

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

**CRA-D-309-DB-2013 (O&M)
Date of decision : 17.03.2021**

Gurmeet Singh @ Kaka

...Appellant

Versus

State of Punjab

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. S.S. Swaich, Advocate
and Mr. G.S. Salana, Advocate,
for the appellant.

Ms. Monika Jalota, DAG, Punjab.

JITENDRA CHAUHAN, J.

Convict Gurmeet Singh @ Kaka has preferred the instant appeal assailing the judgment of conviction and order of sentence dated 11.02.2013, passed by learned Additional Sessions Judge, Fatehgarh Sahib. The appellant has been convicted and sentenced as under:-

Conviction under Section	Sentence of imprisonment	Sentence of fine	Default clause
376 IPC	Life imprisonment	10,000/-	RI for 02 years
342 IPC	01 year	₹1,000/-	RI for 01 month
506 IPC	02 years	₹2,000/-	RI for 02 months

All the sentences were ordered to run concurrently. The amount of fine, upon recovery, was ordered to be paid to the victim as compensation under Section 357 Cr.P.C.

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

“2. *Adumbrated in brief facts of the prosecution case are that on 27.12.2012, ASI Jagroop Singh along with other police officials were present in connection with patrol duty and checking of bad elements at bridge canal minor, Jassran on their private vehicles, when complainant (the name has been withheld in view of guidelines issued by Hon'ble Supreme Court in case “State of Punjab Vs. Ram Dev, AIR 2004 SC 1291” and she has been referred as victim or prosecutrix or complainant) along with her uncle Buta Khan and aunt Begum met the police party. Victim suffered her statement on the account that she is studying in 8th standard in Government Middle School, Tooran. Her date of birth is 15.9.1999. After the death of her father, she is residing with her uncle Buta Khan, as her mother had also gone to her parental house. Yesterday i.e. 26.12.2012 at about 7.00 P.M., she had gone to take langer, which was served near bridge canal minor, Ladpur but villagers on account of Shahidi Jor Mela. At about 7.10 P.M., she reached near plot of Khazan Singh, where one truck no.PB-11-AP-1495 was lying parked. When she reached parallel to said truck, then Gurmeet Singh @ Kaka son of Kulwant Singh resident of village Tooran caught hold her from hand and dragged her in the cabin of truck and has committed*

rape upon her without her consent. He also gave fist and slap blows and further threatened her not to disclose about this incident, otherwise he will commit her murder. Victim's uncle Buta Khan came there in search of her. On seeing her uncle, Kaka fled away from the spot. Complainant's uncle brought her down from the truck and due to fear, they went to their house. She has kept concealed the fact due to her respect and there was talk of compromise in the village, but the same was not matured. Complainant was going to lodge the report with her uncle Buta Khan, when the police party met them on the way at over bridge of Jassran. Complainant signed her statement in token of correctness, which was also verified by her uncle Buta Khan and aunt Begum. On the basis of above statement case for offence under Sections 376, 342, 506 of IPC was got registered and investigation has been pressed into service..”

After completion of the investigation, final report under Section 173 Cr.P.C. was presented. Upon committal of the case by learned Area Magistrate, learned trial Court framed charges under Sections 376, 506 and 342 of the Indian Penal Code, against the accused, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. Savreet Kaur, Medical Officer, Civil Hospital, Gobindgarh as PW-1; Dr. Swaran Singh, Medical Officer, Civil Hospital, Mandi Gobindgarh, as PW-2; Prosecutrix d/o Babbi Khan as PW-3; Buta Khan, uncle of the prosecutrix

as PW-4; HC Karamjit Singh as PW-5; Ashok Kumar, Jr. Assistant, office of the DTO, Fatehgarh Sahib as PW-6; Lady Constable Gurjit Kaur as PW-7; Devinder Singh Sangar, Draftsman as PW-8; HC Lekh Raj as PW-9; Mehar Kaur, Head Mistress, Government Middle School, Tooran, as PW-10; HC Jaswinder Singh as PW-11; HC Harinder Singh as PW-12; and ASI Jagroop Singh, the Investigating Officer as PW-13.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. He took the plea that he was never employed as a driver on truck of Khazan Singh, whereas, Buta Khan, suspected that he had a love affair with the prosecutrix. Further, the accused took a plea that there is party faction in the village and the complainant party was demanding a huge amount of money to compromise the matter. In defence, he examined Karamjit Singh as DW-1 and closed the defence evidence.

Learned trial Court vide the impugned the judgment, convicted and sentenced the appellant as reflected at the outset of this judgment. Hence, the instant appeal.

Learned counsel for the appellant contends that there is inordinate and unexplained delay of 24 hours in lodging the FIR, which was used to falsely implicate the appellant. In fact, there are two groups in village Torran and Ladpur, belonging to Congress Party and Akali Dal respectively. The appellant was perceived to be a member of the hostile faction of the village. To settle the score, the opposite group connived with Khazan Singh, owner of the truck in question, and put forward Buta Khan in

lodging false case against the appellant. As there is no reference of the appellant by the prosecutrix to any body including her uncle Buta Khan, therefore, there was no reason for Buta Khan to suspect any love affair between the appellant and the prosecutrix. This story of having any affair by the appellant has been concocted by the hostile faction of the village and was executed through the help of complainant Buta Khan. The prosecution has also failed to produce on record any ossification test of the prosecutrix. In the absence of the same, the age of the prosecutrix has been wrongly held to be below 18 years. The school certificate produced by the prosecution is inadmissible in evidence. There is no opinion of the doctor as regards the age of the prosecutrix. As per the MLR dated 28.12.2012, conducted by Dr. Swaran Singh, PW-2, no external mark of injuries were found on the labia majora or minora of the appellant which shows that no struggle was put forth by the prosecutrix. In the absence of any injury the story put forth by the prosecutrix/prosecution is not believable. Lastly, there is no evidence to connect the appellant with the truck in question.

On the other hand, learned State counsel submits that the prosecution has been successful in bringing home the guilt against the appellant. The prosecutrix, who was minor at the time of the occurrence, as well as the other prosecution witnesses, have withstood the test of lengthy cross-examination by the defence. The plea of false implication has not been substantiated by any cogent evidence.

We have heard learned counsel for the parties and perused the record with their able assistance.

In the instant case, the appellant as per record reflected in the MLR, has been found to be an able bodied and grown up young man, aged around twenty seven years at the time of occurrence. He stands convicted for sexually assaulting the prosecutrix, a young child of fourteen years. As per the prosecution story, on the fateful day i.e. 26.12.2012, the prosecutrix was going to take meal from the community kitchen '*langar*' organized by the villagers of Village Ladpur on *Shahidi Jor Mela*. At around 7.00 p.m., while she was passing by the side of the truck of Khazan Singh, she was forcibly pulled inside the cabin of the said truck by the appellant. Thereafter, the appellant committed rape upon her under threat. She was rescued by her uncle, PW-4 Buta Khan, who while searching for the prosecutrix, had reached near the truck in question and heard some noise therefrom. On seeing Buta Khan, the appellant, who was in naked condition, managed to escape after carrying his clothes. After returning back home, the matter was brought to the notice of Bhinder, Sarpanch of Village Ladpur and a Panchayat was convened at the house of Buta Khan. An effort was made by the Sarpanch to get the issue compromised. However, no such compromise could be effected and, therefore, the matter was reported to the police on the next date i.e. 27.12.2012 at 6.00 p.m.

In the cases relating to sexual abuse, the version of the victim assumes utmost importance. While appearing as PW-3, the prosecutrix has narrated the entire incident. She has deposed that she never had any conversation with the appellant and had also never visited his house. She was forcibly lifted inside the cabin of truck by the appellant. When she

raised alarm, she was given slaps and was threatened to be killed, in case, she raised alarm. When her uncle Buta Khan, who while searching for the prosecutrix, reached the spot, he found the appellant in naked condition, who ran away as such while carrying his clothes. Most importantly, the prosecutrix has specifically stated that the appellant never teased her before the incident, which goes to show the truthfulness of this witness. In fact, the appellant had an evil eye upon the prosecutrix, niece of the complainant. He fully knew that father of the prosecutrix had already passed away, whereas, her mother had deserted her and she was being supported by the family of her uncle, PW-4 Buta Khan. Therefore, she was taken as easy prey by the appellant. Even after subjecting her to a lengthy cross-examination, the defence failed to shake the credibility of this witness, who was just fourteen years of age at the time of occurrence. Hon'ble the Supreme Court as well as this Court has time and again emphasized that the testimony of a victim of sexual assault is not only at par with that of an injured witness but on a much higher pedestal and does not need any corroboration from any other witness. Reference in this regard can be placed on the judgment rendered by Hon'ble the Supreme Court in ***Moti Lal v. State of M.P., (SC), 2008(3) R.C.R. (Criminal) 796***, wherein, it has been held as under:-

“6. In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to

admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is in built assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. The State of Rajasthan, (AIR 1952 SC 54) were :

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge..."

7. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even

before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scating her own prestige and honour.”

In *Swaroop Singh v. State of M.P. (SC), 2013 AIR*

(SC) 2912, it has been laid down as under:-

*“14. In this context it will be worthwhile to refer to the principles laid down by this Court as to the manner in which the evidence of a rape victim should be evaluated to ascertain the truth. The said decision is reported in *State of Punjab v. Gurmit Singh, 1996(1) RCR (Criminal) 533 : 1996(2) SCC 384, Para 8 and 21 are relevant which reads as under :-**

"8..... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the

statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix 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. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a

witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable..."

"21. Of late, crime against women in general and rape in particular is on the increase. It is

an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in

the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. "

In *Krishna Kumar Malik Vs. State of Haryana (2011)*

7 SCC 130, it is observed by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. Moreover, in the instant case, the version put forth by the prosecutrix has been duly corroborated by the testimony of PW-4, Buta Khan, who is an eye-witness.

Learned counsel for the appellant states that there is unexplained delay of about 24 hours in lodging the FIR. However, we feel that the same stands sufficiently explained by the prosecution as made out from the statement of PW-4, Buta Khan. It has come in the evidence of the prosecutrix as well as her uncle, PW-4 Buta Khan, that after the incident, a Panchayat was convened and they were pressurized through the Sarpanch of the Village to enter into a compromise. All these developments after the occurrence have led to a delay of about 24 hours in lodging the FIR, however, the same is not fatal to the prosecution case, particularly, when we view the circumstances and status of the poor orphan child who lost her

father and her mother deserted her to secure the love of other person in her life.

The argument with regard to age of the prosecutrix having not been proved also deserves to be rejected. It is to be seen that the prosecutrix herself has stated date of her birth as 15.09.1999. This fact finds corroboration from the testimony of her uncle Buta Khan, appearing as PW-4, who has deposed that the prosecutrix was born in the year 1999. Interestingly, there is no cross-examination by the defence on this particular issue. The ocular evidence is sufficiently supported by the documentary evidence in the form of school certificate, Ex.PO, wherein, the date of her birth has been recorded as 15.08.1999. As per Section 35 of the Indian Evidence Act, a register maintained in a school is admissible in evidence to prove date of birth of a person. Further, in her cross-examination, Dr. Savreet Kaur, PW-1, who conducted the medical examination upon the prosecutrix has specifically stated that she did not feel any necessity of ossification test as she was instructed to examine for the purpose of rape. Even otherwise, the ossification test is based upon mere estimation. Therefore, it stands established on record that the victim was minor at the time of the occurrence.

Now, coming to the medical evidence on record, Dr. Savreet Kaur, PW-1, has testified as under:-

“.....Patient gives history of assault at around 7.30 pm yesterday. On examination conscious, co operative, well oriented, blood pressure 120/80 mmHg, pulse rate 76 per minute, secondary sexual characters well

developed, LMP 8.12.12.

1- Bluish bruise below left eye.

2- Red abrasion two in number in front of neck in an area of 5 cm square

3- Red bruise in an area of 10 X 5 cm in front of left thigh.

Accompanying swelling present.

Patient has changed clothes and taken bath.

P/V Patient not wearing under wear. No fresh external mark of injury on labia majora or minora. Vagina admits one finger with difficulty. Hymen ruptured, edges ragged. No blood seen.....

.... The nature of injuries (1, 2, 3) was simple in nature.

Probable duration of injuries was within 24 hours.

Probable weapon blunt.....”

The seat and probable duration of the injuries as noticed by this witness lend credence to the prosecution story. Even if no semen was detected in the chemical examiner report, Ex.PB, the same cannot be held to be sufficient to brush aside the entire prosecution version in view of the MLR report which details the physical status of the prosecutrix after the incident, particularly, when the victim was examined after about 24 hours of the occurrence and in the interregnum, she had taken bath and changed clothes, thus, demonstrable semen was not found by the doctor. Similarly, the appellant was examined by Dr. Swaran Singh, PW-2 on 28.12.2012, i.e. after two days of the occurrence. The accused had also taken bath and changed clothes during this period. Therefore, the contentions raised by learned counsel for the appellant, in this regard, are repelled.

To the contrary, the defence version appears to be highly improbable. The appellant could neither prove that he was falsely implicated on account of party faction, nor on account of suspicion by Buta Khan, PW-4, of a love affair between him and the victim, by leading cogent evidence.

In view of the above discussion, we do not find any ground to upset the well reasoned findings returned by learned trial Court. Consequently, the instant appeal fails and is hereby, dismissed, whereas, the impugned judgment of conviction and order of sentence dated 11.02.2013, are hereby, affirmed.

Pending application(s) if any, also stand disposed of.

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

17.03.2021

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No