

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

**CRM-A No. 915-MA of 2017 (O&M)
Date of Decision: 08.03.2019**

Neeru (Minor)

..... Appellant

Versus

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: None for the applicant-appellant.

Mr. Arun Beniwal, Deputy Advocate General, Haryana
for respondent No. 1/State.

Mr. G.S. Sandhu, Advocate
for respondent No. 2.

JASWANT SINGH, J.

CRM No. 14418 of 2017

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **139 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **139 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 915-MA of 2017

1. Present application has been filed under section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment dated 29.07.2016 passed by learned Additional Sessions Judge, Karnal. As per the allegations of the

prosecution, the F.I.R. was got registered on 06.02.2015 by father of victim namely **PW5** wherein he alleged that while he was away and his daughter (victim) was all alone in the house on 05.02.2015 then at about 3.30 P.M., the respondent/accused forcibly entered into his house and he tore the shirt of his daughter and committed sexual intercourse against her wishes and after committing rape, he managed to escape from his house. Despite of raising of hue and cries by his daughter, none came on the spot who could save his daughter from the clutches of the accused/respondent. The fact of committing of rape was divulged by victim to her mother on her return from village Assandh. On the basis of these allegations, the F.I.R. for commission of offences under section 452 IPC and section 4 of the POCSO Act, 2012, was registered against the respondent. Her statement under section 164 Criminal Procedure Code (in short Cr.P.C.) was also recorded by Judicial Magistrate. Thereafter, on completion of investigation formalities, the report was presented by the prosecution in the Court against the respondent/accused.

2. On appearance before the Trial Court, the respondent was supplied the copies of challan and he was also charge-sheeted for the commission of offence. To strengthen its case against the respondent, the prosecution has examined as many as ten (10) witnesses, which are as under:-

PW1 Dr. Prem Lata who medically examined the victim on 06.2.2015, PW2 victim herself appeared in the witness box, PW3 Dr. Mohinder, who had medico-legally examined the accused/respondent, PW4 Arvind, mother of victim, PW5 Sompal, father of victim, PW6 police official namely ASI Joginder, PW7 EHC Vir Shakti Singh, who prepared the site plan of the place of

occurrence, PW9 Constable Sanjiv, the then MHC P.S.Assandh, PW10 SI Pawan Devi, Investigating Officer of the accused.

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

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

5. We have gone through the ground of attack as maintained by the applicant/victim in her Memorandum of Appeal and it has been submitted that the judgment of the trial Court is wrong both on facts and law. The statement of the victim was fully supported and corroborated by the medical evidence on the record but the trial Court has wrongly acquitted the accused by coming on the conclusion that the prosecution has failed to prove the commission of offence of rape. The stand of the defence was too weak to disprove the case of the prosecution but has been wrongly given undue weightage by the trial Court. At last, it has been submitted that impugned judgment may kindly be reversed and be set aside and accused may kindly be convicted.

6. It is abundantly clear that as per the stand of the prosecution the alleged occurrence took place while the victim was alone in her house. It is manifestly clear that the statement of victim was also recorded under section 164 Cr.P.C. on 06.02.2015. The trial Court has taken a view that there is variation in the statement of victim recorded in the Court from the statement

recorded under section 164 Cr.P.C. We are of the view that when a victim has given two inconsistent statements then both the statements of this witness have to be disbelieved. It is well settled that 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 shall find no difficulty to act on the testimony of a victim of sexual assault alone to convict, if it inspires confidence.

7. 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. ”

7.1 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."

7.2 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)."*

7.3 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."

8. After examining the aforesaid ratio of judgments of Hon'ble Supreme Court, we are of the view 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 previous statement of the prosecutrix soon after the occurrence and her subsequent conduct showing protest within the meaning of section 157 and section 8 of the Indian Evidence Act as also from Medical Evidence showing injury to the private parts of the victim, injury to other parts of her body, seminal stains on her clothes or the clothes of the accused or marks of struggle at the place of occurrence.

9. Coming to the case in hand, the trial Court has rightly observed that the statement of the victim recorded in the Court has to be ignored because she has taken a zig-zag stand from her earlier statement recorded under section 164 Cr.P.C. As per the MLR Ex.P2 no external mark of injury were present on the different parts of the body of victim. Her hymn was opined to be old ruptured and the menstrual bleeding was present on the

victim at the time of medical examination. The carpet upon which victim was allegedly made to lay was also taken into possession but the chemical examiner did not notice any semen or blood stains on this carpet. More so, the semen of the accused/respondent was not found in the under garments of the victim also by the chemical examiner. Further, we are of the view that presence of smegma on corona glands (glans penis) of the accused soon after the incident is proof against complete penetration since it is rubbed off during intercourse. However, in the instant case no such kind of evidence has been led by the prosecution to rule out the possibility that the case of rape projected by the prosecution is not false.

10. In this manner, we are of the view that oral evidence produced by the prosecution is inconsistent to the medical evidence. The trial Court has rightly given the benefit of doubt to the respondent on the basis of weak evidence produced by the prosecution. The evidence of other witnesses on the record is also of frail nature. We have noticed the following infirmities in the case of prosecution:-

1. The medical expert did not find any fresh mark of injury on any part of body including the private parts of the victim.
2. The victim has taken different stands in her two statements i.e. one recorded under section 164 Cr.P.C. and one recorded in Court.
3. No semen or blood stain was noticed on the carpet, which was allegedly used by the accused to commit the rape by making the victim laid on the carpet.

11. It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Hon'ble Supreme

Court in **Mahamad Khan Nathekhani Vs. State of Gujarat, 2014 (5) Recent Apex Judgments (R.A.J.) 502: (2014) 14 SCC 589** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused it stands reinforced, reaffirmed and strengthened by acquittal by the trial Court.

12. 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, had rightly held that the prosecution had failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment.

The **application** is without any merit and, therefore, **dismissed**.

Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

March 08, 2019

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(ARUN KUMAR TYAGI)
JUDGE

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