

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

**Crl. Appeal No.S-2059-SB of 2015(O&M)**

**Date of Decision: 21.11.2018**

**\*\*\***

**Arun Kumar**

**.. Appellant**

**Vs.**

**State of Haryana**

**.. Respondent**

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

**Argued by:- Mr. Abhishek Grover, Advocate  
for the appellant.**

**Mr. Arun Kumar, AAG Haryana.**

**\*\*\***

**ANITA CHAUDHRY, J.**

This appeal has been preferred against the judgment of conviction dated 06.04.2015 and order of sentence dated 08.04.2015 vide which the appellant has been held guilty under Sections 376(2)(i), 376(2)(n) of Indian Penal Code (for short, IPC) and under Sections 3 and 5(1) of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO Act) and sentenced for a period of 10 years with a fine of Rs.5000/- each under Sections 376(2)(i), 376(2)(n) IPC and Section 5 of POCSO Act. In default of payment of fine, he was required to undergo further rigorous imprisonment for six and three months respectively. Under Section 3 of POCSO Act, he was awarded rigorous imprisonment for seven years with a fine of Rs.3000/-. In default whereof further imprisonment for 2 months was awarded. All the sentences were ordered to run concurrently.

The facts of the case are that a complaint, Ex.PD was sent by the Member, Child Welfare Committee, Yamuna Nagar, wherein it was mentioned that on 05.07.2014 a child had come to the police station with her brother and aunt and informed that her mother and the appellant used to take liquor together and on the asking of her mother she had been sexually exploited by the appellant. Her counselling was done and the matter was reported to the police for taking action. The victim was sent to Shelter Home, Chhachhroli.

On the basis of complaint, FIR (Ex.PE) was registered under Section 376 read with 34 IPC and Section 4 of POCSO Act. The victim was taken to the Magistrate and her statement under Section 164 Cr.P.C. was recorded. She disclosed that she was staying at Children Home. In the month of June, 2014 she had come home during summer vacations. Arun had been coming to their house for the last about three years. He and her mother used to consume liquor. In inebriated condition, he used to beat her and committed wrong acts with her and was raped thrice in the month of June the previous year. Her mother was not involved in it as she became unconscious after taking liquor.

Medical examination of the victim was done.

The appellant was arrested and he suffered a admitting to rape with the victim and also identified the spot. He was medically examined.

Statements of witnesses were recorded. On completion of investigation, challan was filed against the appellant for trial.

Charge under Sections 376(2)(i) and 376 (2)(n) IPC and under Sections 3 and 5(1) of POCSO Act was framed. The accused pleaded not guilty.

At the trial, the prosecution examined fourteen witnesses.

PW1 Ram Kumar, Draftsman had prepared the scaled site plan Ex.PA.

The prosecutrix was examined as PW2.

PW3 Inspector Rajesh Kumar inspected the place of occurrence and prepared the final report under Section 173 Cr.P.C.

PW4 Deepak Kumar from the office of Municipal Corporation, Yamuna Nagar produced the birth entry of prosecutrix and proved her date of birth as 31.10.2000.

PW5 Raj Gopal member of the Child Welfare Committee had written complaint Ex.PD seeking an enquiry.

PW6 ASI Kusum Bala investigated the case. On the complaint, Ex.PD she recorded the proceedings and sent it to the police station for registration of the FIR. She took the prosecutrix for medical examination and for statement under Section 164 Cr.P.C. before the Magistrate. She deposed about apprehending the accused and the disclosure statement given pursuant to which he identified the spot. He was got medically examined.

PW7 Sukhminder Singh, Superintendent Bal Kunj deposed about handing over the custody of prosecutrix to the police.

PW8 SI Richhpal Singh deposed about the investigations carried out by him, including interrogation of the accused.

PW9 Dr. Anurag Bhushan (wrongly written as PW10) had medically examined the accused.

PW10 ASI Ashok Kumar (wrongly written as PW11) had tendered affidavit Ex.PY.

PW11 Poonam Rani (wrongly written as PW12) the mother-in-

law of elder sister of prosecutrix. She deposed that the prosecutrix told her about the harassment meted out to her by the accused and counselling of prosecutrix was done in her presence and she signed the statement given by the prosecutrix, Mark A.

PW12 Shubham Sharma (wrongly written as PW13) the elder brother of the prosecutrix showed ignorance about the case and was declared hostile.

PW13 Dr. Pooja (wrongly written as PW14) had medically examined the prosecutrix. She found the hymen ruptured and healed. In her opinion, the possibility of rape could not be ruled out.

PW14 ASI Mukesh Kumar (wrongly written as PW15) had tendered affidavit Ex.PW15/A.

In his statement under Section 313 Cr.P.C., the accused abjured the trial. He took the stand that the sister of prosecutrix had solemnized love marriage with son of PW 11. The prosecutrix had an affair with the other son of PW11 and both of them wanted to marry. It was not acceptable to the mother of the prosecutrix as the boy was from poor family. He was friend of father of prosecutrix who had since died and his help was sought. He had objected to this relation and had slapped her. Annoyed with him, the prosecutrix falsely implicated him in this false case.

He examined two witnesses in defence.

DW1 Pinki was the tenant in the same house in which the prosecutrix and her family was residing.

DW2 Ram Singh was the owner of the house.

Both of them denied that any occurrence had taken place.

The trial Court rejected the defence version and held the

accused guilty and convicted him in the manner noted above. Dis-satisfied with the same, the instant appeal.

I have heard learned counsel for the parties and have gone through the record carefully.

Learned counsel for the appellant submitted that the prosecutrix had concocted a false story of rape. According to him, the appellant was friend of father of prosecutrix who had died. He was on visiting terms with the family. The prosecutrix wanted to marry the brother-in-law of her sister. This alliance was not accepted by her mother and she sought his help. He stopped the prosecutrix and had slapped her. Annoyed with him, she implicated her in the case. He further submitted that in the statement, Mark-A there was no reference of rape in June 2013 and the prosecutrix had deposed that her mother was hand in glove with accused in committing wrong acts. He referred to the statement of the prosecutrix recorded under Section 164 Cr.P.C. and pointed out that the prosecutrix had changed her stand and had exonerated her mother. He has further urged that the brother of the prosecutrix did not support the case and turned hostile while PW11 Poonam Rani did not corroborate the prosecutrix with regard to incident which occurred in June 2013 and she had reasons to depose against the accused as the prosecutrix wanted to marry her son and they found the appellant a hurdle. He had further urged that Pinki to whom the prosecutrix had disclosed about the occurrence was produced in defence and she had denied it. It was urged that no complaint with regard to occurrence of June, 2013 was given to anyone nor any explanation was offered as to why the matter was not reported for a year to anyone in the Children Home and the testimony of prosecutrix was not reliable and the Court below had erred in

placing implicit reliance thereupon to record his conviction.

Learned State counsel supported the judgment of conviction.

In this case, the version propounded by the prosecutrix was that on 04.07.2014 the accused tried to commit rape with her and previously in the month of June, 2013 she was raped thrice by him. She disclosed the incident of 04.07.2014 to Pinki, residing in neighbourhood. In support of its case, the prosecution mainly relied upon the testimony of prosecutrix, her brother and mother-in-law of sister of prosecutrix. Their statements require to be examined minutely.

PW5 Raj Gopal gave the complaint to the police on the basis of information which was supplied to the prosecutrix and had only deposed that the prosecutrix told him that a friend of her mother i.e. the appellant had bad intentions.

Interestingly, the brother of the prosecutrix when stepped in the witness box as PW 12 did not support the case of the prosecution. He showed ignorance about the case. He admitted that he signed the statement, Mark-A as witness. Though, in his cross-examination, he admitted that on 04.07.2014 the accused tried to do wrong act with his sister, but this part of his statement is of no help to the prosecution as in the statement, Mark-A there was no such reference. He denied that in his presence the accused had made disclosure statement or that he got the place of occurrence demarcated.

PW11 Poonam Rani mother-in-law of the sister of prosecutrix did not refer to the incident of June, 2013. She only deposed that on 04.07.2014 she was called to the house of the prosecutrix and she had gone to her house. She noticed that the accused and the mother of prosecutrix

were in inebriated condition. The prosecutrix told her that the accused harassed her by doing “*chhedchhad*” and tried to do wrong act with her. She admitted that the statement of prosecutrix Mark-A was written in her presence and she signed the same as a witness. She deposed what was told to her by the prosecutrix and she had not witnessed any incident.

From the above, it is evident that she did not depose about the occurrence of rape in June, 2013. The statements of both the witnesses are of no help to the prosecution.

We are left with the solitary statement of the prosecutrix with regard to the allegations of rape. No doubt, the conviction can be based on the solitary statement of the prosecutrix, but at the same time, it cannot be mechanically applied to every case of sexual assault. 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. 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.

**In Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC**

**171**, Hon'ble Apex Court has held that 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.

Adverting to the facts of the case in hand, it is not disputed that the date of birth of prosecutrix was 16.10.2000. The prosecutrix was medically examined on 09.07.2014. As per report, hymen was ruptured and healed and no fresh mark of injury was found on her person. The other scientific evidence is of no help as rape was committed more than a year ago. A perusal of statement of prosecutrix reveals that she did not bring the complete facts before the Court. In her statement, Mark-A,(which is admitted by the prosecutrix) recorded at the time of counselling, there is no reference of the incident of June, 2013. It was only mentioned that under the influence of liquor her mother used to force her to do wrong acts with accused. It was not specifically stated therein that the accused attempted to rape her on 04.07.2014. She levelled allegations against her mother of being involved with the accused. After registration of the FIR, she was produced before the Magistrate on 09.07.2014. She changed her version volte faced and stated that there was no role of her mother and she (mother) was not aware of anything as she fell unconscious after consuming liquor and the accused committed rape with her. She deposed in Court that she disclosed the incident of 04.07.2014 to her neighbourer Pinki. Pinki was examined by

the accused as defence witness and she denied that any such occurrence had taken place. The allegations of rape pertained to the period June, 2013 but the complaint was made in July 2014. There was no explanation why she kept silent during this period. She admittedly was residing in the Shelter Home. But she had not disclosed the incident of rape to anybody. Her brother and mother-in-law of her sister did not state about the incident of rape. It had come on record that the house in which the mother of prosecutrix was residing has two rooms. One room was occupied by her mother while in another room Pinki (DW) was residing. Pinki and the owner of the house denied that any occurrence had taken place. It is highly improbable that the incident of rape went unnoticed by either the mother, her brother and neighbours. It had come on record that the sister of prosecutrix was married to another son of PW Poonam, residing nearby, but the prosecutrix failed to disclose the incident to Poonam. She could have reposed confidence in her. All these circumstances create doubt on the version propounded by the prosecutrix.

The accused in his statement under Section 313 Cr.P.C. had taken the stand that the prosecutrix was annoyed with him as he and her mother had stopped her from marrying the son of PW Poonam. The prosecutrix and the private witnesses are not reliable and it is found that the defence version appears to be more probable.

For the reasons recorded above, it is found that the evidence led by the prosecution suffers from serious infirmities and inconsistencies. In a criminal case, the prosecution has to prove its case beyond reasonable doubt. In the instant case, the prosecution failed to prove the case against the accused beyond shadow of reasonable doubt. The trial Court erred in

convicting and sentencing the appellant on the basis of untrustworthy and unreliable evidence. Accordingly, the appeal is allowed. Judgment of conviction and sentence is set aside. Accused is acquitted. He be released forthwith, if not required in any other case.

**November 21, 2018**  
**Jiten**

**(ANITA CHAUDHRY)**  
**JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No