

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

CRA-D-786-DB-2019 (O&M)
Date of Decision: 24.03.2023

KULDEEP SINGH AND ORS. -Appellants

Versus

STATE OF PUNJAB -Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Brijesh Nanda, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

KULDEEP TIWARI, J.

1. The instant appeal has been directed against the verdict of conviction, and, the order of sentence dated 16.07.2019 passed by the learned Additional Sessions Judge/Exclusive Court, Amritsar, in case FIR No.69 dated 18.04.2017, registered under Sections 365, 363, 366-A, 376, 328, 120-B of Indian Penal Code (hereinafter referred to as 'IPC' for short), and, Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for short), at Police Station Jandiala, District Amritsar, whereby the appellant Nos.1 and 3 have been convicted for the offences punishable under Sections 363, 365, 366, 366-A and 376-D of IPC, while, the appellant No.2 has been convicted for the offences punishable under Sections 363, 365, 366, 366-A, and, Section 17 of POCSO Act. The appellants have been awarded sentence as under:-

Offence under Section	Period (R.I.)	Fine	In Default
Appellants No.1 and 3- Kuldeep Singh and Manjinder Singh @ Peeta			
Section 363 of IPC	R.I. for 7 years	Rs.10,000/-	R.I. for 1 year
Section 365 of IPC	R.I. for 7 years	Rs.10,000/-	R.I. for 1 year
Section 366 of IPC	R.I. for 10 years	Rs.20,000/-	R.I. for 1 year
Section 366-A of IPC	R.I. for 10 years	Rs.20,000/-	R.I. for 1 year
Section 376-D of IPC	R.I. for 20 years	Rs.20,000/-	R.I. 2 years
Appellant No.2- Jinder Kaur @ Veer Kaur			
Section 363 of IPC	R.I. for 7 years	Rs.10,000/-	R.I. for 1 year
Section 365 of IPC	R.I. for 7 years	Rs.10,000/-	R.I. for 1 year
Section 366 of IPC	R.I. for 10 years	Rs.20,000/-	R.I. for 1 year
Section 366-A of IPC	R.I. for 10 years	Rs.20,000/-	R.I. for 1 year
Section 17 of POCSO Act	R.I. 10 years	Rs.20,000/-	R.I. for 1 year

FACTUAL MATRIX

2. The prosecution story unveils with the recording of the statement (Ex.PW1/A) of the complainant (mother of prosecutrix) (identity of the complainant and the prosecutrix is withheld in terms of explanation attached to Section 33(7) of the POCSO Act), wherein, she stated that she is doing a private job at Focal Point, Amritsar, and, her duty hours are from 09:00 a.m. to 05:00 p.m. She is the mother of three children, i.e. two daughters and one son, out of whom, the prosecutrix is her youngest daughter, who was born in 1999. At the time of the incident, the prosecutrix had appeared in matriculation examination. On

15.04.2017, she went on duty at Focal Point, Amritsar, while leaving both her daughters at house, however, when she returned home at 5 o'clock in the evening, she did not find the prosecutrix at home. When she enquired about the whereabouts of prosecutrix from her another daughter, it was informed that at about 11:00 a.m., the friends-cum-schoolmates of the prosecutrix, namely, Ravneet Kaur and Komalpreet Kaur, had come to their house and the prosecutrix accompanied both of them on the premise of going to the house of Ravneet Kaur. Thereupon, the complainant went to the houses of both these girls to enquire about the prosecutrix and both these girls were found present at their respective houses, however, nothing could be elucidated about the whereabouts of the prosecutrix. Consequently, the complainant along with her other family members made efforts to search the prosecutrix at various places, but, all in vain. Having been unsuccessful in tracing the prosecutrix, the complainant alleged that the prosecutrix has been kidnapped by some unknown person with intention to detain her in illegal custody. Upon such statement being made by the complainant, originally the present FIR was registered against an unknown person, but, only under Section 365 of IPC.

INVESTIGATION PROCEEDINGS

3. After registration of FIR, the criminal investigation agency was set into motion and the Investigation Officer concerned started searching the prosecutrix. The birth certificate of the prosecutrix, as produced by the complainant, was taken into possession vide recovery memo (Ex.PW1/D). The prosecutrix was recovered on 25.04.2017, and, as per her volition, she was handed over to her legal heirs vide memo

(Ex.PW1/B). Thereafter, statement (Ex.PW2/A) of the prosecutrix, under Section 161 Cr.P.C., was recorded, wherein, she alleged commission of rape upon her by two persons, besides, other allegations against certain other persons. Thereupon, the prosecutrix was medico-legally examined on 26.04.2017, where she disclosed to the doctor that she was administered injection and she does not know what happened thereafter. Subsequently, on 28.04.2017, the complainant suffered a supplementary statement (Ex.PW1/C), wherethrough, Kuldeep Singh, Jinder Kaur @ Veer Kaur, Manjinder Singh @ Peeta, Sukhwinder Kaur, Lakhwinder Singh, and, Hardip Singh were nominated as accused in the FIR. However, during investigation, Lakhwinder Singh and Hardip Singh were declared innocent, whereas, Sukhwinder Kaur was declared as Proclaimed Offender. Consequently, the present appellants came to be arrested on different dates, and, during interrogation, the appellant No.2 suffered a disclosure statement (Ex.PW7/M) qua preparation of an affidavit, on 22.04.2017, regarding solemnization of marriage of the prosecutrix with her nephew, and, she offered to get the said affidavit recovered from the almirah of her room. In pursuance of such disclosure statement, she led the police party and got recovered the affidavit, which was seized vide recovery memo (Ex.PW7/P). Upon further investigation, offences under Sections 363, 366-A and 120-B of IPC was added in the case. It is also apt to record here that the Senior Superintendent of Police concerned, vide its order dated 03.05.2017, had constituted an S.I.T. to conduct investigation in the case, whereupon, considering all the material available on record, the S.I.T. ordered inclusion of offences under Section

376 of IPC, and, Section 5 of POCSO Act. The statement (Ex.PW2/B) of the prosecutrix, under Section 164 Cr.P.C., was also recorded before the Illaqa Magistrate. Thereafter, the prosecutrix was once again medico-legally examined, on 06.06.2017, by a Board of Doctors, constituted by the S.M.O., Civil Hospital, Amritsar. After completion of investigation, the Final Report under Section 173 Cr.P.C. was filed against the present appellants, besides, one Sukhwinder Kaur (Proclaimed Offender), before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide committal order dated 19.07.2018.

PROCEEDINGS OF TRIAL COURT

3. Finding a prima facie case, the accused were charge-sheeted for commission of offences punishable under Sections 363, 365, 366, 366-A, and, Sections 6 and 17 of the POCSO Act, and, in the alternative, Section 376-D of IPC. The prosecution, in order to prove its case, has examined as many as 11 witnesses, whereas, the accused did not lead any evidence in defence. After completion of trial, the learned trial Court reached a finding qua commission of offences of kidnapping and gang-rape upon the prosecutrix, while holding her to be a minor at the relevant point of time, and accordingly, held the appellant Nos.1 and 3 guilty for committing the offences punishable under Sections 363, 365, 366, 366-A and 376-D of IPC, and, held the appellant No.2 guilty for committing the offences punishable under Sections 363, 365, 366, 366-A, and, Section 17 of POCSO Act. Aggrieved by this finding of conviction recorded by the learned Additional Sessions Judge concerned, the present appeal

has been preferred at the instance of the appellants.

ANALYSIS

4. We have heard the rival submissions of both the learned counsels for the parties, and, with their able assistance, have also minutely scrutinized the entire record and the judgment passed by the learned trial Court. In our considered opinion, the entire case of the prosecution is founded primarily on the statements of the prosecutrix, and, the complainant, besides, the medical evidence, as available on record. Therefore, to cull out the entire gist of the present matter, and, to clear the clouds covering the truth, it is vital to adjudicate the following two principal issues:-

(a) Age of the prosecutrix.

(b) Whether the prosecutrix was kidnapped, intoxicated, subjected to sexual assault, and, also forcibly married with one of the appellants ?

5. So far as the first issue pertaining to the age of the prosecutrix is concerned, which will further form the basis to adjudicate the second issue, the prosecution has examined the complainant as PW1, who, in her examination-in-chief, has categorically stated the prosecutrix to be aged two months less than 18 years. She also proved on record the recovery memo of the birth certificate of the prosecutrix as Ex.PW1/D. Another witness, in the chain of witnesses, to prove the age of the prosecutrix is Ajitpal Singh, Multipurpose Health Worker, CHC Manawala, Amritsar, who was examined as PW8, and, who proved on record the birth certificate of the prosecutrix as Ex.PW7/D, and, the attested copy of birth register as Ex.PW8/A. A perusal of the birth

certificate makes it abundantly clear that the date of birth of the prosecutrix is 20.06.1999. Furthermore, Dr. Anujeet Kaur Randhawa, and, Dr. Simrat Kaur, Medical Officers, Civil Hospital, Amritsar, were examined as PW5 and PW6 respectively, who had medico-legally examined the prosecutrix on 06.06.2017. They proved on record the MLR as Ex.PW5/A, wherein also the date of birth of the prosecutrix is recorded as 20.06.1999. All these witnesses were put to cross-examination, however, the defence remained defeated in its efforts to impeach the credibility of these witnesses. The birth certificate issued by the competent authority is a substantial piece of evidence, which by itself is sufficient to prove the age of the prosecutrix. Therefore, in view of settled principle of law as well as the ocular and documentary evidence, as led by the prosecution, we can safely conclude that the date of birth of the prosecutrix is 20.06.1999, and, she had not attained majority on the alleged date of occurrence, rather, was approx. two months less than 18 years.

6. Now, for the purpose of adjudicating the second issue, the prosecution has mainly placed reliance upon the statements of the complainant, and, the prosecutrix, who were examined as PW1 and PW2 respectively. Before examining the veracity of the testimonies of both these witnesses, and, to effectively adjudicate this issue which forms the backbone of the case, we deem it apposite to first deal with the medical evidence.

7. The prosecutrix was medico-legally examined twice, i.e., firstly on 26.04.2017, and thereafter, on 06.06.2017. On 26.04.2017, the

prosecutrix was medico-legally examined by Dr. Sahiba Kaur, and, in pursuance thereof, a MLR No.82/SK/CHCMW/2017 dated 26.04.2017 was prepared, wherein, the history of incident, as described by the prosecutrix, reads as follows:

“History/Brief description of the incident (as narrated by the victim/acquaintance):

Sexual assault and she was saying that injection was given to her after that she does not what happened”.

Upon medical examination of the prosecutrix, the doctor concerned, i.e. Dr. Sahiba Kaur, observed as under:-

“Age: 17 yrs 10 months, according date of birth certificate.

Evidence of injury, if any: Very minor injury on left index finger and left leg on back.

Evidence of Intercourse: NA

Evidence of child sexual assault: NA

Investigation (Lab and Radiological): UPT and Bone Age Estimation

Laboratory Test Reports (if any): UPT

Opinion: After the Forensic Report.”

It would be apt to record here that Dr. Sahiba Kaur was not examined by the prosecution to prove the MLR (supra). Thereafter, the prosecutrix was once again medico-legally examined, on 06.06.2017, by a Board of Doctors, comprising of Dr. Anujeet Kaur Randhawa, and, Dr. Simrat Gill. The prosecution examined Dr. Anujeet Kaur Randhawa and Dr. Simrat Gill, as PW5 and PW6 respectively, to prove the MLR (Ex.PW5/A), which was prepared after the second medico-legal examination on 06.06.2017. The contents of the MLR (Ex.PW5/A)

reveals that the MLR of the prosecutrix was already done on 26.04.2017. The MLR (supra) further transpires that the prosecutrix gave the following history of assault:-

“The girl gives alleged history of going to Daduana, on 15.04.2017, along with her friends, where she was allegedly given a sedative laced drink and kept drugged over the next ten days, until her recovery by the police from Jandiala Guru Bus Stand on 25.04.2017. She alleges that she was married off during this period, but she has no recollection about any sexual act, as she alleges that she was always kept in a drugged state.”

After examination, the following observations were recorded by the doctors concerned in the MLR (supra):-

“Menarche: 3 years back.

Menstrual Formula: 4-5 days/28-30 days.

Her LMP is 10.05.2017.

Her Gait is normal.

General Physical Examination: Secondary sexual characters developed. No evidence of any fresh external injury on the body at time of examination.

Local Examination: No edema, no tenderness noted during examination of genital area. Hymenal orifice has ragged margins.”

It is further found opined by Dr. Anujeet Kaur Randhawa, and, Dr. Simrat Gill, upon perusal of the report of Chemical Examiner (Ex.PW5/B), that since spermatozoa was detected in the contents of Exhibit (I) (a,b), which was sent by Dr. Sahiba Kaur, the prosecutrix was subjected to sexual intercourse.

8. From the medical evidence, as discussed hereinabove, two things do surface that the prosecutrix has given two distinct stories of the incident, at the time of hers being medico-legally examined. In her initial medico-legal examination, she gave history of sexual assault, however, she also got recorded that she did not recall anything on account of her being administered injection. Thereafter, in her second medico-legal examination, she gave history of being administered a sedative laced drink and being kept drugged for the subsequent period of days until her recovery by police, and, also alleged being married off, however, it is categorically recorded therein that she did not recollect any incident of sexual act on account of intoxication. Therefore, such conflicting histories of alleged incident, create doubt on the veracity of the prosecution story. It is also apt to record here that Dr. Sahiba Kaur, who originally medico-legally examined the prosecutrix, was not examined by the prosecution, thus the said medico-legal examination remains unproved, as the doctor concerned does not become covered within the ambit of Section 292 Cr.P.C.

9. Now, let us examine in detail, the statements of the prosecutrix and the complainant. There are certain glaring inconsistencies and contradictions in the statements of the prosecutrix and the complainant, which consequently renders the same unworthy of acceptance, although, every endeavour had been made on their part to camouflage their statements. Perusal of the depositions of the prosecutrix, whether it be her deposition under Section 161 Cr.P.C., under Section 164 Cr.P.C., or, before the Court, reveals that she has made material

improvements in her version at every stage, or, it can also be said that she narrated completely contrary version, which goes on to affect the probative value of her statement.

As per the story of the prosecution, the prosecutrix was recovered on 25.04.2017, whereupon, her statement (Ex.PW2/A), under Section 161 Cr.P.C., was recorded on 26.04.2017. In this statement, she alleged that on 15.04.2017, she along with her friend Komalpreet Kaur travelled to Bus Stand Daduana, and, upon reaching there, Komalpreet Kaur went inside a telephone shop while she was standing outside. Thereafter, Komalpreet Kaur brought her a cup of tea from a tea shop, but, after consumption thereof, she fell unconscious and when she regained consciousness, she found herself in the house of Ashu (Veer Kaur), resident of Jandiala. There, two-three persons administered her injections, made her smoke cigarettes, and, also gave beatings to her. Thereafter, one Sonu took her to a restaurant, called 'Two In One', where two persons forcibly committed rape upon her. The owner of the hotel tried to rescue her. Security guards were also deployed outside the hotel. Two persons removed her clothes, while two persons shot her video. Thereafter, a lady of her village namely Sukhwinder Kaur tried to administer her medicine. One Lakha Singh, Photographer, tried to take her on a motorcycle, but, she did not go with him. She alleged commission of sexual assault upon her, in the hotel, by Hardip Singh and Lakha Singh. She further alleged presence of Lakha Singh, Photographer, and, Sukhwinder Kaur when she was taken from Bus Stand Daduana, and, that both of them also came in the hotel. Thereafter, Veer Kaur @

Ashu performed her marriage with Kuljit Singh, resident of Dhariwal. She stayed in the house of her in-laws for two days, and, on the third day, her husband left her at Bus Stand Jandiala after giving her beatings, wherefrom, she went to Police Station Jandiala and narrated the entire incident to police.

A reading of the above statement reveals that there is not even an iota of allegation qua commission of rape or kidnapping against the present appellants. The only allegation, as found attributed in the above statement, is against Veer Kaur (appellant No.2) that she performed the marriage of prosecutrix with Kuldeep Singh (appellant No.1). Insofar the other allegations are concerned, the same do not have any relevance to accuse the present appellants. If we summarize the statement (Ex.PW2/A) of prosecutrix, under Section 161 Cr.P.C., the following emerges:-

- Komalpreet Kaur gave her intoxicant laced tea, and consumption thereof, made her unconscious.
- Two-three persons administered her injections, made her smoke cigarettes, and, also beaten her.
- One Sonu took her to a restaurant, called 'Two in One', where two persons forcibly committed rape upon her.
- Owner of the said restaurant tried to rescue her, and, security guards were also deployed outside the restaurant.
- She was sexually assaulted by Hardip Singh and Lakha Singh.
- She was forcibly married with Kuljit Singh, by Veer Kaur @ Ashu.

It is also interesting to note that the prosecutrix had narrated, in detail, the sequence of events as allegedly occurred, in her statement under Section 161 Cr.P.C. Thereafter, the Investigation Officer concerned proceeded to get her medico-legally examined on 26.04.2017, however, at time of such medical examination, the prosecutrix did not depose categorically against any particular individual, rather, only alleged the following: *“History/Brief description of the incident (as narrated by the victim/acquaintance): Sexual assault and she was saying that injection was given to her after that she does not what happened”*. It is quite strange that, in her statement (Ex.PW2/A), under Section 161 Cr.P.C., the prosecutrix alleged specific allegations of rape against Hardip Singh and Lakha Singh, however, subsequently when she was medico-legally examined, she did not name any wrongdoer, except alleging only the words “sexual assault”, rather, she projected herself as unaware of anything, being under the influence of intoxication at the relevant time.

Thereafter, the statement (Ex.PW2/B) of the prosecutrix, under Section 164 Cr.P.C., was recorded by the JMIC concerned on 02.06.2017, wherein, she deposed that her friend and Komalpreet took her to their village, on the premise of doing practical work, and thereafter, they took her to their house. From there, the mother of her friend sent her and Komalpreet to Daduana. Sukhwinder Kaur telephonically informed Lakhwinder Singh regarding their arrival and consequently, Lakhwinder Singh took them to a shop, where Hardip Singh was present. There she was served tea and thereafter, she fell unconscious. After regaining consciousness, she was taken to ‘Two In

One' Hotel, where she was kept for two-three days. Thereafter, she was sent to the club of Ashu.

Perusal of this statement (Ex.PW2/B) presents a totally different set of facts, rather, is completely lacking any allegations qua commission of rape, or, solemnization of her marriage, as found alleged in her initial statement (Ex.PW2/A). The only allegation that can be culled out from the statement (Ex.PW2/B) is regarding intoxication, however, the prosecutrix is ambiguous even in attributing the allegation of intoxication to anyone. More so, though the prosecutrix has alleged therein regarding her transportation to the hotel, however, she did not allege commission of any sexual assault, harassment, or, administering her any intoxicant substance. All the more surprising is the fact that the statement of the prosecutrix, under Section 164 Cr.P.C., was recorded after about a month of her being recovered by the police, as she was recovered on 25.04.2017, while the statement under Section 164 Cr.P.C. was recorded on 02.06.2017. Thus, the above belatedly recorded statements inspire an inference that they are stained by vices of concoctions, premeditation, and, are an afterthought, upon which no reliance can be placed.

Furthermore, during the course of investigation, finding the prosecutrix to be resiling from the case set up by the prosecution (in her statement recorded under Section 164 Cr.P.C.), the Investigation Officer concerned went on to record her supplementary statement under Section 161 Cr.P.C. (Ex.PW2/C), on 23.07.2017, i.e., about 2½ months of the recording of her initial statement (Ex.PW2/A). Supporting her earlier

statement (Ex.PW2/A) in its entirety, the prosecutrix attributed allegations of procurement of two affidavits by the appellant No.2 regarding solemnization of marriage of prosecutrix with Kuldeep Singh (appellant No.1). She also denied to have appended her signatures thereon in her full senses and also denied to have any knowledge about the contents thereof. Alleging further, she stated that the appellant No.2 and accused Sukhwinder Kaur (already declared P.O.) had removed her clothes, while, the appellant Nos.1 and 3 had shot her video, besides, commission of rape upon her by Lakhwinder Singh and Hardip Singh. A summary reading of the supplementary statement (Ex.PW2/C) of the prosecutrix would reveal that it is a totally new story cooked up by the prosecutrix i.e.:-

- Jinder Kaur @ Veer Kaur (appellant No.2) procured two affidavits, regarding her marriage with Kuldeep Singh (appellant No.1).
- Her signatures were obtained on these affidavits, while being under the influence of intoxicants.
- Jinder Kaur @ Veer Kaur (appellant No.2) and Sukhwinder Kaur (already declared P.O.) removed her clothes.
- Kuldeep Singh (appellant No.1) and Manjinder Singh (appellant No.3) recorded her video.
- Hardip Singh and Lakhwinder Singh committed rape upon her.

It is also interesting to note that both the principal accused, according to the statement of prosecutrix, namely Lakhwinder Singh and Hardip Singh, had already been exonerated and declared innocent by the Investigation Officer concerned, whereas, the present appellants along

with one Sukhwinder Kaur (declared P.O.) were sent to face trial.

The contradictions in the statements of the prosecutrix are not restricted only upto the stage of investigation, rather, the same continued even while deposing before the trial Court as PW-2. In her examination-in-chief, she deposed that one Komalpreet Kaur had offered her tea, consumption whereof made her unconscious. As regards commission of sexual assault, she alleged commission thereof only by Kuldeep Singh (appellant No.1) and none else. Surprisingly, then she did not attribute any perpetration of any sexual assault upon her by the other appellant(s)/accused. The relevant extract of her examination-in-chief is reproduced hereunder:-

“Stated that in the month of April 2017, I appeared in Matriculation exams. On 15.04.2017, I alongwith my friend Komalpreet Kaur, resident of Village Shapa Ram Singh had gone to the Bus Stand Daduana. Komalpreet Kaur served a cup of tea to me and thereafter, I become unconscious. When I gained my consciousness, I found myself in Club of Ashu in the area of Jandiala Guru. At that time, Veer Kaur and some other ladies, however, the gents, who were there in the club, today present in the court, but can not tell his name and other particulars, but the witness pointed out towards Hindu gentleman sitting on the bench, wearing pink colour T-shirt. The said person when was asked his name, he told his name as Manjinder Singh. I was kept there for 2-3 days and I was got married with one Sardar person, who is sitting in the court and I identify him. The witness pointed out towards the Sikh person, sitting on the bench of the court, wearing blue turban. The said person disclosed his name as

Kuldeep Singh. Accused Kuldeep Singh present in the court committed sexual intercourse with me during the period I was kept by him. **Except Kuldeep Singh, nobody else has committed rape upon me. I suffered statement to the police. I did not get it recorded before the police in my statement that other persons also committed rape with me.”**

Therefore, the above made variant statements by the prosecutrix, at different stages of the investigation, make her statement to be unworthy of any probative vigor being assigned thereto. Though, in the wake of the prosecutrix resiling from her previously made statements in writing, the learned Public Prosecutor, after getting her declared hostile, proceeded to subject her to cross-examination. However, during the course of such cross-examination by the learned Public Prosecutor concerned, she admitted the contents of her statement (Ex.PW2/A), wherein, she attributed commission of sexual assault upon her by Hardip Singh and Lakha Singh (both declared innocent by Investigation Officer concerned). The above attribution of an inculpatory role by the prosecutrix to Hardip Singh and Lakha Singh is contrary to hers, in her cross-examination, forthrightly speaking that she was not, at the relevant stage, fit to make a statement, but with the above incriminations against the above persons. Significantly, also when subsequent to hers being cross-examined by the learned Public Prosecutor concerned, she on hers becoming cross-examined by the learned defence counsel, she took a complete somersault. The relevant portion of her cross-examination, is extracted hereunder:-

“When I was served tea at Village Daduana, at that time, Kuldeep Singh and Manjinder Singh were not present. Komalpreet Kaur served cup of tea to me. Lakhwinder Singh @ Lakha had brought me on motorcycle from village Daduana. When my marriage was performed, at that time, beside the bridegroom, his mother and some persons from their village were present. My marriage was performed at Gurdwara Sahib at Dhariwal. It is wrong to suggest that when my marriage was solemnized in Gurdwara Sahib, at that time, I was fully conscious. **I did not complain to Granthi of Gurdwara Sahib that accused are forcibly performing my marriage.** After my marriage was performed, thereafter, I was brought to my in-laws’ village at Dhariwal. I remained there for two days. At village Dhariwal, besides my mother-in-law and my husband, there were Taya (maternal uncle), Aunt (Chachi) and two of their children. At my in-laws’ village, no one from my family came there. **I stayed at my in-laws’ house happily. I did not complain any of the family members at the in-laws’ house that I have been forcibly married.** Someone brought me from my in-laws’ house and dropped me at Jandiala Guru. The person who brought me from my in-laws’ house, did not say anything to me.

From there, I came to the police station. I got recorded my statement with the police. **Nothing had happened with me except whatever has been stated by me in my above said cross examination.** I had suffered my statement before the Magistrate. At that time, I was fully conscious and mentally stable. I got recorded the name of Kuldeep Singh and Manjinder Singh in my statement Ex.PW-2/B. The attention of

witness is drawn towards her statement Ex.PW-2/B, wherein, it is not so recorded. I had got recorded in my statement Ex.PW-2/B that some one had committed sexual intercourse with me against my Will. The attention of witness is drawn towards her statement Ex.PW-2/B. wherein, it is not so recorded. My statement was recorded by the police for once.”

11. Furthermore, there are various other issues, which also make the case of the prosecution doubtful. Firstly, the prosecution neither joined Komalpreet Kaur or Ravneet Kaur (friend of the prosecutrix) in the investigation, nor, made any effort to record their statements to support the story put forward by the prosecutrix. Contrarily, the prosecutrix, in her statement under Section 161 Cr.P.C., has leveled specific allegations against Komalpreet Kaur qua her serving the prosecutrix an intoxicant laced tea. Despite this, the prosecution has been completely silent on this aspect of the matter. Further, there was no endeavour on the part of the investigation agency to record the statement of the tea vendor(s), from where the prosecutrix was allegedly served an intoxicated tea. Furthermore, as alleged by the prosecutrix, in her statement under Section 161 Cr.P.C., when she was sexually assaulted in a hotel called ‘Two In One’, the owner of said hotel, had tried to rescue her, however, there appears no attempt being made by the investigation agency to record the statement of such a material witness, which consequently further weakens the case of prosecution. Likewise, no one from the club of Ashu was joined in the investigation or examined during trial. Another vital aspect to note is that the prosecutrix did not suffer any injury on her body, despite there being allegations of her being detained

by the appellant(s)/accused for approx. 10 days. Also, a perusal of the cross-examination of the prosecutrix, reveals that she did not raise any alarm during such a long period of her illegal detention, rather, it stands categorically recorded that she did not complain to the Granthi of the Gurudwara Sahib concerned, at the time of solemnization of her marriage forcibly. Lastly, the prosecution has not produced any medical or forensic evidence on record, to substantiate the allegations that the prosecutrix was ever drugged, or, injected with anything intoxicant by the appellant(s)/accused.

12. Further, the submission made by learned counsel for the State that in view of the statutory provision, as envisaged in Sections 29 and 30 of the POCSO Act, a statutory presumption arises against the appellants, and, the onus is upon them to prove their innocence, and that, in the present case, the appellants have failed to discharge such onus. Therefore, the statutory presumptions stand against them, coupled with the fact that the prosecutrix levelled specific allegations against the appellants/accused, which make them liable to be held guilty under the charges framed against them. However, we are unable to accept this submission of the learned counsel for the State. A cumulative reading of Sections 29 and 30 of the POCSO Act, would provide that, once the foundational incriminatory facts have been proved by the prosecution, only then the statutory presumption is raised against the accused and the onus shifts upon the accused to prove his innocence. In the present case, as we have discussed above in detail, the prosecution has failed to prove the foundational incriminatory facts, upon which statutory presumption

becomes well rested. "*Presumption*" is a rule of law, which enables the Court to presume existence of a fact on the basis of certain proved facts. The Court cannot presume existence of certain facts in vacuum. The prosecution has to discharge its initial burden by proving those facts which are essential to raise the statutory presumption. In the case in hand, the prosecution has failed to discharge its initial onus, therefore, the statutory presumption cannot be raised at the instance of the prosecution. The above aspect has already been considered, and, discussed in detail, in case bearing No.**CRM-A-2941-2019**, titled "***State of Haryana V/s Vishal***".

13. Now let us come to the testimony of another purportedly significant witness of the prosecution, who is the complainant (PW1). However, perusal of her examination-in-chief, while deposing as PW-1, clearly transpires that she has completely resiled from her earlier made statement, under Section 161 Cr.P.C., and, she goes on to state that she did not know as to who had enticed the prosecutrix, or, by whom she was intoxicated. She further stated therein that no such facts had been disclosed to her by the prosecutrix. Thereupon, she was declared hostile, and, upon being cross-examined by the learned Public Prosecutor, likewise the prosecutrix, she also again admitted the correctness of her statement made to the police. Even the evidence of the complainant makes her testimony fall within the ambit of "*hearsay evidence*", hence the same merits no probative value in the eyes of law. She has just simply deposed the version, which according to her, was narrated to her by the prosecutrix, which is inadmissible in evidence.

14. All the above discussed lacunae make the case of prosecution highly improbable, rather, casts clouds of doubt over it. We are unable to place any reliance upon such vacillating and contradictory statements of the prosecutrix, to bring home the guilt of the appellants/accused. It is indubitably true that in a case involving sexual offences, a finding of guilt can be recorded against the wrongdoer, solely on the statement of the prosecutrix, without necessitating corroboration from any corner, however, if, in the opinion of the Court, the statement of the prosecutrix is found to be vacillating and unreliable, therefore, corroboration is required to be meted to such a statement, so as to bring home the guilt of the wrongdoer. We also do not find any reliable corroborative evidence to support the inconsistent statements of the prosecutrix.

15. Upon a cumulative reading and appreciation of the evidence on record, particularly of the prosecutrix, the contradictions and omissions therein, and, the medical evidence, which is at complete variance with her testimony, raises a serious doubt as to the veracity of the version of the prosecutrix. In such backdrop, we are of the opinion that the prosecution has miserably failed to prove its case against the appellants beyond all reasonable doubt. As elucidated from the above discussed evidence, the complicity of the appellants in the alleged crime is shrouded with serious doubt. Accordingly, the trial Court was not justified in holding them guilty, and, they deserve to be acquitted of all the charges by extending them benefit of doubt.

CONCLUSION

16. Therefore, the instant appeal is **allowed**, and, the verdict of conviction, and, the order of sentence dated 16.07.2019 passed by the learned Additional Sessions Judge/Exclusive Court, Amritsar, are hereby **set aside**.

17. In case, the appellants/accused are in custody, in the present case, they be forthwith set at liberty, if not required in any other case.

18. The case property, if any, be dealt with in accordance with law after expiry of the period of limitation for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

24.03.2023
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No