

Sukhdev Singh and Another Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Sep-25-2013

Appellant : Sukhdev Singh and Another

Respondent : State of Punjab

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Crl.

Appeal No.S-1565-SB of 2002 Date of Decision: September 25, 2013 Sukhdev Singh and another ...Appellants VERSUS State of Punjab ...Respondent CORAM: HON'BLE Mr.JUSTICE INDERJIT SINGH Present: Mr.Ramandeep Singh Sidhu, Advocate for the appellants.

Mr.Jasdev Singh Brar, Asstt.

Advocate General, Punjab for the respondent-State.

**** INDERJIT SINGH, J.

The present appeal has been filed by the appellants against the judgment of conviction and order of sentence dated 25.09.2002, passed by the learned Addl.

Sessions Judge, Jalandhar, whereby, appellant Sukhdev Singh was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ` 5,000/- under Section 376 IPC and in default of

payment of fine, to further undergo rigorous imprisonment for a period of one year whereas appellant Jinder Bhaiya was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ` 5,000/- under Section 376 read with Section 34 IPC and in default of payment of Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -2- fine, to further undergo rigorous imprisonment for a period of one year.

Co-accused Joga Singh and Tara Singh were acquitted of the charges framed against them.

The brief facts of the prosecution case are that FIR in the present case has been registered on the basis of statement Ex.PD made by prosecutrix, who was about 14 years of age, before ASI Manjit Singh.

As per the FIR, on 17.01.2001 at about 7.30 P.M, prosecutrix was going on foot to the house of her aunt.

On seeing her, Sukhdev Singh alias Kuku and Jinder Bhaiya came out of the shop and forcibly lifted her and took her to a vacant plot having four walls but without any gate.

There Jinder Bhaiya put his hand on her mouth and Sukhdev Singh alias Kuku committed rape upon her.

On hearing her shrieks, her aunt Kiran Mehmi and her son Manish Kumar and Surinder Kumar son of Sucha Ram came to the spot and got her released.

Both the accused-appellants fled away from the spot.

On the basis of this statement, ruqa was sent to the police station, whereupon FIR was registered.

The Investigating Officer visited the place of occurrence and prepared rough site plan and also took into possession small pieces of bangles from the spot.

Prosecutrix was medico-legally examined.

Accused were arrested.

Accused were also medico-legally examined.

After necessary investigation challan was presented against the accused-appellants and co-accused.

On presentation of challan against accused-appellants and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -3- accused-appellant Sukhdev Singh was charge-sheeted under Section 376 IPC and accused-appellant Jinder Bhaiya was charge-sheeted under Section 376 read with Section 34 IPC and both the accused-appellants were further charge-sheeted under Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereas co-accused Tara Sigh and Joga Singh were charge-sheeted under Section 120-B IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Kulwinder Kaur, who medico-legally examined prosecutrix on 18.01.2001 and found hymen absent.

The doctor also found multiple linear abrasions over both breasts which were reddish in colour.

Vaginal swabs were taken.

Clothes of prosecutrix were taken into possession and were sealed and handed over to the police for chemical examination.

The doctor has also stated that joint report was made which is Ex.PB and in her opinion, rape has been committed upon prosecutrix.

PW-2 Dr.Resham Lal also deposed regarding opinion Ex.PB.

PW-3 Dalip Singh, Draftsman, deposed regarding preparing of scaled site plan Ex.PC.

PW-4 Constable Jagjit Singh mainly deposed regarding depositing of parcel in the FSL, Punjab, Chandigarh.

PW-5 Constable Mohinder Singh, is a formal witness.

PW-6 prosecutrix did not support the prosecution version and turned hostile.

She stated that on 17.01.2001, at about 7.30 P.M., she was going from her house towards the house of her aunt and when she reached near the shop of electrical goods owned by Jinder Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -4- Bhaiya accused present in the Court, one person came to that place with muffled face and he caught hold her arMs.He took her to an adjoining plot forcibly.

She raised alarm upon which that person left her there and escaped.

He did not commit any bad act with her.

She also stated that she had disclosed all these facts to the police and she had made statement Ex.PD which was signed by her.

In cross- examination, she admitted that her statement was recorded by ASI Manjit Singh.

The witness was confronted with her statement but she denied the statement given to the police.

She admitted that she had raised cries at the spot.

She also admitted her signatures on MLR Ex.PA.

She also stated that she does not remember if her date of birth is 07.11.1985.

PW-7 Kiran Mehmi, is the eye witness.

She deposed as per prosecution version.

PW-8 Guralpal Chand, Math Teacher mainly brought the record of the school consisting of admission and withdrawal register.

As per this school record, the date of birth of prosecutrix is recorded as 11.04.1985.

He also proved the certificate given to that effect which is Ex.PF.

PW-9 Constable Kuldeep Singh deposed regarding delivery of Special Report to Illaqa Magistrate.

PW-10 Surinder Kumar, is also the eye witness and deposed as per prosecution version.

PW-11 Dr.Prem Nath Dutta, Medical Officer mainly deposed that on 22.01.2001 he medico-legally examined accused Sukhdev Singh alias Kuku and found following injuries:- 1.

A lacerated wound 5 cm x 1 cm x depth not explored, present over left side of head starting from Gulati Vineet hair line on the left side extending upwards and
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Appeal No.S-1565-SB of 2002 -5- medially (wound was 8 cms above from middle 1/3rd of left eye brow).It was oblique in direction, clotted blood was present around the wound.

Wound was partially healed.

Complained of pain.

X-ray was advised and surgeon's opinion.

2.

Swelling of upper and lower eye lid of left eye was present.

Black discolouration of skin of upper eye lid and below left eye over an area of 5 cms x 3 cms (black dye).Sub conjunctival haemorrhage was present in left eye.

Complained of pain in left eye.

Some areas were bluish.

Kept for expert opinion or eye surgeon.

3.

Small abrasions were present over back of right hand and wrist joint.

Brown scab was formed.

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PW-12 Manish Kumar, is another eye witness, who also deposed as per prosecution version.

PW-13 Constable Ram Lubhaya had not supported the case and was declared hostile.

He was the witness regarding disclosure made by the accused.

PW-14 Charan Singh is the Chowkidar, who deposed regarding maintaining register and making entries regarding birth of children in the village.

PW-15 Dr.R.P.Verma, Medical Officer, deposed that he medico-legally examined accused Jinder Bhaiya.

PW-16 ASI Manjit Singh, is the Investigating Officer, who mainly deposed regarding investigation conducted by him in the present case.

PW-17 Head Constable Balraj Singh, is a formal witness, who tendered into evidence his affidavit Ex.PS.

At the close of prosecution evidence, the accused- appellants and co-accused were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

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Appeal No.S-1565-SB of 2002 -6- No witness was examined in defence.

On the basis of the evidence produced by the prosecution, accused-appellants were convicted and sentenced by the learned Addl.

Sessions Judge, Jalandhar whereas other co-accused namely Joga Singh and Tara Singh were acquitted, as stated above.

At the time of arguments, learned counsel for the appellants argued that firstly prosecutrix was major and she has turned hostile.

Therefore, he argued that prosecution has failed to prove guilt of the accused when prosecutrix herself deposed that no rape has been committed upon her by the accused-appellants.

Learned counsel for the appellants further contended that a reasonable doubt exists regarding link evidence.

The parcels were returned on the basis of some objections and these were kept by the police official with him.

He next argued that the doctor had signed the opinion that rape has been committed, on the report Ex.PB in the Court.

Learned counsel for the appellants further argued that no injury statement on the person of accused was prepared by the Investigating Officer, which also creates doubt in the prosecution version.

He next contended that defence version is more probable and the accused-appellants have been falsely implicated in the present case due to strained

relations of accused with the Sarpanch and eye witnesses have deposed falsely at the instance of the Sarpanch.

He further argued that in the present case, though the occurrence took place in populated area as per prosecution version but no independent witness was joined in the investigation or Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -7- examined in the Court.

Learned counsel for the appellants, therefore, argued that there being merit in the appeal, it should be allowed and accused-appellants should be acquitted.

On the other hand, learned Asstt.

Advocate General, Punjab for the respondent-State has argued that case of prosecution has been duly proved by the eye witnesses.

Even the prosecutrix admitted her signatures on her statement Ex.PD.

She also admitted her signatures on her MLR Ex.PA.

She further admitted the fact that she was taken to a plot forcibly and she raised cries there.

Learned State counsel further argued that case of the prosecution has been duly proved by the eye witnesses, which is duly supported and corroborated by medical evidence and investigation of the case.

The defence version is not believable.

There are no material contradictions or material improvements in the statements of the PWs, which may go to the root of the case.

He next contended that prosecutrix has been duly contradicted with her statement made before the police.

He further contended that when no independent witness has seen the occurrence, then there was no purpose to join independent witness in the investigation and to examine in the Court.

Learned State counsel, therefore, argued that there being no merit, the appeal should be dismissed.

I have gone through the evidence on record minutely and carefully and have heard learned counsel for the appellants and learned Asstt.

Advocate General, Punjab for the respondent-State.

From the evidence on record, I do not find any merit in the Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -8- arguments of the learned counsel for the appellants.

In the present case three eye witnesses i.e.PW-7 Kiran Mehmi, PW-10 Surinder Kumar and PW-12 Manish Kumar, have deposed consistently regarding prosecution version.

All of them have deposed that accused Sukhdev Singh was committing rape upon prosecutrix and accused Jinder Bhaiya had kept his hand on the mouth of the prosecutrix.

Statements of all these PWs are consistent on material points and there are no material discrepancies or contradictions nor any material improvements in their statements, which may go to the root of the case.

The perusal of cross-examination of these witnesses shows nothing to disbelieve their statements.

Therefore, these eye witnesses are truthful, trustworthy and reliable witnesses.

There is nothing on the record to show as to why these PWs are deposing falsely against the accused-appellants.

Their statements are also duly supported and corroborated by medical evidence.

PW-1 Dr.Kulwinder Kaur has deposed regarding injuries on the person of prosecutrix.

PW-1 Dr.Kulwinder Kaur and PW-2 Dr.Resham Lal have duly proved the report Ex.PB and their opinion.

If PW-1 has signed the report in the Court, even then, it will not have any affect on prosecution version.

PW-1 Dr.Kulwinder Kaur has found the hymen absent.

She has also taken vaginal swabs.

As per report of chemical examiner, semen was found on the shirt, salwar, under-shirt etc.and vaginal swabs of the prosecutrix and in view of the statement of eye witnesses, the prosecution has duly proved its case by leading cogent evidence against the accused-appellants.

Further, the recovery of broken Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -9- bangle pieces from the place of occurrence, also supports and corroborates the prosecution version.

The defence version is not believable.

Even, no defence has been taken in the statement under Section 313 Cr.P.C.There is nothing on the record to show as to what was the dispute between the accused-appellants and the Sarpanch and how the PWs are under the influence of the Sarpanch.

It is not believable that the eye witnesses, who were relative of prosecutrix, would level such type of serious allegations against the accused- appellants falsely to put

reputation of the prosecutrix or family members at stake.

Linear abrasions found on the breast of the prosecutrix, further supports and corroborates the prosecution version.

Though the prosecutrix has not supported the prosecution version and turned hostile but she was duly confronted with her statement recorded by the police Ex.PD, on which she admitted her signatures.

She also admitted that she gave statement to ASI Manjit Singh.

She further admitted her signatures on MLR Ex.PA.

She also admitted regarding shrieks raised by her.

Therefore, when the witness was confronted with her statement recorded by the police and those facts are found mentioned in the statement, then the statement can be considered under proviso of Section 162 Cr.P.C. Otherwise also, this statement given by the prosecutrix was under Section 154 Cr.P.C. and it was signed statement, which is a corroborative piece of evidence.

In the case State versus Ram Prasad Mishra and another, AIR 1957 SC366 it has been held that the evidence of hostile witness would not be totally rejected if spoken in favour of the Gulati Vineet 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -10- prosecution or the accused, but can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

Therefore, we accept the statement of PW-5 Des Raj given in chief-examination as a true version and the statement given in cross-examination as false.

From the evidence on record, it is also clear that PW-4 Parkash Chand being father of the accused has resiled from his statement.

However, he has been confronted with the statement recorded by the Police under Section 161 Cr.P.C.

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Hon'ble Supreme Court in Bhagwan Dass v.

State (NCT) of Delhi, 2011 (2) RCR (Cr.) 920 held as under: No doubt a statement to the Police is ordinarily not admissible in evidence in view of Section 162(1) Criminal Procedure Code, but as mentioned in the proviso to Section 162(1) Criminal Procedure Code it can be used to contradict the testimony of a witness.

Smt.

Dhillon Devi also appeared as a witness before the trial Court, and in her cross examination, she was confronted with her statement to the Police to whom she had stated that her son (the accused) had told her that he had killed Seema.

On being so confronted with her statement to the police she denied that she had made such statement.

We are of the opinion that the statement of Smt.

Dhillon Devi to the police can be taken into consideration in view of the proviso to Section 162 (1) Criminal Procedure Code, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment.

In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor.

When she was confronted with this statement in the court she denied that she had made such statement before the police.

We are of the opinion that her statement to the police can be taken into consideration in view of the proviso of Section 162(1) Criminal Procedure Code.

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Gulati Vineet Therefore, in view of the above law laid down by the 2013.10.05 11:46 I attest to the accuracy and integrity of this document Chandigarh Crl.

Appeal No.S-1565-SB of 2002 -11- Hon'ble Supreme Court, the statement given by prosecutrix before the police can be taken into consideration.

The statement of prosecutrix has been duly proved by PW-16 ASI Manjit Singh, who stated that he recorded the statement Ex.PD of prosecutrix correctly and the statement given by prosecutrix before the police is further supported and corroborated by statements of three eye witnesses i.e.PW-7 Kiran Mehmi, PW-10 Surinder Kumar and PW-12 Manish Kumar.

The perusal of evidence on record shows that the statement of prosecutrix given in chief-examination regarding denial of occurrence, cannot be believed and reliance can be placed on the statements of eye witnesses.

The mere fact that no injury statement was prepared by the Investigating Officer on the person of accused, will not create any doubt in the prosecution version.

Similarly, there is no evidence on record to show that any independent witness has seen the occurrence.

Therefore, non-joining of independent witness in the investigation will not create any reasonable doubt in the prosecution version.

The defence version is not believable.

As regarding link evidence, I find that it is complete.

There is no evidence on the record that samples were tampered with.

There is also no opinion of the Chemical Examiner that the seals were tampered with or not tallied.

Rather, the seals were found intact.

This report of Chemical Examiner further supports and corroborates the prosecution version.

The PWs have deposed that till the samples remained in their possession, they had not tampered with the same.

Therefore, link evidence is complete and no reasonable doubt exists Gulati Vineet
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Appeal No.S-1565-SB of 2002 -12- on this ground.

The mere fact that PW-1 Dr.Kulwinder Kaur has signed the opinion which was already written on the back side of the report of Chemical Examiner Ex.PB, in the Court, does not create any doubt in the prosecution version.

PW-2 Dr.Resham Lal has also proved the opinion by coming to the witness box.

Learned counsel for the appellants has cited judgment passed by the Hon'ble Supreme Court in Satpal Singh versus State of Haryana (2010) 8 SCC714 regarding age of the prosecutrix as it is not a consent case and the Court has sentenced the accused by treating her major and as there is no appeal by the State to enhance the sentence etc., therefore, the age of the prosecutrix in the present case is irrelevant.

Therefore, from the above, I find that prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt against the accused-appellants.

The impugned judgment of conviction and order of sentence passed by learned Addl.

Sessions Judge, Jalandhar are correct and as per law and same are upheld.

Resultantly, the present appeal stands dismissed.

As appellants are on bail, their bail bonds stand annulled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

(INDERJIT SINGH) September 25, 2013 JUDGE Vgulati Gulati Vineet 2013.10.05
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