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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(I) CRA-S-1140-SB-2004 (O&M)

Date of decision : 23.09.2017

Manjit Maseeh

Versus

State of Punjab

... Appellant(s)

... Respondent

(II) CRA-S-1330-SB-2004 (O&M)

Date of decision : 23.09.2017

Balbir Singh @ Raju and others

Versus

State of Punjab

... Appellant(s)

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Harpreet Kaur, Advocate,
for Mr. Saurabh Arora, Advocate/amicus curiae,
for the appellant(s).

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN.J.

The above noticed criminal appeals are directed against judgment and order dated 11.05.2004, passed by learned Additional Sessions Judge, (Ad hoc), Fast Track Court, Faridkot whereby, the appellants were convicted and sentenced as under:

Name of the convict	Conviction u/s	Sentence	In default
Balbir Singh @ Raju	376 IPC	RI for 10 years and fine of Rs.1,000/-	RI for 02 months

	366 IPC	RI for 06 years and fine of Rs.1,000/-	RI for 02 months
	148 IPC	02 years and fine of Rs.	
	506 IPC	01 years and fine of Rs.200/-	RI for 01 month
Surinder Singh	376 IPC	RI for 10 years and fine of Rs.1,000/-	RI for 02 months
	366 IPC	RI for 06 years and fine of Rs.1,000/-	RI for 02 months
	148 IPC	02 years and fine of Rs.	
	506 IPC	01 years and fine of Rs.200/-	RI for 01 month
Dilbagh Singh	366 IPC	RI for 06 years and fine of Rs.1,000/-	RI for 02 months
	148 IPC	02 years and fine of Rs.	
	506 IPC	01 years and fine of Rs.200/-	RI for 01 month
Manjeet Masih	366 IPC	RI for 06 years and fine of Rs.1,000/-	RI for 02 months
	148 IPC	02 years and fine of Rs.	
	506 IPC	01 years and fine of Rs.200/-	RI for 01 month

However, all the sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“This case was registered on the statement of Smt.Sukhbir Kaur, which she made on 02.05.2000, wherein she stated that she was married to Balbir Singh alias Raju son of Karnail Singh about 9 years back. She has got 2 children. Said Balbir Singh had purchased 4 ½ killas of land about 4 years back at village Wadian and he is residing there. On 17.4.2000, she alongwith her children had come to the house of her brother Balbir Singh. At about 11.30 p.m., Balbir Singh alias Raju,

Sukhdev Singh alias Sukha, Surinder Singh alias Chhinder Singh, alongwith two other persons, entered the court-yard of her brother's house, after climbing the wall. They were armed. After entering the house, they raised a lalkara that in case alarm is raised, all of them will be killed. All the family members were encircled and bolted inside a room. Those persons also stated that they were abducting Jasbir Kaur and taking her away and in case alarm is raised, then she and others will be killed. As such, due to fear, no alarm was raised. They saw through the window that Jasbir Kaur was being dragged by them and was put in a jeep standing outside. The jeep started and thereafter they broke the door. They informed the Sarpanch of the village. An attempt was made by them to inform the police on Telephone but the same was not working. On coming out, they found that the wires of telephone had been cut. Accused abducted Jasvir Kaur aged 22 years and as such, action may be taken.

The statement of Smt. Sukhbir Kaur was recorded by SI Gurchand Singh when she met him during his patrolling at bus stop of village Madheer. After making his endorsement on the statement of Sukhbir Kaur, he sent the same to the Police Station and formal FIR was recorded. Then, SI Gurchand Singh handed over the investigation of the case to ASI Darshan Singh. On 2.5.2000, ASI Darshan Singh went to the place of occurrence and prepared its rough site plan. He recorded the statements of the Pws. Accused Manjit Maseeh was arrested on 28.5.2000. On 7.5.2000, Jasbir Kaur, prosecutrix was recovered by the Police at Gidderbaha. On 8.5.2000, she was produced by the Sub Divisional Judicial Magistrate, Gidderbaha, where her statement was recorded. In her statement, she stated that on 17.4.2000 at about mid-night, she was sleeping in the house and fiver persons entered the house and asked her family members to stand in a line otherwise they will be killed. She came out in order to raise an alarm. Then, one of them caught hold of her and gagged her mouth. She was dragged and put in a vehicle. That person had muffled his face. Other assailants also came out. Her house was bolted from outside. One of those persons was Balbir Singh alias Raja, who is her sister's husband, one of the assailants was his sister's son namely Chhinda. One of his nephew named Dilbag Singh. She could not identify the other persons. They were 7-8 persons. She was taken in a car by accused Chhinda and Raju to

different stations. She was given beating. Sexual intercourse was committed with her against her will. She was rescued by the Police. She was taken to Jalandhar and Uttar Pradesh by Balbir Singh and others. She was threatened that in case she raised alarm she will be killed.

Jasbir Kaur, prosecutrix was got medically examined on 8.5.2000 from Dr.R.K.Gupta. Vagina swab was taken and sent to the Chemical Examiner for examination. Statements of witnesses were recorded. Accused were arrested and after completion of the investigation, they were challaned.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charges under Sections 148, 457, 366 342, 506 and 376 of the IPC were framed against all the accused to which they pleaded not guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-Jasbir Kaur, PW2-Sukhbir Kaur, PW3-Gurchand Singh, SI (Retd), PW4-Dr. R.K.Gupta, PW5-Dr. Bharti Gupta and PW6-ASI Darshan Singh and thereafter, closed its evidence.

The statement of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication. However, no evidence in defence was led by the accused.

During the course of trial, accused Harvinder Singh @ Sodhi absented and he was declared a proclaimed offender on 19.03.2001. It is

further worth mentioning here that in the Court, statement of Jasvir Kaur was recorded firstly on 11.04.2002 and in that statement, in addition to the accused challaned by the police, she implicated one Sukhdev Singh @ Sukha. Thereafter, the prosecution moved an application under Section 319 Cr.P.C., which was allowed and said Sukhdev Singh @ Sukha was summoned as an additional accused to face trial. However, he could not be apprehended and ultimately, was declared a proclaimed offender.

After appraisal of the evidence, the trial Court vide impugned judgment and order dated 11.05.2004, convicted and sentenced all the accused as narrated above.

Hence, the instant appeals.

Learned counsel for appellants Balbir Singh @ Raju, Dilbag Singh @ Bagga and Surinder Singh contends that the occurrence took place on 17.04.2000, whereas, the FIR was recorded after a considerable delay of more than 15 days, which renders the case of the prosecution highly doubtful. The prosecutrix was recalled for cross-examination on 09.04.2002 and she categorically deposed that she had wrongly made the earlier statement before the Court under threat and pressure of her brother Balbir Singh, who was inimical towards the appellants. In fact, her brother wanted to get her married against her wishes. It is further contended that the story put forth by the prosecution, even if, taken at its face value, does not inspire confidence. As per the allegations of the prosecutrix, she was taken to different places in the States of Punjab and

Uttar Pradesh and she allegedly remained with the appellants for about 10 to 15 days but she never made any attempt to make any complaint to the police or any other person. This shows that she had gone with the appellants out of her own free will and there was no force whatsoever on the part of the appellants.

Learned counsel for appellant-Manjeet Maseeh, submits that though the appellant is closely related to the prosecutrix/complainant, his name does not find mention in the FIR. In fact, the prosecutrix, is major, who was having illicit relations with her brother-in-law (jija), namely, Balbir Singh @ Raju (co-appellant). And she eloped with him on her own accord. Later on, the present story was concocted after due deliberations, embellishments and exaggerations. There are material contradictions in the statements of the star witnesses of the prosecution, namely, the prosecutrix and her sister, PW-2Sukhbir Kaur (complainant) who happens to be estranged wife of co-appellant, Balbir Singh.

On the other hand, learned State counsel has vehemently argued that the examination-in-chief of the prosecutrix (PW-1) cannot be disbelieved because even if she has given an altogether different version in her further cross-examination, it does not mean that she is telling lie on other points also and thus, the principle of '*falsus in uno falsus in omnibus*' would not be applicable in the present case and the Court is required to separate the grain from the chaff.

I have heard learned counsel for the parties and perused the

record.

The case of the prosecution rests upon the statements of PW-1, the prosecutrix; and PW-2, the complainant, Sukhbir Kaur. Both these witnesses are sisters. Appellant Balbir Singh @ Raju is the husband of PW-2, Sukhbir Kaur. The alleged occurrence had taken place on 17.04.2000 at about 11.30 p.m., when the prosecutrix (PW-1) was sleeping in her house. It is the case of the prosecution that her mother Jagir Kaur, brother Balbir Singh and married sister, Sukhbir Kaur (PW-2) along with her children, were also sleeping in the house. Balbir Singh @ Raju, Sukhdev Singh @ Sukha, Surinder Singh @ Chhinder Singh, armed with weapons, along with two other persons entered in the house after scaling the wall. They threatened to kill all the family members and abducted the prosecutrix who was aged 22 years then.

The prosecutrix was recovered by the police on 07.05.2000. During this period, she was allegedly raped by the appellants, one Sukhdev Singh @ Sukha and Harvinder Singh @ Sodhi, who were declared as proclaimed offenders.

The version of the prosecution appears to be highly improbable. The unexplained delay of more than 15 days in reporting the matter to the police is a serious flaw in the prosecution case. No doubt, in rape cases, the relatives and family of the prosecutrix are hesitant in promptly reporting the matter to the police as the honour and dignity of the unmarried girl as well as the family are at stake. It is not the case of the prosecution that the

prosecutrix was abducted in a clandestine manner. Rather, the case of the prosecution is that the appellants along with two-three other miscreants, armed with weapons, scaled the wall in the dead of night, encircled all the family members, openly abducted the prosecutrix, aged 22 years and criminally intimidated them. What prevented the complainant and her brother, Balbir Singh, whose young unmarried sister had been abducted, to report the matter to the police immediately after the appellants had left ? Balbir Singh, the most crucial witness did not step into the witness-box to depose for the reasons best known to the prosecution. Withholding the best evidence is certainly a circumstance against the prosecution. In the instant case, false implication of the appellants cannot be ruled out inasmuch as Balbir Singh, appellant and his wife Sukhbir Kaur (PW-2), the complainant, were admittedly at loggerheads coupled with the fact that the reasons for not lodging the complaint remain unexplained.

The conduct of the prosecutrix (PW-1) is also under a heavy cloud. She moved from one place to another in the States of Punjab and Uttar Pradesh without raising any hue and cry. She has minced no words in testifying that she did not raise any alarm when she was going to urinate at Bharu Wala Chowk. She further admitted that she had confronted with numerous persons during the relevant period when she was taken from Jalandhar to Uttar Pradesh. She did not complain to anybody that she had been abducted or subject to forcible sexual intercourse.

Further, the prosecutrix has made two inconsistent statements in her evidence. In the first statement, she has supported the case of the prosecution in its entirety, whereas, in the latter statement, she resiled from her previous statements and took a somersault. She has deposed in her second statement that her first statement was made under pressure and coercion.

No doubt, the maxim '*falsus in uno falsus in omnibus*' has neither received general acceptance in different jurisdictions in India, nor has this maxim come to occupy the status of a rule of law, but the fact remains that where a witness makes two inconsistent statements in the evidence, the testimony of such witness becomes unreliable. It is settled law that testimony of such a witness becomes unworthy of credence. The first statement of the prosecutrix is full of contradictions and cannot be relied upon to convict the appellants. It is true that conviction of rape can be based on the sole testimony of the prosecutrix. However, such testimony must inspire confidence and have a ring of truth. Hon'ble the apex Court in ***Abbas Ahmed Chowdhary Vs. State of Assam, (2010) 12 SCC 115***, has laid down as under:-

“We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.”

As per the case of the prosecution, the the prosecutrix was medico-legally examined by PW-4, Dr. R.K. Gupta along with PW-5, Dr. Bharti, vide report Ex.PC. No fresh injury was found either on the private parts or other parts of the body of the prosecutrix. She was allegedly gang raped for about 20 days. Had she been subjected to forcible sexual intercourse by two persons continuously, there was every possibility of sustaining injuries on her person. The defence version appears to be more probable that she was a consenting party.

From the evidence of the complainant (PW-2), it is very much clear that appellant-Manjit Maseeh was known to her. Non-mentioning the name of appellant Manjit Maseeh as one of the miscreants in the FIR lodged after more than 15 days of the alleged occurrence, creates a serious dent in the prosecution story. The defence plea that the appellants were falsely implicated cannot be discarded in overall factual scenario.

The entire gamut of circumstances leads to the irresistible conclusion that the trial Court erred in convicting the appellants who certainly deserve to be acquitted by extending the benefit of doubt.

The prosecution case, when judged on the touchstone of totality of the facts and circumstances, does not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against any of the appellants. In view of the above discussion, this Court finds that the prosecution has not been able to prove its case beyond

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reasonable doubt and benefit thereof is given to the accused/appellants.

As a result, the present appeals is allowed and the impugned judgment and order passed by the trial Court are set aside. Appellants are stated on bail. Their bail bonds stand discharged.

A photocopy of this judgment be placed on the connected file.

23.09.2017

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No