

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

CRA-S-1615-SB-2014 (O&M)

Date of Decision: 13.03.02018

Harbans Singh

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. B.S. Jaswal, Advocate and
Mr. Ankush Thatai, Advocate
for the appellant.

Mr. Pawan Sharda, Sr. DAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

The appellant assails the judgment of conviction and sentence vide which he was sentenced to 10 years' rigorous imprisonment along with a fine of Rs.5,000/- under Section 376 IPC. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 6 months, on a complaint given by his daughter.

The police received a complaint on 10.06.2013, made by the 17 year old daughter alleging rape by the father. The incident occurred in the morning at about 6:00 AM on 08.06.2013. The allegations are that she was raped at their house in the morning at about 5:30/6:00 AM. Her siblings were away to school, her mother was mentally unstable. The complainant had mentioned that she had mustered courage and had confided in her elder sister and then informed the police. The police produced the girl before the Magistrate for her statement under Section 164 Cr.P.C. and her medical was got done. The vaginal swabs and samples for DNA test were collected. The father was arrested.

Charge was framed under Section 376 IPC to which he pleaded not guilty and claimed trial.

Dr. Simrit Kaur PW-1 had conducted the medico-legal examination on the victim who informed that she (victim) was being repeatedly sexually assaulted since the age of 8 – 9 years and the last assault had taken place on 08.06.2013. Medical Officer deposed that there was no evidence of fresh external injury on her body and there was no mark of injury even on local examination. The hymen was found to be old and torn. On examination of the chemical examiner's report, the Medical Officer had stated that in her opinion the victim had been subjected to sexual intercourse. In the cross-examination, the witness had stated that the average age of spermatozoa is up to 72 hours and as per the chemical examiner's report, no spermatozoa was detected.

Dr. Rajeev Mehra PW-2 had examined the accused and had proved his report Ex.PW2/1.

The prosecutrix in her statement while appearing as PW-3 stated that the accused had been sexually assaulting her for the last two years. She stated that when she was 11 – 12 years old, her father had physically teased her and asked her to remove her clothes. She stated that the act was committed whenever her brother and sister were away from home. She stated that she had told her elder sister but she discouraged her, saying that the family would be put to shame. She stated that on 08.06.2013 she was present at home and her brother and sister were away to school and her mentally ill mother had wandered out of the house and she was alone and the accused came home and

finding her alone forcibly removed her clothes and sexually assaulted her. She stated that she did not raise alarm because she was ashamed that such an act would come to the notice of others and she was worried that the people would come to know about it but as she was fed up she reported the matter to the police on 10.06.2013. In the cross-examination she accepted that her father was a rickshaw puller and used to leave home in the morning and returned home at night. She stated that her elder sister was 18 years old. She admitted that on 08.06.2013 it was a holiday in the school and her brother and sister had not gone to school that day and they were at home. She stated that she had told the police that her sister had discouraged her from reporting the matter to the police. The attention of the witness was drawn to her statement Ex.PA wherein it was not specifically recorded. She admitted that her mother used to live with them. She stated that she had never shared her woes with anyone in her school except her brother and sister. She denied that she was indulging in immoral activities and had friends and that her father used to stop her. She stated that her father used to object to her working as a domestic help. She stated that her father used to return home from work at about 11:00 AM or even at mid-night and some times he used to come early or even during day. She stated that she used to leave home for work at 6:00 a.m. and used to return from work at about 10:00 a.m.

ASI Satpal Singh PW-6 had investigated the case. He proved the site plan Ex.PW6/A and stated that there was only one room in the house.

The prosecution had given up Jyoti, the elder sister of the victim.

The accused pleaded false implication and stated that his daughter was indulging in immoral activities and he used to reprimand her. He stated that he had two more children and all of them lived in the same room.

The elder daughter of the accused was examined as a defence witness. She supported her father and stated that they had one room tenement and her sister had never told her anything about the alleged act. She stated that her sister used to wander throughout the day and her father used to object as he used to return home late at night. She stated that before the registration of the FIR, there was a tussle between her father and sister and she had caught her speaking to some boys. The brother of the victim appeared as DW-2 and supported the father and that his sister was wayward and he used to object.

The trial Court accepted the solitary statement of the prosecutrix and convicted the appellant. It got swayed with the fact that the mother of the victim was mentally ill and the act was committed when the victim was alone at home.

I have heard the submissions of counsel of both the sides.

The counsel for the appellant had urged that there was a delay of two days in lodging the FIR and the complaint was false and the daughter had spoken against the father because she herself was into immoral activities. It was urged that the falsehood can be seen from the fact that in the complaint the victim had stated that she was alone at

home and her brother and sister were at school and she did not realize that in the month of June all the schools are closed and while appearing in the witness box she had admitted that it was a holiday on that day. It was urged that the incident is stated to be at 5:00/5:30 AM, which could not be possible as the entire family was at home. It was urged that the family lived in one room and the act could not have been committed in the presence of other family members. It was urged that the MLR reveals that the hymen was old and torn and there was no recent assault and there was no injury on her body. It was urged that no family member had accompanied the girl to the police or for the medical examination and this fact is noted in the MLR. It was urged that the FSL report shows that no spermatozoa was found and the trial Court had erred in recording conviction without any cogent and convincing evidence. It was contended that the Medical Officer had advised DNA test and samples were taken for DNA test but the prosecution has not led any evidence to show that the test was carried out and if it was, its result. It was contended that the appellant is a rickshaw puller and used to leave early morning and returned late at night and the father had caught the daughter with some boys and he had reprimanded the daughter and therefore the complaint was filed.

The State counsel had supported the judgment of the trial Court.

It is settled that in rape cases, the solitary statement of the prosecutrix is sufficient to convict the accused if it is found to be convincing and reliable.

The law is settled that in the case of sexual offences, the testimony of the victim 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 the victim and that alone would be sufficient to convict but while appreciating the evidence, the Court would also look for some assertions 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 to insist upon corroboration to base a conviction.

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 protected against the possibility of false implication. It has been further held 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.

It has now to be examined whether the statement of the prosecutrix is convincing and could be relied upon? Whether she was stating the truth and is her statement believable. The incident is said to have taken place on 08.06.2013. The victim was over 17 years of age at the time of the occurrence. The complaint was given after two days. According to the complainant, she was being abused by her father for a number of years. She had stated that she had confided in her elder sister but she would stop her from reporting as it would bring disrepute to their family. The sister of the complainant was cited as a prosecution witness but was given up by the prosecution. She was later on examined as a defence witness. It is necessary to mention here that the appellant was in custody throughout the trial, therefore he was not in a position to influence the witnesses.

The occurrence had taken place in the house and according to the complainant she was sexually assaulted at about 5:30/6:00 AM in the morning. The entire family was at home. It was vacation time as the schools were closed, therefore, it was highly improbable that the incident could occur at that hour.

Not only there is a delay in lodging the FIR, there is no medical evidence which corroborates the statement. No spermatozoa was found. There was no injury internal or external on the body of the prosecutrix. The Medical Officer had suggested DNA test and a sample

was taken but surprisingly the DNA report was not produced for the reasons only known to the prosecution.

According to the accused and the siblings, the prosecutrix was seen in the company of boys and the father used to reprimand her and that appears to be the reason for the complaint. The medical record shows that the hymen was old and healed and there was no fresh assault and the plea taken by the accused that his daughter was out of his control is again true. False allegations had been levelled by the daughter and her statement should not have been accepted as the gospel truth. The story is improbable and belies logic. The trial Court had erred by accepting the bare statement of the prosecutrix on its face value. It should have sought corroboration from other evidence. The trial Court has not appreciated the evidence in its totality or with sensitivity. The circumstances taken as a whole creates a doubt on the correctness of the prosecution version. The statement of the victim is not convincing. The story put forward by her is improbable and belies logic. The prosecution had been unable to prove its case. Resultantly, the appeal is accepted. The judgment and order of conviction are set aside. The appellant is in custody. He be released forthwith, if his custody is not required in any other case.

(ANITA CHAUDHRY)
JUDGE

13.03.2018
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No