

**State Vs. Babli @ Bawli and anr.**

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**Court :** Delhi

**Decided On :** Jan-22-2014

**Judge :** S. Muralidhar

**Appellant :** State

**Respondent :** Babli @ Bawli and anr.

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI #3. + CRL. L.P. No.125 of 2013 STATE ..... Petitioner Through: Ms. Aashaa Tiwari, APP SI Sunil Sharma, PS:Nand Nagri, Delhi versus BABLI @ BAWLI & ANR. Through: .....Respondents  
In person CORAM: JUSTICE S. MURALIDHAR

**ORDER**

2201.2014 % 1. The State seeks leave to appeal against the impugned judgment dated 16th July 2012 passed by the learned Additional Sessions Judge in Sessions Case No.179 of 2008 acquitting the Respondents of the offences under Sections 363/343/366A/328/109/114 read with Section 34 IPC.

2. The case of the prosecution is that, on 13th July 2008, on receipt of DD No.44B, ASI Bhupinder Singh along with Head Constable Kanwar Pal reached near Gagan Cinema, Nand Nagri, Delhi. There, the Complainant Bakshish Ali and his wife, Rehana met ASI Bhupinder Singh and produced Accused No.1. The Complainant (PW1) disclosed to him that Accused No.1 had kidnapped their daughter, the

prosecutrix (PW2) on 6th July 2008. It is stated that the lady constable, Reena Chauhan (PW4) was called to the spot and Babli (Accused No.1) (A-1) was interrogated. A-1 is stated to have disclosed that PW2 had been handed over to co-accused Chhoti, (Accused No.2) (A-2). Thereafter, ASI Bhupender Singh, along with other persons, reached near Chungi where A-2 was seen coming towards them with PW2. Thereafter, PW2 was taken into police custody, medically examined at the Guru Teg Bahadur Hospital (GTBH) and had her statement recorded, on the basis of which First Information Report (FIR) No.349 of 2008 was registered at Police Station (PS): Nand Nagri, Delhi on 14th July 2008. The statement of PW2 under Section 164 Cr PC was also recorded by the learned Metropolitan Magistrate (MM).The accused were arrested and thereafter a chargesheet was filed.

3. In the trial, PW1, his wife (PW3) and the prosecutrix PW2 were examined. The lady constable, Reena Chauhan (PW4), Head Constable, Kishan Pal (PW6), SI Rajbir Singh (PW7), ASI/IO, Bhupender Singh (PW8) were examined. The learned MM who recorded the statement of PW2 under Section 164 Cr PC, was examined as PW6. The in-charge of the school from where the school certificate of PW2 showing her date of birth was produced was examined as PW5. The Senior Resident of GTBH, who proved the MLC of PW2 was examined PW-10.

4. In the statement under Section 313 Cr PC, both the accused denied the incriminating evidence against them and claimed that they had been falsely implicated.

5. The case of the prosecution was that as per the school certificate, the date of birth of PW2 was 10th April 1997, and since it had been duly proved, it was clear that she was a minor when she was kidnapped by the accused persons. The case of the defence, however, was that PW2 was above 18 years on the date of the incident and that there were several contradictions in the depositions of the prosecution witnesses which threw considerable doubt on the claim of the prosecution that the date of birth of the prosecutrix was 10th April 1997.

6. The learned trial Court first analysed the evidence of the prosecutrix. The three statements made by her were first, to the police on 14th July 2008 (PW1/A), then

before the learned MM on 18th July 2008 under Section 164 Cr PC (PW2/B) and finally in Court on 9th March 2009 (when she took the witness stand). On several critical aspects her aforementioned three versions were inconsistent, and sometimes, even contradictory. This Court has also perused the trial court record and is of the view that for the reasons hereafter discussed, the conclusion of the trial Court that it was unsafe to rely on the evidence of PW2 is justified.

7. Taking up first the actual date of the incident itself, in her statement to the police, the prosecutrix stated that she was kidnapped on 6th July 2008. In her statement under Section 164 Cr PC, she did not mention any date. In her deposition in the Court, she could not confirm that the date was 6th July 2008. She simply stated that it was the 7th day of the month but had no recollection of the year or the month. As to the place to which she was going when was kidnapped, in her statement under Section 164 Cr PC, she mentioned that she was going to the market to buy a shameez, whereas in her deposition in Court, she stated that she was going to her Mausis daughters house to take a shameez. As regards her first encounter with A-1 Babli, in her statement to the police PW2 states that she met A-1 at 2 pm on 6th July 2008 outside Gagan Cinema, when A-1 lured her by offering her a cold drink and many other things. In her statement under Section 164 Cr PC, PW2 stated that she met A-1 on the way to the market and that A-1 told her that a friend of hers was calling PW2. In her deposition in Court, PW2 stated that she met A-1 outside Gagan Cinema at about 2 pm and that A-1 lured her by insisting that a friend of hers was calling PW2. The offering of the cold drink is not mentioned in the statement under Section 164 Cr PC or in the Court.

8. Importantly, PW2 made no mention of the address of A-1 either in her statement under Section 164 Cr PC or in the deposition in the Court, although before the police, she is supposed to have given it. This is critical because A-1 is supposed to have kidnapped PW2 and taken her to A-1's jhuggi. PW2 denied in Court that she had pointed out to the police the jhuggi of A-1. In her cross-examination, PW2 admitted that the jhuggi of A-1 was located amidst a large number of jhuggis which were visited by many persons residing therein.

9. The other important aspect about which PW2 made inconsistent statements at various stages is the manner of intoxication. In her statement to the police, she stated that A-1 gave her a drink in the pepsa bottle. In her statement under Section 164 Cr PC, she stated that after consuming the drink in a pepsa bottle given to her by A-1, she became unconscious. She added that A-1 also made her drink beer. In the Court, PW2 stated that A-1 gave her a cold drink whereupon she became intoxicated and then unconscious.

10. As regards what transpired at the jhuggi of A-1, PW2 stated to the police on 14th July 2008 that accused No.1 produced a man, who first harassed and then raped her, and that in the evening, another man came who did wrongful acts with her; that A-1 kept her confined for four days and made her do wrongful acts with two men. In her statement under Section 164 Cr PC, PW2 did not state the period for which she was kept confined. She stated that A-1 called several people to do wrongful acts with her. In her deposition in Court, PW2 stated that A-1 forced her to have sexual intercourse with four men who raped her and that A-1 kept her confined for one day. In the Court PW2 specifically denied that she had been confined for four days.

11. As regards the role of A-2, PW2 first informed the police that at the house of A-2, another man did wrongful acts with her. In her statement under Section 164 Cr PC, the manner of meeting between A-2 and PW2 was unclear. In her deposition in the Court, PW2 stated that A-2 forced her to have sex with an unknown person and kept her confined for seven days. On the aspect of marriage, in her statement to the police, PW2 stated that after getting her intoxicated A-1 stated that she should marry A-1's son Vinny, which was refused by PW2. However, PW2 made no mention of this in her statement under Section 164 Cr PC. In the Court, PW2 stated that the son of A-2 wanted to marry her and she refused.

12. The learned trial Court has, in para 15 of its judgment, opined that the said three statements of PW2 have made her evidence unreliable, untrustworthy and doubtful.

On a perusal of the trial Court record, this Court concurs with the above conclusion.

13. The learned trial Court has also adverted to the fact that for about eight days after PW2 allegedly went missing, her parents did not think of lodging any complaint. It was also not clear how PW1 came to know that A-1 had kidnapped PW2 since neither PW2 nor PW1 were known to A-1 prior to the incident. They were also not residing in the same locality. Further, although PW2 was kept in a jhuggi located amongst several other jhuggis she did not lodge any complaint with any member of the public or with the police regarding her illegal confinement. With their being no facility of a toilet in the jhuggi and with everyone using the public toilet, it was unlikely that PW2 never came out of the said jhuggi. It was strange that she had failed to raise any hue and cry or attract the attention of the public during her entire period of illegal confinement for about eight days.

14. The learned trial Court has also adverted to the unreliability of the school certificate regarding the age of PW2. In his deposition PW1 stated that he was married in 1984; that his first child was born one year thereafter; the gap between the children was about one to three years and that PW2 was his fourth child. In terms of the said deposition of PW1 PW2 could be said to have been born in or around 1991. This, therefore, threw considerable doubt on the claim of the prosecution that PW2 was only eleven years old on the date of her alleged abduction.

15. The Court finds that the learned trial Court has undertaken a very detailed analysis of the evidence on record. Having perused the petition and having considered the submissions of learned counsel for the Petitioner, the Court is not persuaded to hold that sufficient grounds have been made out for grant of leave against the impugned judgment dated 16th July 2012 passed by the learned ASJ.

16. The petition is accordingly dismissed. The trial court record be returned forthwith. S. MURALIDHAR, J.

JANUARY 22 2014 tp

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