

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

**CRA-D No. 689-DB of 2014
Date of Decision: 09.07.2019**

Sunita

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Surinder Gaur, Advocate for
Mr. Surinder Garg, Advocate
for the appellant.

JASWANT SINGH, J.

1. Challenge in this appeal, preferred by the appellant, is to the judgment of acquittal dated 15.01.2014 passed by learned Sessions Judge, Faridkot, whereby respondent No. 2/accused (Harpreet Singh) has been acquitted for an offence under Section 376 of Indian Penal Code.

2. The facts of the prosecution case can be noticed in the manner that on 18.09.2012 at about 11.00 a.m., the husband of the prosecutrix was away to attend his duty and she was alone at her house, then ***Harpreet Singh son of Jangir Singh*** (respondent No. 2 herein), resident of Street No.3, Dashmesh Nagar, Faridkot, who was already known to the prosecutrix, came to her house and showed his willingness to talk with her. But the prosecutrix did not oblige him and she went inside the room. Thereafter, respondent No. 2-Harpreet Singh followed the prosecutrix and bolted the room from the inside. Prosecutrix also tried her level best to dissuade him but he gave a push to the prosecutrix and made her to lay on the bed. Respondent/accused also started removing the shirt of the

prosecutrix forcibly and as a result of which her shirt was torn from neck side. He also forcibly opened the string of her lower and caught hold the prosecutrix. He also removed her *trouser/salwaar* and opened the zip of his pant and forcibly committed rape upon the prosecutrix. She raised noise but none came to the spot because her voice was not audible to anyone. Later on, Harpreet Singh (respondent No. 2) released her and managed to escape from the spot. The prosecutrix met her aunt ***Shanti Devi wife of Ram Kishan*** in the street and she proclaimed the mis-happening to her aunt. She also made aware her husband-***Ashok Kumar***, when he came back in the evening to the house. Then prosecutrix with her husband and Shanti Devi went to the police station to inform the episode. The statement of the prosecutrix was recorded and she was also subjected to medical examination. An F.I.R. was registered against the respondent-accused for commission of offence under Section 376-Indian Penal Code (IPC). On 29.11.2012, respondent/accused (Harpreet Singh) was arrested.

On presentation of challan, copies of report were supplied to the respondent-accused under Section 207 of the Cr.P.C. and after completion of the necessary formalities of investigation, report under Section 173 Cr.P.C. was presented. Thereafter, the case was committed to the Court of Sessions. Finding a *prime facie* case, the respondent/accused was charge-sheeted for commission of offence under Section 376-IPC.

To prove its case against the respondent-accused, the prosecution has examined as many as ten (10) witnesses, which are as under:-

“ ***Prosecutrix as PW-1, Ashok Kumar***, husband of
prosecutrix as PW-2, Dr. Bikramjit Singh,

Demonstrator, Forensic Medicine as PW-3, SI Amit Thakur as PW-4, Dr. Meenakshi as PW-5, Balour Singh, Draftsman as PW-6, Head Constable Jaswant Singh as PW-7, Head Constable Sukhdata Pal as PW-8, Sub Inspector Ranjit Singh as PW-9 and Sub Inspector Shinderpal Singh as PW-10.

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent-accused were put to him and he pleaded his innocence and false implication.

On the basis of weak evidence led by the prosecution, the Sessions Court has acquitted the respondent for the commission of offence for which he has been charge-sheeted.

3. We have heard the learned counsel for the applicant-appellant and have also gone through the paper book very carefully.

It is abundantly clear that as per the stand of the prosecution, the alleged occurrence took place while the victim was all alone in her house. It is well settled that a testimony of victim in case of sexual offences is vital and unless there are compelling circumstances which necessitate looking for corroboration of her statement, the Court shall find no difficulty to act on the testimony of a victim of sexual assault alone to convict, if it transpires confidence.

4. Hon'ble Supreme Court in *Raju and others v. 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 statements 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.

4.1 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 belles 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.

4.2. *In Narender Kumar v. State (NCT of Delhi), (2012) 7 SCC 171*, Hon'ble Apex Court has held that minor or insignificant inconsistencies, discrepancies or contradictions in the statement of prosecutrix are inconsequential. However, 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. The Court must appreciate evidence in its totality with utmost sensitivity. It was held:

"20. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: **Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. & Anr.**, AIR 2003 SC 818; and **Vishnu v. State of Maharashtra**, AIR 2006 SC 508)."

4.3 In **Munna v. State of Madhya Pradesh, 2014 (10) SCC 254**, in a similar situation, the Hon'ble Apex Court held as under:-

"11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecution in view of the statutory presumption under Section 114A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 I.P.C. has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused."

5. After examining the aforesaid ratio of judgments of Hon'ble Supreme Court, we are of the view that although there is no necessity that the statement of victim of sexual assault has to be corroborated by independent evidence but if corroboration is insisted upon in a particular case, in view of its peculiar facts and circumstances, such corroboration can come from the attending circumstances of the case.

6. In the instant case, the statement of prosecutrix has rightly been disbelieved by the trial Court. The trial Court has rightly observed in the impugned judgment that prosecutrix was running at the age of 40 years at the time of alleged incident and she was able to take rational decisions, good or bad, for her and implications thereof.

7. We are of the view that in case at the time of alleged incident the prosecutrix was not interested to talk with respondent/accused, she could straightway bolt the entrance gate of her house but she herself has stated that she went inside the room and the accused also followed her and thereby bolted the room from the inside. It shows that in case the sexual intercourse took place between victim and the respondent and that was not forcible and against the wish and consent of the prosecutrix, rather it was consensual. Non-examination of Aunt namely Shanti Devi to whom it is allegedly claimed by the prosecution that the episode of incident was firstly disclosed by her, is also fatal to the case of the prosecution.

8. Coming to the medical evidence on the record, there is nothing in the medical evidence which could show that due to any scuffle between the prosecutrix and the respondent, she received minor or superficial injury on her body. We are of the view that in case the alleged incident took place and accused/respondent forcibly committed the rape with the prosecutrix, it was natural that during this scuffle, the prosecutrix might have sustained some injuries on any part of her body.

8.1 Further, the statement of other witnesses of the prosecution is totally inconsequential. The defence version is probable. The defence witnesses have demolished the very foundation of the case of the prosecution by proving on the record that prosecutrix was regularly in

contact with the respondent and there was no chance of committing of sexual intercourse by accused with victim against her wish and consent.

9. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

Appeal is dismissed.

**(JASWANT SINGH)
JUDGE**

July 09, 2019
'dk kamra'

**(LALIT BATRA)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>