

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

**CRA-S-3111-SB of 2015.
Decided on : 21.11.2017.**

Manjit Kaur

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. H.S. Virk, Advocate for
Mr. Vaibhav Sehgal, Advocate,
for the appellant.

JITENDRA CHAUHAN, J.

This appeal is directed against the judgment dated 13.05.2015, passed by Additional Sessions Judge, Ludhiana vide which respondent Nos. 2 and 3 were acquitted in case FIR No.21 dated 13.03.2014, registered under Sections 376, 506 and 120-B IPC at Police Station Dugri, Ludhiana.

Brief facts of the case as noticed in para No. 2 of the judgment passed by the trial Court are as under:-

“Criminal process against the accused was set into motion on 13.03.2014, when prosecutrix, aged 22 years, daughter of Gurnam Singh r/o 234, Killa Mohalla, Jalandhar, presently tenant of SCO No.43,

Godown of Anoop Taneja, Dana Mandi, Near Arora Palace, Ludhiana, came present and got recorded her statement before ASI Kuldeep Kaur, who was present at Dugri Canal Bridge, for a special nakabandi, to the following effect:-

2.1 “That complainant is studying in BCA 2nd year in Lovely Professional Institute, Phase II, Dugri and is also doing account work. On 1.3.2014 she was residing in a rented house in village Dugri near Gurdwara Chhevin Patshahi. The landlady and her family resides on the ground floor of the said house and the complainant was residing on the first floor. At about 10/11 AM the landlady of the complainant asked the complainant to make tea for her in the ground floor kitchen. The complainant came downstairs in the kitchen for making tea while the landlady sat under the sun on the first floor. While the complainant was making tea in the kitchen Amandeep Singh, son of the landlady, came in the kitchen and forcibly caught hold the complainant from her arm and started teasing and touching the complainant. The complainant stopped Amandeep Singh but Amandeep Singh did not desist from his act and pulled the

complainant in the room where he removed the clothes of complainant and committed rape upon her by throwing her on the bed. The complainant raised screams but none came forward to rescue the complainant. Amandeep Singh threatened the complainant that he would kill her if she anyone told about the occurrence. On 03.03.2014, complainant vacated the said rented house and shifted to SCO No.43 with Vivek Mehta. Today she narrated the entire occurrence to Vivek Mehta. Earlier she had not talked about the occurrence to any one under the fear of accused.”

Charges under Sections 120-B, 376 and 506 IPC were framed against the accused to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution has examined PW-1 the prosecutrix and PW-2 Vivek Mehta, PW-3 Kuldip Singh, Surveyor, PW-4 ASI Kuldeep Kaur, PW-5, Dr. Malwinder Mala, Medical Officer, Civil Hospital, Ludhiana, PW-7 SI Kulwant Kaur and closed the evidence.

Statements of the accused were recorded under section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to them. They denied

the same and pleaded false implication. It was stated by the accused that a room had been rented out to Vivek Mehta and his daughter/prosecutrix in their house. However, the relationship between Vivek Mehta and the prosecutrix were not that of father and daughter. They were thrown out by their previous 4-5 landlords after noticing them in unbecoming relationship. The accused/appellant got the room vacated from them and threw their belongings out in the street that is why a false case had been planted against them.

In defence evidence, the accused have examined DW-1 Inderjit Singh, DW-2 Ajit Singh and DW-3 Sharanjit Kaur, DW-4 HC Kuldip Singh and after tendering certain documents closed the evidence.

The learned trial Court acquitted respondent Nos. 2 & 3 by observing that three versions had come from the mouth of the prosecutrix regarding the incident. In the first version recorded in the FIR, she had stated that she was raped by accused Amandeep Singh while his mother Satwinder Kaur was present on the first floor of the house whereas in the second version Ex.PB recorded before the Magistrate under Section 164 Cr.P.C she had stated that while Amandeep Singh was committing rape upon her, Satwinder Kaur came downstairs but turned a deaf ear to the cries of prosecutrix. In the third version recorded before the trial Court, she had made improvement to the extent that Satwinder Kaur abused her and also told Amandeep

Singh to control the prosecutrix. There were further contradictions with regard to time of disclosing the factum of rape to PW-2 Vivek Mehta, who was alleged to be her father. She narrated that she had told the occurrence to her father in the evening whereas her father states that she had narrated the occurrence in the morning of next date. DW-1 and DW-2 the earlier landlords of the prosecutrix testified that the behaviours of the prosecutrix and Vivek Mehta was not that of daughter and father but that of husband and wife. Separate proceedings under Section 344 Cr.P.C were initiated by the learned trial Court against the prosecutrix and PW-2 Vivek Mehta.

It is contended that the Court below has failed to appreciate the facts and circumstances of the present case and the law involved in the matter. It is well settled law that the testimony of a prosecutrix cannot be at par with that of accomplice as the prosecutrix is in fact a victim of the crime.

I have heard the learned counsel appearing on behalf of the appellant and have gone through the case file.

There are material contradictions in the testimony of the prosecutrix herself. While recording the FIR, her version was that accused Amandeep Singh committed rape upon her whereas his mother Satwinder Kaur was on the first floor of the house. In her statement recorded under Section 164 Cr.P.C, she has stated that Satwinder Kaur was present on the first floor and she came downstairs but after hearing

her cries, she did not pay any heed whereas in her statement recorded before the trial Court, she has stated that while Amandeep Singh was raping her, Satwinder Kaur was abusing her and she told Amandeep Singh to control the prosecutrix. There are further contradictions with regard to disclosure of incident of rape to the father of the prosecutrix. She has stated that the incident was disclosed to her father in the evening itself whereas the father has stated that she had disclosed the incident in the morning of next date. Further, DW-1 and DW-2 the earlier landlords of the prosecutrix have deposed that the relationship between Vivek Mehta and that of prosecutrix were not that of father and daughter rather they were behaving like husband and wife. Even before this Court, the prosecutrix has not mentioned the name of her father as Vivek Mehta rather the name of her father is given as Gurnam Singh. There is unexplained delay of 12 days in recording the FIR and the medical examination of the prosecutrix was conducted after 14 days of the occurrence. There was a hostility between the parties as the belongings of the prosecutrix were thrown by the accused/landlord, therefore, possibility of false implication cannot be ruled out.

In **Abbas Ahmad Choudhary vs. State of Assam** **(2010) 1 SCR 869** it was held by Hon'ble the Supreme Court that 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.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In view of above, this Court does not find any illegality or irregularity in the impugned judgment calling for interference by this Court. Consequently, the impugned judgment is upheld and the appeal is dismissed.

21.11.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

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