

CRA-S-603-SB-2007

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

CRA-S-603-SB-2007

Date of decision: 8.9.2017

Ramesh Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.HS Randhawa, Advocate /Amicus Curiae
for the appellant

Mr.NK Banka, DAG, Punjab

JITENDRA CHAUHAN, J.

The present appeal has been filed by the appellant against the judgment of conviction and the order of sentence dated 6.12.2006, passed by the Additional Sessions Judge, Gurdaspur, vide which he was convicted under Section 376(2)(F) of the Indian Penal Code and sentenced for a period of 10 years rigorous imprisonment and to pay a fine of Rs.10,000/-; in default of payment of fine, he shall further undergo rigorous imprisonment for six months.

The relevant facts of the case has been noticed in para no. 2 of the judgment of the trial Court. The same are reproduced as under:-

“The prosecution case, in brief, is that complainant Parshotam Lal, resident of Marri, out of his wedlock with Suresh Kumari gave birth to one daughter and two

sons. His eldest, daughter Meenu at the time of occurrence was aged about seven years and was a student of 1st standard. On 1/5/2005 Suresh Kumari was giving bath to her daughter Meenu and she noticed blood flowing from the private part of Meenu. Upon enquiry made by Suresh Kumari, Meenu disclosed that on 27/4/2005, accused Ramesh Kumar, who resides nearby the house of the complainant had asked Meenu to fetch a bundle of 'beedies' and when Meenu went to the house of Ramesh Kumar to deliver that bundle, Ramesh Kumar closed the main door of his house. Ramesh Kumar took off clothes of Meenu and also took off his trouser and thereafter committed sexual intercourse with Meenu. Upon raising cry by Meenu, Ramesh Kumar left her and threatened her not to disclose that fact to anybody.”

On 4.5.2005, Parshotam Lal reported the matter to the police, on the basis of which FIR was registered. The spot was inspected by the Investigating Officer on 4.5.2005 and an inquest report was prepared. During the spot inspection, sufficient material was collected by the Investigating Officer. After completion of investigation, report under Section 173 Cr.P.C. was filed in the Court, on the basis of which, charge under Section 376(2)(F) IPC was framed against the accused to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Dr.Chetna, who medico legally examined the prosecutrix; PW-2 Dr.D.S.Chohan, who medico legally examined the accused; PW3 Parshotam Lal, father of the prosecutrix; PW4 prosecutrix; PW5 Suresh Kumari, mother of the prosecutrix; PW6 Head Constable Dalwinder

Kumar; PW7 Constable Sanjiv Kumar; PW8 SI Sakattar Singh, Investigating Officer; PW9 Head Constable Jarnail Singh; PW10 ASI Sukhdev Singh and PW11 Janak Singh Dhanjal, draftsman.

In his statement, recorded under Section 313 Cr.P.C, the accused denied all incriminating evidence against him and pleaded his false implication. In defence, DW-1 Gurmit Singh and DW2 Wassan Singh were examined.

After going through the evidence and hearing the learned counsel for the parties, learned Trial Court convicted and sentenced the accused as indicated above. Aggrieved against the judgment of conviction and sentence, the accused-appellant has filed the present appeal.

On behalf of the appellant, it is submitted that there is unexplained delay of 7 days in lodging the FIR. The incident took place on 27.4.2005, whereas the complaint, which is the basis of the present FIR, was filed on 4.5.2005. It is further submitted that neither any injury on the private parts of the prosecutrix nor any spermatozoa was seen. It was clarified by PW1 Dr. Chetna, who medico-legally examined the prosecutrix, that the hymen could be ruptured while playing or while plying cycle. It is further asserted that there are material discrepancies in the statement of PW3, Parshotam Dass, father of the prosecutrix and PW4, the prosecutrix with regard to the incident, which cause a dent in the case of the prosecution. In support of his contentions, learned counsel relied upon **Amit and another vs. State of Punjab and another 2014(1) CrL CC 170** and **Mohammed Farooq Abdul Rauf vs. State of Maharashtra 2010 CrL.L.J. 1468.**

On the contrary, learned State counsel has supported the impugned judgment and submitted that the appellant has committed heinous crime with a minor girl, who was aged about 7½ year old at the time of occurrence. The offence committed by him stands duly proved from the evidence on record. It is further contended that the discrepancies, if any, are minor in nature and deserve to be ignored.

The submissions made by the learned counsel for the parties have been heard and the record has been meticulously perused.

The issue to be settled in the present appeal is whether the evidence adduced by the prosecution with regard to rape i.e. the testimony of the prosecutrix, is trustworthy, credible and worthy of reliance?

Rape or an attempt to rape is a crime not against an individual but a crime which destroys the equilibrium of the atmosphere of society. Rape is a monstrous burial of dignity of prosecutrix in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is in fact such an unpleasant outrageous, nasty/disagreeable offence that the psychological trauma through which the victim has to undergo cannot be measured by any means. Vulnerable and feeble victim of rape is humiliated and her dignity is shredded by the society. The societal

stigma attached to the crime is such, that many a time, a crime would go unreported by the victim in order to escape the repercussions, a rape victim will be subject to by the society. Instant case is also one of such cases wherein appellant has been convicted and sentenced as stated above.

There are a catena of judgments passed by Hon'ble the apex Court wherein it has been held that only the deposition of the prosecutrix by itself is sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth. In **Md. Ali Vs. State of UP : 2015 (3) SCALE 274**, Hon'ble the apex Court has held that "Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based." and in **Mohd. Iqbal v. State of Jharkhand reported in (2013) 14 SCC 481**, Hon'ble the Supreme Court has held that "There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses."

In order to test the veracity of the deposition of the prosecutrix, a threadbare discussion is warranted. The trial Court after putting certain questions recorded that "the said witness appears to be having sufficient understanding of the purpose of her visit and appears to be competent witness to depose in court." In her cross-examination, she frequently replied all the questions put to her. She vividly narrated the details of the occurrence before the court.

Learned counsel for the appellant has pointed out the

discrepancies in the statements of the witnesses viz., (i) In examination-in-chief, PW3 Parshotam Dass deposed that the incident came to his notice on 1.5.2005, whereas in his cross-examination, he stated that his daughter (victim) told about the occurrence on the same day i.e. 27.4.2005. However, he hastened to add that she told him on 1.5.2005. As per learned counsel for the appellant, it is a clear cut improvement made by the witness; (ii) PW5 Suresh Kumari in her cross-examination deposed that they (she, her husband and daughter) went to Civil Hospital, Gurdaspur on 28.4.2005 alongwith the police but PW8 SI Skattar Singh, SHO PS Charratta, Amritsar deposed that Parshotam Lal complainant met him on 4.5.2005 and on his statement, FIR was registered; he did not go to civil hospital and went to village Marri on 4.5.2005. Learned counsel has further submitted that the delay of 7 days from 27.4.2005 to 4.5.2005 has not been satisfactorily explained and there is every possibility of embellishment and exaggeration in the prosecution version.

The discrepancies pointed out by learned counsel are immaterial and do not go to the root of the case. Rather, such discrepancies suggest that the case of the prosecution is worthy of belief and the witnesses are deposing truthfully. PW3 Parshotam Dass and PW5 Suresh Kumari, parents of the victim are illiterate therefore, minor discrepancies are bound to occur.

Hon'ble the Supreme Court in **State of Himachal Pradesh vs Lekh Raj And Anr 1999 Supp (4) SCR 286** illuminatingly observed as under:-

“In support of the impugned judgment the learned

counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State Of Kerala* 1974 3 SCC 767 held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In **Jagdish v. State of M.P 1981 SCC Cri 676** this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in **State of Rajasthan v. Kalki 1981 2 SCC 752** held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to

mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.”

In the present case too, the prosecutrix and her father have narrated the events in a lucid manner. The medical evidence also corroborates their version.

Moreover, in case of sexual offences, as the honour of the family is involved, its members normally collectively decide whether to take the matter to the court or not. In such a fact situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim.”

In the present case, at the time of alleged occurrence, the prosecutrix was of a tender age i.e. 7½- year- old. It is the case of the prosecution that after committing sexual intercourse with the prosecutrix the appellant threatened her not to disclose the incident to anyone. Since the prosecutrix was minor at the time of alleged occurrence and she was under trauma, she may not have narrated the incident to her parents and, therefore, her parents also could not notice the same. However, as and when, her parents noticed it, immediately, they reported the matter to the police. It was not easy for the victim of tender age to take immediate steps or comprehend the complete extent of impingement upon her body.

Hon'ble the Supreme Court in **Satyapal versus State of**

Haryana AIR 2009 SC 2190 held as under:-

“20. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon. Both the courts below apart from relying on a part of the testimony of the prosecutrix found the evidence of PW-5 to be absolutely reliable. The medical evidence itself being a part of the evidence is required to be appreciated in the context of ocular evidence and other circumstances surrounding thereto.

21. There was some time gap between the occurrence and the examination of the witnesses. Some lapse of memory on the part of the child witness, therefore, is possible.”

In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384,

Hon'ble the Supreme Court observed that the Courts cannot overlook the fact that in sexual offences delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident, which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.

In view of the facts and circumstances discussed above, this Court finds that the contention of learned counsel for appellant regarding delay, to be implausible.

The next limb of arguments of learned counsel for the appellant was that there was no external mark of injury on the body of prosecutrix. There is no merit in the said argument. It is true that injury is

not a *sine qua non* for deciding whether rape has been committed or not, but it has to be decided on the factual matrix of the each case. Certainly, it is an important factor and if the prosecutrix's version is not credible, then there would be need for corroboration. As regards the facts and circumstances of the present case, the presence of the element of *mens rea* on part of the accused cannot be denied. He had fully prepared himself for committing the offence. He was a neighbour and when the prosecutrix went to his house to deliver the bundle of 'beedies', then he closed the main door of his house and took off her clothes and thereafter, committed sexual intercourse with her. The appellant was grown up person at the time of alleged incident whereas the prosecutrix was of a tender age about 7½ years of age and he easily overpowered her and it was not possible for the victim to save herself, who was ravished for the fulfillment of desire and lust of the appellant. This is why no marks of external physical injury could be noticed on her body. Absence of injuries in the context of the present case would not justify drawing of any adverse inference against the prosecution, but on the contrary would support the case of the prosecution.

However, PW1 Dr.Chetna, Medical Officer, Civil Hospital, Gurdaspur, who medical legally examined the prosecutrix, deposed that as per vaginal examination, hymen was torn and admitted right little finger. She further opined that as per Ex.PD, Chemical Examiner's Report, the possibility of rape cannot be ruled out. PW2 Dr.DS Chohan stated that he medico legally examined the accused and he was found fit for sexual intercourse.

So far the argument of learned counsel for the appellant with

regard to discrepancy in the statement of prosecutrix is concerned, the same does not cut much ice. The prosecutrix in her statement categorically stated that she was subjected to sexual intercourse by the appellant and when she raised cry, he threatened her with dire consequences and asked her not to disclose this fact to anybody. The statement of the prosecutrix is reiterated repeatedly and fully corroborated by PW3 Parshotam Dass, complainant and also PW1 Dr. Chetna, who deposed that the possibility of rape cannot be ruled out. Otherwise also, minor contradictions here and there are bound to creep in the statement of a girl of 7 ½ year old and such discrepancies, contradictions and exaggerations should not and cannot be used as a tool to discredit the testimony which is otherwise cogent and convincing.

In State of Himachal Pradesh vs. Asha Ram (2005) 13 SCC 766 Hon'ble the apex Court has observed that minor contradictions and insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

Similarly in **Om Parkash vs. State of U.P. (2006) 9 SCC 787** Hon'ble the Supreme Court has observed:

"The courts while dealing with such cases should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case."

No other point has been urged.

The ratio of the case law cited by the learned counsel for the appellant is distinguishable on the facts of the present case.

In the considered opinion of this Court, evidence of the prosecutrix is consistent and it stands amply corroborated from evidence of her parents and the medical evidence. There is no material infirmity in the prosecution case so as to justify granting the benefit of doubt to appellant.

In view of the foregoing narration, this Court finds no substance in this appeal and as such, it is dismissed and the impugned judgment of conviction and order of sentence are upheld.

08.09.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No