

A PARMINDER KAUR @ P.P. KAUR @ SONI

v.

STATE OF PUNJAB

(Criminal Appeal No. 283 of 2011)

B JULY 28, 2020

**[N. V. RAMANA, SURYA KANT AND
KRISHNA MURARI, JJ.]**

Penal Code, 1860 – ss.366A and 506 – Case of prosecution

- C *that the appellant, a single lady who had a young boy as her tenant, lived in minor prosecutrix's (PW1) neighbourhood – She tried to entice the prosecutrix to indulge in illicit intercourse with the rich tenant boy and allegedly pushed her into the room occupied by him and bolted it from outside – Door was unlocked after five minutes, with prosecutrix's father (PW2) standing outside – Boy escaped –*
- D *Matter was reported only after the appellant allegedly threatened to kill prosecutrix's brother if anyone was informed – Alternate version given by appellant u/s.313,CrPC was rejected – Convicted u/ss.366A, 506 – Held: Five day delay in registration of FIR gains importance as the father of the victim is an eye-witness to a part of the occurrence – Difficult to appreciate that a father would await a second incident to happen before moving the law into motion – No complaint registered against the tenant boy who was not even traced – Numerous contradictions between testimonies of PW1 & PW2, which are fatal to prosecution's case – Important links of the story, including what happened in the crucial five minutes when the girl*
- E *was locked inside the room or how the male tenant reacted, are missing – Appellant's alternate version that there was no male tenant at all and no one except her child and mother lived with her and that she was falsely implicated as vengeance for filing rape complaint against the person with whom the prosecutrix's father used to work,*
- F *could not be lightly brushed aside – Prosecution failed to prove appellant's guilt u/ss.366A & 506 beyond reasonable doubt – CrPC, 1973 – s.313.*
- G *Code of Criminal Procedure, 1973 – s.313 – Held: Once a plausible version is put forth in defence at the s.313 examination stage, then it is for prosecution to negate such defense plea.*

Criminal Law – Sexual Offences – Delay in FIR – Sweeping Assumptions by Courts – Effect of – Discussed. A

Criminal Law – Re-appreciation of evidence by Supreme Court – Discussed.

Allowing the appeal, the Court

HELD 1.1 The five-day delay in registration of the FIR, in the facts and circumstances of this case, gains importance as the father of the victim is an eye-witness to a part of the occurrence. It is difficult to appreciate that a father would await a second incident to happen before moving the law into motion. Sweeping assumptions concerning delays in registration of FIRs for sexual offences, send a problematic signal to society and create opportunities for abuse by miscreants. Instead, the facts of each individual case and the behaviour of the parties involved ought to be analysed by courts before reaching a conclusion on the reason and effect of delay in registration of FIR. In the present case, neither is Section 366A by itself a sexual offence in the strict sense nor do the inactions of the prosecutrix or her father inspire confidence on genuineness of the prosecution story. PW-1 and PW-2 differed in their physical description of the boy's age, clothing and his whereabouts. If the boy was indeed a tenant and if he did live there for months, it is highly mootable that he couldn't have been traced. Lack of examination of material independent witnesses, adversely affects the case of the prosecution. [Paras 11, 13, 15][515-A-C; 516-A; 516-D]

1.2 Ordinarily, the Supreme Court ought not to re-appreciate evidence. However, where the courts below have dealt with the material-on-record in a cavalier or mechanical manner likely to cause gross injustice, then this Court in such exceptional circumstances may justifiably re-appraise the evidence to advance the cause of justice. Such re-assessment ought not to take place routinely and ought not to become substitution of an otherwise plausible view taken by the Courts below. There are numerous clear contradictions between the testimonies of the two star-witnesses, which is fatal to the prosecution case. Important links of the story, including what happened in the crucial five minutes when the girl was locked inside the room or how the male tenant

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- A reacted, are missing. Similarly, other links of the story are grossly inconsistent and don't fit with each other. [Paras 16, 17, 19 and 20][516-G-H; 517-A, C; 518-B-C]
- 1.3 Once a plausible version has been put forth in defence at the s.313 CrPC examination stage, then it is for the prosecution
- B to negate such defense plea. The alternate version given by the appellant could not be lightly brushed aside. Her two-part defence was that *first* there was no male tenant at all and no one except for her child and mother lived with her, and *second*, that she was being falsely implicated as vengeance for filing a rape complaint against one 'BS' with whom the prosecutrix's father used to work.
- C A rape complaint had indeed been made by the appellant against him approximately seven months previous to the present incident. DW-1, who lived in the neighbourhood of the parties, both supported the appellant's claim that there was no male tenant in her home and created sufficiently reasonable connection between
- D 'BS' and the prosecutrix's father by volunteering that PW-2 was residing in BS's premises. The trial Court's analysis of the appellant's Section 313 defence ought to have been deeper, before concluding it as being false or untrustworthy. Given the facts of this case where the common testimony of PW-1 on both charges was doubted, it would be unwise to rely upon it as the sole piece of evidence to convict the appellant for criminal intimidation without any other corroboration. [Paras 21-25][518-F-H; 519-A-G]

Kamij Shaikh v. Emperor AIR 1948 Pat 73 – approved.

- F *Musauddin Ahmed v. State of Assam, (2009) 14 SCC 541 : [2009] 9 SCR 1135; Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors. (2001) 6 SCC 145; Reena Hazarika v. State of Assam (2019) 13 SCC 289 : [2018] 13 SCR 1108; M Abbas v. State of Kerala (2001) 10 SCC 103; Manik Taneja & Anr. v. State of Karnataka & Anr. (2015) 7 SCC 423 : [2015] 1 SCR 156 – relied on.*

Bhupinder Sharma v. State of Himachal Pradesh (2003) 8 SCC 551 : [2003] 4 Suppl. SCR 792 – referred to.

<u>Case Law Reference</u>			A
[2003] 4 Suppl. SCR 792	referred to	Para 2	
[2009] 9 SCR 1135	relied on	Para 14	
(2001) 6 SCC 145	relied on	Para 15	
[2018] 13 SCR 1108	relied on	Para 21	B
(2001) 10 SCC 103	relied on	Para 21	
[2015] 1 SCR 156	relied on	Para 25	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 283 of 2011. C

From the Judgment and Order dated 30.11.1999 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 305-SB of 1999.

Dushyant Parashar, Dinesh Pandey, Manu Parashar, Ms. Jaspreet Gogia, Advs. for the appearing parties. D

The Judgment of the Court was delivered by

SURYA KANT, J.

1. The present Criminal Appeal has been preferred by Parminder Kaur, impugning the judgment dated 30.11.2009 of the High Court of Punjab and Haryana through which her challenge to a judgment dated 27.02.1999 passed by the Additional Sessions Judge, Barnala was turned down, thereby confirming her conviction of three years rigorous imprisonment and fine of Rs. 2000 under Sections 366A and 506 of the Indian Penal Code, 1860 (“IPC”). F

FACTS & CASE HISTORY

2. The prosecution story, as recorded in the FIR at around noon on 24.02.1996, was that the appellant was a single lady living with her child, mother and a young boy as her tenant in the neighbourhood of the prosecutrix’s¹ house. About a week prior to registration of the police complaint, the appellant called the prosecutrix to her house and tried to entice her to indulge in illicit intercourse with the rich tenant boy in return for clothes and trips from him. The appellant at about 6.00 A.M. on G

¹ *The name of the prosecutrix/victim has been withheld, in compliance with the ratio in Bhupinder Sharma v. State of Himachal Pradesh, (2003) 8 SCC 551.* H

- A 19.02.1996, allegedly pushed the visiting prosecutrix into the room occupied by the tenant boy and bolted it from the outside. It was only on hearing the prosecutrix's screams that after five minutes the door was unlocked, with her father (Hari Singh, PW-2), Bhan Singh and Karnail Singh standing outside. Swiftly, the boy ran out of the room and successfully escaped. Upon the prosecutrix emerging from the room, her father protested and expressed his dismay to the by-standing appellant. Scared for their reputation, the prosecutrix and her father returned to their home without reporting the matter to anyone, except the prosecutrix's mother. However, on 24.02.1996 at 7.00 A.M., the appellant caught hold of the prosecutrix outside her house and threatened to kill
- B her brother if anyone was informed of the matter. The prosecutrix was able to escape the appellant's clutches and worried at this high-handedness, proceeded with her father towards the police station to report these two incidents and lodged a complaint.

3. During trial, the prosecution examined five witnesses, including

- D the prosecutrix (PW-1), her father (PW-2), the draftsman who prepared the site plan (PW-3), the headmistress who proved the prosecutrix's age (PW-4) and the investigating officer (PW-5). The appellant, in turn, both denied all allegations and examined one witness of her own – a neighbour, Gurnail Singh (DW-1) and offered an alternate version in her statement under Section 313 of the Code of Criminal Procedure, 1973 ("CrPC"), claiming that there was no tenant at all in her home and that the complaint was nothing but motivated revenge at the instance of one Bhola Singh against whom she had levelled allegations of rape a few months ago.

4. This alternate version was summarily rejected by the trial Court which concluded that the appellant's claim of the complaint being at the

- F instance of Bhola Singh was unlikely both because malicious prosecution of sexual abuses involving minors, at the instance of third parties, was improbable; and even DW-1 in his cross-examination had admitted that Hari Singh was a permanent employee of the Irrigation Department and could not be a *Karinda* (employee) of Bhola Singh as claimed by the
- G appellant.

5. Relying upon the school records produced by DW-4, the Court observed that the prosecutrix was studying in Class VII with date of birth as 12.04.1982, thereby unimpeachably making her a minor. Without delving into the elements of Section 366A or 506 IPC, or whether each

individual ingredient had been satisfied by the prosecution, the learned Additional Sessions Judge focused on negating the defences projected by the appellant. In response to the contradictions between important aspects of the prosecutrix and her father's testimonies, like differences in physical description and antecedents of the male tenant and the inability of the witnesses and the police to catch or trace the boy, the trial Court instead noted that there was no reason to disbelieve the prosecutrix and her father. The five-day delay in registration of the FIR was condoned for having arisen out of natural fear of reputation of the prosecutrix and her family, as well as the mild severity of the case. Similarly, the non-examination of the other two independent witnesses, Bhan Singh and Karnail Singh was ignored as being normal reluctance of bystanders in cases where there was no rape or assault.

6. Accordingly, the trial Court held that the appellant had intentionally induced the prosecutrix to perform illicit intercourse with her male tenant, and that she had also criminally intimidated the prosecutrix by threatening her family member. Noting the large number of dependents that the appellant had to support as a single lady, and considering the lack of commission of any assault or rape against the prosecutrix, the appellant was concurrently sentenced to three years rigorous imprisonment and fine of Rs 2,000 (or further six months rigorous imprisonment in lieu thereof) under Section 366A, and one year rigorous imprisonment and fine of Rs. 1,000 (or further three months rigorous imprisonment in lieu thereof) under Section 506 of IPC.

7. The aggrieved appellant approached the High Court which too refused to interfere with the order of conviction. While dismissing the appeal, the High Court observed that the statement of the accused under Section 313 CrPC appeared to be an after-thought, and that in the absence of any evidence proving enmity between the parties it was impossible that anyone would falsely implicate a woman in such like offence. The minority of the prosecutrix was noted as having been proved, and the testimonies of PW1 and PW2 were held to be impeccable and corroborating each other completely. Similar to the trial Court, the High Court also explained-away the delay in registration of FIR as a result of family reputation put at stake in matters of sexual offence cases. Other omissions in the form of non-examination of Bhan Singh and Hari Singh and failure to catch or trace the identity of the male tenant were deemed insignificant and immaterial.

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A**CONTENTIONS OF PARTIES**

8. The judgments of the trial Court and High Court have been elegantly assailed before us by learned counsel for the appellant who contended that the testimonies of the two star-witnesses, being full of material contradictions, are far from reliable. The delay in registration of
- B the FIR and the lack of any attempt to catch or even later trace the male tenant showed that the story was concocted by the prosecutrix's family with ulterior motives. Reliance was also placed on the denial and alternate version put forth by the appellant in her statement under Section 313 CrPC, and the failure of the Courts below to either examine such statutory
 - C statement in-depth or for the prosecution to belie it effectively. Emphasis was laid on the statement of DW-1 who volunteered during his cross-examination that PW-2 was then living in the house owned by Bhola Singh, the person against whom the appellant had alleged rape. The deleterious effect of these proceedings on Bhola Singh's trial and his subsequent acquittal on grounds that Parminder Kaur (the appellant here)
 - D was a lady of questionable character who indulged in trafficking of minors, was highlighted to show colourable motive behind registration of this case against the appellant.

9. On the contrary, learned state counsel supported the impugned judgment(s) by placing emphasis on the concurrent findings of the Courts below. Reliance was also placed on PW-2's cross-examination wherein he himself denied knowing Bhola Singh, to counter the allegation of false implication by the prosecutrix.

ANALYSIS***I. Sweeping generalisations and superficial analysis***

- F 10. Having heard learned counsel for the parties at considerable length through video conferencing, we find from the impugned orders that the Courts below failed in making the desired attempt to delve deep into the factual matrix of this case. Many aspects, as discussed hereunder, have completely been ignored or only dealt with hastily. Further, the
- G reasoning is generic and is premised upon generalisations which may not be necessarily true always. It is indisputable that parents would not ordinarily endanger the reputation of their minor daughter merely to falsely implicate their opponents, but such clichés ought not to be the sole basis of dismissing reasonable doubts created and/or defences set out by the
- H accused.

11. Similarly, the five-day delay in registration of the FIR, in the facts and circumstances of this case, gains importance as the father of the victim is an eye-witness to a part of the occurrence. It is difficult to appreciate that a father would await a second incident to happen before moving the law into motion. Sweeping assumptions concerning delays in registration of FIRs for sexual offences, send a problematic signal to society and create opportunities for abuse by miscreants. Instead, the facts of each individual case and the behaviour of the parties involved ought to be analysed by courts before reaching a conclusion on the reason and effect of delay in registration of FIR. In the facts of the present case, neither is Section 366A by itself a sexual offence in the strict sense nor do the inactions of the prosecutrix or her father inspire confidence on genuineness of the prosecution story. No steps were taken to avail of medical examination of the victim, nor was the Panchayat or any social forum approached for any form of redress till the occurrence of the second alleged incident.

12. Further, it is beyond comprehension that the prosecutrix's father and his two male associates failed to stop the tenant boy who was allegedly about to commit a sexual offence with the minor victim and neither did they later make any attempt to even register a complaint against him. Strangely, the prosecution has acquiesced to such disappearance of the boy from the scene. Still further, the father of the prosecutrix merely registered his protest to the appellant on the scene, instead of reacting instinctively and approaching police authorities when faced with possible trafficking of his daughter. This conduct of belatedly proceeding against only the prosecutrix creates a lurking suspicion against the prosecution case and it may not be totally improbable to infer that it was a malicious attempt at the behest of Bhola Singh to falsely implicate a weak rape victim and stifle her ability to seek justice.

II. Shoddy investigation and prosecution

13. The original record elucidates the lack of serious effort on part of either the investigation agency or the prosecutor to bring home the appellant's guilt. Save for the initiative of the prosecutrix and her father to register the complaint, no substantive evidence has been gathered by the police. Despite the male tenant having been residing with the appellant allegedly for many months, the police were unable to even discover his name, let alone his antecedents or location. Further, DW-1 casts an impressionable doubt on the existence of the boy in the first

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- A place. This is further buttressed by the fact that PW-1 and PW-2 differed in their physical description of the boy's age, clothing and his whereabouts. If the boy was indeed a tenant and if he did live there for months, it is highly mootable that he couldn't have been traced.

14. The spot map prepared by PW-3 also has glaring omissions.
- B The location of Bhan Singh's house and the place where the appellant allegedly threatened the prosecutrix on 24.02.1996 are not even marked. Letters which the prosecutrix alleged in her examination-in-chief and police complaint that the appellant got written from her, have not been produced during trial. These could have shed light on the relationship between the accused, prosecutrix and the male tenant prior to the incident.
- C It is the duty of the prosecution to lead the best evidence in its possession, and failure to do so ought to lead to an adverse inference.²

15. Non-examination of Bhan Singh and Karnail Singh is also a noticeable lapse, given the gaps in the prosecution story. It appears that no serious attempt was made to get them examined to resolve the contradictions in the testimonies of PW-1 and PW-2. Such lack of examination of material independent witnesses, adversely affects the case of the prosecution. This Court in *Takhaji Hiraji v. Thakore Kubersing Chamansing and others*³, viewed that:

- E “19. ... *It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. ...*”
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G ***III. Gross mis-appreciation of conflicting testimonies***

16. Ordinarily, the Supreme Court ought not to re-appreciate evidence. However, where the courts below have dealt with the material-on-record in a cavalier or mechanical manner which is likely to cause

² Musaiddin Ahmed v. State of Assam, (2009) 14 SCC 541, 11-15.

H ³(2001) 6 SCC 145.

gross injustice, then this Court in such exceptional circumstances may justifiably re-appraise the evidence to advance the cause of justice. There is no gainsaying that such re-assessment ought not to take place routinely and ought not to become substitution of an otherwise plausible view taken by the Courts below.

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17. The trial Court has summarily disregarded the contradictions highlighted by the defense side, on the premise that such contradictions had no material bearing and that there was no reason to disbelieve the prosecutrix. The High Court too has opined that PW-1 and PW-2 have completely corroborated each other and their testimonies were impeccable. These reasons, in our considered opinion, are not only contrary to the record but they also lead to an impermissible reversal of the burden of proof imposed in criminal trials. There are numerous clear contradictions between the testimonies of these two star-witnesses, which we find fatal to the prosecution case.

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18. *First*, PW-1 states that when the door was unlocked from outside, only her father (PW-2) and Bhan Singh were present outside. However, this contradicts both the information she gave in the police complaint and the testimony of her father (PW-2) who states that additionally a third person, Karnail Singh, was also present. *Second*, the prosecutrix's description of the male tenant differs significantly from that of her father. Whereas PW-1 estimated his age at about 26 years and described him as wearing a pant-shirt, PW-2 believed the boy to be 18-19 years' old and wearing a banian, underwear and dirty shirt. *Third*, on the antecedents of the anonymous boy, the prosecutrix stated that he was residing with the appellant for a year, whereas this period was materially less at only 2-3 months per her father. *Fourth*, whereas prosecutrix claimed that her father and Bhan Singh unsuccessfully attempted to catch the tenant while he was escaping from the room, PW-2 himself states that he was too perplexed to either run or raise any alarm. *Fifth* and most notably, on the point of recording of the FIR, the testimonies of PW-1, PW-2 and PW-5 all differ noticeably. Whereas PW-1 claims that the complaint was recorded by PW-5 while sitting on a "patthar" (stone), PW-2 claims that the same was recorded by PW-5 while sitting on a "concrete bench" in the waiting shed of a bus stand in the presence of two other policemen. Most intriguingly, PW-5 gives an entirely third version, claiming that he was present at the bus stand with five other police officials and that the statement was written not by him

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- A but by another ASI, who placed the papers on the bonnet of the jeep while standing.
 - 19. In addition to these inconsistencies which cast a serious shadow of doubt over the version of events put forth by the prosecution, the accounts of PW-1 and PW-2 are superficial and lack detail. Important links of the story, including what happened in the crucial five minutes when the girl was locked inside the room or how the male tenant reacted, are missing.
 - 20. Similarly, other links of the story are grossly inconsistent and don't fit with each other. PW-2 admits to being not at home and instead
- B outside Bhan Singh's house during the initial part of the incident, which as per the prosecutrix's statement was a 10-minute walk from the spot of the crime. It is thus unlikely that PW-2 could have heard the prosecutrix's screams from such afar or could have covered such a significant distance in less than five minutes as claimed by PW-1. There are, thus, mutual contradictions in the prosecution story.
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IV. Failure to refute Section 313 CrPC statement

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21. Under the Code of Criminal Procedure, 1973 after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself.⁴ Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities.⁵ Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defense plea.

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22. In the case at hand, the alternate version given by the appellant could not be lightly brushed aside. Her two-part defence, put succinctly, was that *first* there was no male tenant at all and no one except for her child and mother lived with her, and *second*, that she was being falsely

⁴ Reena Hazarika v. State of Assam, (2019) 13 SCC 289, 19.

⁵ M Abbas v. State of Kerala, (2001) 10 SCC 103, 10.

implicated as vengeance for filing a rape complaint against one Bhola Singh with whom the prosecutrix's father used to work. A

23. It is revealed that a rape complaint had indeed been made by the appellant against Bhola Singh approximately seven months previous to the present incident. Not only did she face difficulties in registering an FIR of rape with the police, but she also had to take pains in filing a private complaint and prosecuting the case against such third party. In fact, the effect of these proceedings was in line with the appellant's defence, for in that rape trial the trial Court drew a damning observation against her character (calling her a child trafficker) owing to these proceedings. B

24. Lastly, DW-1, who lived in the neighbourhood of the parties, both supported the appellant's claim that there was no male tenant in her home and created sufficiently reasonable connection between Bhola Singh and the prosecutrix's father by volunteering that PW-2 was residing in Bhola Singh's premises. Reliance on mere admission by DW-1 during cross-examination that PW-2 was a government employee, neither negates the defense of false implication nor does it imply that PW-2 couldn't be working with Bhola Singh in a part-time/casual capacity or staying in Bhola Singh's house. Thus, the trial Court's analysis of the appellant's Section 313 defence ought to have been deeper, before concluding it as being false or untrustworthy. C

V. Charge of Criminal Intimidation

25. Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a pre-requisite of successful conviction under Section 506 of IPC.⁶ The trial Court has undertaken no such separate analysis or recorded any finding on this count, thus calling into question the conviction for criminal intimidation. Further, the nature of this charge is such that it is a derivative of the main charge of 'procurement of minor girls'. Given the facts of this case where the common testimony of PW-1 on both charges has been doubted, it would be unwise to rely upon it as the sole piece of evidence to convict the appellant for criminal intimidation without any other corroboration.⁷ D

⁶ Manik Taneja & Anr. v. State of Karnataka & Anr., (2015) 7 SCC 423, 12.

⁷ Kamij Shaikh v. Emperor, AIR 1948 Pat 73, 5.

A CONCLUSION

26. We are thus of the considered view that the prosecution has failed to discharge its burden of proving the guilt of the appellant under Section 366A and 506 of the IPC beyond reasonable doubt. Thus, for the reasons aforesaid, the appeal is allowed and the conviction and sentence awarded by the Courts below are set aside. The appellant is acquitted and consequently set free.

Divya Pandey

Appeal allowed.