIR was lodged against one Jumma son of Santar and there was no mention of petitioner Juber as

accused. His presence was not shown at the spot. Surprisingly, in their statements under Section 161 Cr.P.C. recorded on 16.09.2012, Ajmeri, Iqbal, Reena and Soni disclosed to the police that the prosecutrix was raped by Juber and not by Jumma. Juber was implicated in the case and was put to trial. The witnesses i.e. the complainant and her mother took a somersault before the Court and deposed that both Juber and Jumma raped the prosecutrix.

PW7 Dr. Asha had medicolegally examined the prosecutrix. Her hymen was torn and cervical Os was present at vaginal introits and 2.0 cms tear was present on the posterior vaginal wall in midline and fresh blood was present. The medical was done after two days of the occurrence i.e. on 15.09.2012. The confirmation regarding rape was subject to the report of FSL and the prosecution failed to produce on record the FSL report in order to prove its case.

In her statement, the prosecutrix disclosed that the doctors opined that rape had been committed and then she disclosed to her mother that Jumma and Juber had committed rape. Still, when the FIR was registered by her mother, the name of petitioner Juber was not mentioned. It appears that the prosecutrix toed the version propounded by her mother and maternal grand-mother and had stated that she was raped by Juber and Jumma. Benefit of her innocence and tender age had been taken to the fullest by implicating the petitioner in the crime, whose name or role was not initially mentioned in the FIR which was registered after two days of the occurrence. The witnesses were not sure about the name of the culprit. On the one hand they lodged the FIR against Jumma whereas in the next breath they gave clean chit to Jumma and implicated Juber, the petitioner as

the culprit and a totally inconsistent version was introduced by them while appearing before the Court by implicating both Juber and Jumma as the culprit. It has come on record that petitioner Juber was residing adjoining the house of Soni, aunt of the prosecutrix and in that view of the matter, there was no occasion for the witnesses not to reveal the name of real culprit at the time of lodging of the FIR.

As noticed above, Soni, the aunt of the prosecutrix and sister and daughter respectively of PW4 Reena and PW6 Ajmeri had not supported the case of the prosecution. She was a vital witness for the prosecution as the occurrence had taken place at her residence. She showed her ignorance. She in clear words denied that the petitioner had committed rape with the prosecutrix. She denied the contents of her earlier statement given to the police. The defence had also tendered the affidavit (Ex.D1) of Iqbal, the father of the prosecutrix wherein he had mentioned that his daughter i.e. the prosecutrix received the injuries accidentally and no rape had been committed. He was kept away from the witness-box and was not examined by the prosecution for the obvious reason that he would not have supported the prosecution story.

The investigation in the case was carried out in a casual manner. The FIR was registered against Jumma, but the next day the witnesses backed out from the version and gave clean chit to Jumma and accused Juber instead. The investigating agency made no effort to elicit the truth. No attempt was made to get the statement of the prosecutrix recorded under Section 164 Cr.P.C. to seek information about the occurrence and who the real culprit was. The real genesis of the occurrence has not come on record and the witnesses kept changing the version. The witnesses were

not sure about the culprit, it was the bounden duty of the investigating agency to hold an identification parade.

The law is settled, the court can safely act upon a solitary statement of the prosecutrix provided the court finds it to be trustworthy, but at the same time, it cannot be mechanically applied to every case of sexual assault. As noticed above, the testimony of the victim does not inspire confidence and she had deposed what was told to her.

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.

For the reasons recorded above, it is found that the evidence led by the prosecution suffers from serious infirmities and inconsistencies. Allegations of rape carry grave implications. Therefore, for convicting any person for the offence, the degree of proof has to be of a higher standard and not mere possibility. In a criminal case, the prosecution has to prove its case beyond reasonable doubt. In the instant case, the prosecution has failed

to prove the case against the petitioner beyond shadow of reasonable doubt and the Courts below had erred in convicting and sentencing the petitioner on the basis of untrustworthy and unreliable evidence. Accordingly, the petition is allowed. The petitioner-jvenile in conflict with law is acquitted of the charges. He be set at liberty forthwith, if not required in any other case.

December 22 ,2016

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No