

* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 08.09.2009
Judgment delivered on: 21.12.2009

Crl. Appeal No. 934/2006

RAMESH Appellant

Vs

STATE (GOVT. OF NCT) DELHI Respondent

Advocates who appeared in this case:

For the Appellant : Ms Saahila Lamba, Advocate
For the Respondent : Mr Amit Sharma, Addl. Public Prosecutor

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is an appeal directed against the judgment dated 12.07.2006 passed by the Addl. Session Judge, Tis Hazari, Delhi in S.C. No. 11/05 and sentence dated 14.07.2006.
2. By virtue of the impugned judgment the appellant has been convicted of offences under Section 376(2)(g) and Section 506, para (ii) of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). Accordingly, the appellant has been sentenced to 10 years of rigorous imprisonment and a fine of Rs 2000/- in respect of offence under Section 376(2)(g) of the IPC. In default of payment of fine the appellant is required to undergo a further rigorous imprisonment for a period of two months. As regards the conviction for offence under Section 506, para (ii) of the IPC is concerned, the appellant is required to undergo rigorous imprisonment for three (3) years and a fine

of Rs 1000/-. In default of payment of fine the appellant is required to undergo a further rigorous imprisonment for a period of one month. Both these sentences are to run concurrently.

3. In brief, the prosecution version is that on 26.04.2004 the prosecutrix along with her relative one Sati Ram (PW9), who incidently is also her boyfriend, arrived from Jalpaiguri in West Bengal at the Old Delhi railway station. At the railway station they were met by the appellant. The appellant, who claimed to have known them, struck up a conversation with them and in a matter of conversation inquired as to the purpose of their visit. On being told that the prosecutrix and Sati Ram (PW9) had come to Delhi for a job, he promised to get them a job. The appellant also promised to get them a place where they could reside. The appellant, evidently, told them that for this purpose they would have to meet up with his friend who will be available at the New Delhi railway station. On this pretext the appellant accompanied the prosecutrix and Sati Ram (PW9) to the New Delhi railway station. On reaching the place the appellant informed them that his friend would arrive late at night, consequently, the prosecutrix and Sati Ram (PW9) slept at the railway station. Sometime, in the early hours of 27.04.2004, the prosecutrix and Sati Ram (PW9) were woken up; the appellant introduced them to his friend Rakesh. After a while they returned back to the Old Delhi railway station. It transpires that at some point in time, the appellant and his friend Rakesh parted company on the pretext of getting Sati Ram (PW9) a job. Rakesh took away Sati Ram (PW9), while the appellant remained with the prosecutrix. However, after some time Rakesh returned and informed the prosecutrix and the appellant that Sati Ram (PW9) has been arrested by the police. The prosecutrix was then told that she would have to be hidden so that the police do not apprehend her. Based on this ruse the appellant and his friend persuaded the prosecutrix to visit a cinema hall. On the prosecutrix showing her disinclination, she was slapped. The prosecutrix continued to do, the appellant and his friend Rakesh's bidding as she was assured that they would try

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and secure the release of Sati Ram (PW9) and for this purpose they would have to involve other friends. It is in this context that the prosecutrix was again put on the train and taken to Ghaziabad. On reaching Ghaziabad she was taken to a nearby field where the prosecutrix was molested, threatened and thereafter raped by Rakesh and the appellant; who took turns at her. Eventhough the prosecutrix resisted and raised an alarm she was not able to prevent herself from being subjected to rape. The assailants' beastiality left the prosecutrix unconscious. She spent the night in the fields. With the break of dawn the assailants realizing the gravity of their dastardly act threatened to kill the prosecutrix and throw her body in the nearby naala. Scared, the prosecutrix promised not to reveal her horrific tale to anyone. She sought shelter at the Sheesganj Gurudwara, Delhi (hereinafter referred to as the 'Gurudwara'). The assailants complied; the prosecutrix was secured shelter at the Gurudwara, with the appellant for company, while Rakesh went away.

3.1 The appellant's crime came to light when a lady help (sewadar) Paramjit Kaur (PW11), who was tasked with cleaning the rooms, came across the prosecutrix. The lady sewadar (PW11) noticed blood stains on the clothes of the prosecutrix; when asked, the prosecutrix blurted out the events of the previous night to the sewadar. The appellant, who was in the vicinity, attempted to flee. He did not succeed and was caught by male helps (sewadars) of the Gurudwara.

3.2 Consequently, the police station Kotwali were informed by the Gurudwara authorities at about 5.00 – 6.00 a.m. on 28.04.2004. On being informed the police personnel SI Harivansh Singh (PW5) and Insp. Shashi Bala (PW6) reached the Gurudwara. Upon interrogation of the prosecutrix, it was decided that the incident related to police station R.M.D. The prosecutrix and the appellant were accordingly brought to police station R.M.D. A statement of the prosecutrix (Ex. PW1/A) was recorded. Based on the said statement a FIR (Ex. PW13/B) bearing no. 134/2004 under Sections 363/376/506/34 of the IPC was registered at police station R.M.D. The

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investigation of the case was handed over to SI Sushila Rana (PW22). On the same day, i.e., 28.04.2004 the prosecutrix was sent for medical examination at Aruna Asaf Ali Govt. Hospital (hereinafter referred to as the 'Hospital'). Similarly, the appellant was medically examined on 30.04.2004, and also on 02.05.2004 by Dr. Akash Jhangee (PW17). On 05.05.2004 the prosecutrix's statement (Ex. PW1/B) under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') was recorded by the Magistrate. On completion of investigation, a chargesheet was filed against the appellant. The co-accused Rakesh, since he had absconded; was declared a proclaimed offender. Proceedings under Sections 82-83 of the Cr.P.C. were commenced against him. The prosecution, in order to prove its case, cited 22 witnesses; while the defence did not lead any evidence. The statement of the appellant under Section 313 of the Cr.P.C. was recorded whereby every incriminating evidence collected by the prosecution was put to him. The appellant, in response, has denied routinely each and every incriminating evidence put to him by the trial court. The only plea that the appellant has raised is that he has been falsely implicated in the case by the police.

4. Ms Saahila Lamba, learned counsel for the appellant has assailed the trial court's judgment on the following grounds:-

(a) there are contradictions in the version set by the prosecutrix at various stages of the case. In order to demonstrate the same the learned counsel has referred to the statement of the prosecutrix (Ex. PW1/A) before the police; the statement made by the prosecutrix to the magistrate under Section 164 of the Cr.P.C.; and the deposition in court, of the prosecutrix both in examination-in-chief and her cross-examination, thereafter. On reading of the aforesaid versions, it is sought to be demonstrated that there is a contradiction; firstly, in so far as Sati Ram's (PW9) relationship with the prosecutrix is concerned. It is contended at one place that Sati Ram's (PW9) relationship with the prosecutrix is described as that of a relative, i.e., he is her cousin,

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and at another place his relationship with the prosecutrix is that of a boyfriend, and at third place he is described as her husband;

(ii) the other contradiction pointed out is with regard to the inconsistency in her statements at various stages, as to who between the two, that is, Rakesh or the appellant, in the first instance, accompanied Sati Ram; and therefore who, i.e., the appellant or Rakesh came back and reported that Sati Ram (PW9) had been arrested by the police. In this context the testimony of Sati Ram (PW9) was also relied upon to show the discrepancy in the version set out by the prosecutrix. At one place the prosecutrix seems to have said that it was Rakesh who was accompanied by Sati Ram (PW9), and informed the appellant and prosecutrix, that Sati Ram (PW9) had been arrested; at another place the prosecutrix is stated to have said that it was appellant who accompanied Sati Ram (PW9) and he came back and informed the prosecutrix and Rakesh that Sati Ram (PW9) had been arrested;

(iii) the third contradiction, which is pointed out, is that in the first statement made to the police the prosecutrix had not made any reference to the fact that she was forced to visit a cinema hall, whereas in her statement (Ex. PW1/B) under Section 164 of the Cr.P.C. before the Magistrate, her deposition in the court and in her cross-examination she had alluded to the fact that she was forced to visit the cinema hall;

(iv) there is admission on the part of Sati Ram (PW9) in his cross-examination that it is he who raped the prosecutrix;

(v) even though the incident occurred, according to the prosecutrix, at about 9.00 a.m. in the morning of 28.04.2004, the prosecution's case is that the police had received the information at about 6.00 p.m. while the rukka records time of the incident as 9.30 p.m. The appellant's arrest vide arrest memo (Ex. PW22/C) is shown as 10.30 p.m. The delay needs to be explained by the prosecution;

(vi) there are discrepancies with respect to the articles sent to Forensic Science Laboratory (in short the 'FSL'). In this connection, it was submitted that:

(a) the clothes of the prosecutrix were never seized. What was seized were her undergarments and what was sent to the FSL was the prosecutrix's salwar.

(b) what was sent to the FSL was the second undergarment of the prosecutrix, which was purportedly recovered at the behest of the appellant. There is no explanation as to what happened to the first undergarment that the prosecutrix was wearing at the time of her medical examination.

(c) the disclosure statement (Ex.PW22/B) of the accused does not refer to any undergarment, therefore, the undergarment which was recovered, cannot be used against the accused.

(vii) there are discrepancies with respect to dates on which the case property was sent to FSL and the person who took the case property for analysis to FSL. It is not clear as to whether the case property was taken by constable Rajesh (PW16) or SI Sushila Rana (PW22);

(viii) Report of the FSL reveals absence of semen on the vaginal swab of the prosecutrix.

4.1 To buttress her submission the learned counsel relied upon the following judgments:

Radhu vs State of MP (2007) 12 SCC 57, Pohalya Motya Valvi vs State of Maharashtra (1980) 1 SCC 530 at para 15 page 535-536 and Sadashiv Ramrao Hadbe vs State of Maharashtra & Anr. (2006) 10 SCC 92.

5. As against this, Mr Amit Sharma, learned Addl. Public Prosecutor submitted in rebuttal as follows:

5.1 Inconsequential discrepancies with regard to prosecutrix's relationship with Sati Ram (PW9) would not impact the case of the prosecution as long as this court were came to the conclusion that the prosecutrix's statement with regard to the incident is trustworthy.

5.2 The learned APP submitted that the relationship of the prosecutrix with Sati Ram (PW9) is that of a distant relative which perhaps had physical overtones, but there was no allegation of the prosecutrix that Sati Ram (PW9) had raped her. The stray sentence in Sati Ram's (PW9) deposition would thus have to be excluded.

5.3 The delay in recording the rukka and timing of FIR was sought to be explained on account of the fact that the information with regard to the incident was first received by police station at Kotwali, and thereafter communicated to police station at R.M.D. The learned APP submitted that delay by itself would not enure to the benefit of the defence.

5.4 As regards the submission for the appellant that clothes which were not seized, i.e., the salwar, was sent for analysis to the FSL was sought to be rebutted by the learned APP by relying upon the testimony of prosecutrix herself. In this connection he drew my attention to the statement made by the prosecutrix to the effect that when she was taken for medical examination her 'clothes' were seized. The learned APP thus submitted that in the road certificate, which accompanied the samples and packets sent to FSL, there is a clear and separate entry with regard to undergarments which were seized at the site of occurrence at the pointing out of the appellant as well as the undergarments which were seized at the time of the medical examination of the prosecutrix. The learned APP submitted that the expression undergarment was a misnomer and if read in conjunction with the testimony of the prosecutrix it had to be clothes. My attention was also drawn to the MLC (Ex. PW4/C) of the prosecutrix wherein there is a reference to the 'under clothes' of the patient. The learned APP submitted that as a matter of fact it is quite clear that there was no second undergarment. The only undergarment was the one which was found at the site of the incident.

5.5 The learned APP further submitted that it was W/H.C. Rajesh (PW16), who had taken the prosecutrix for medical examination on 28.04.2004 to the hospital and that,

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there is a reference to the fact, in her deposition that after the prosecutrix was medically examined she was handed over a slide and a pulanda with sample seal by the doctors. The said prosecution witness PW16 proved the recovery memo (Ex. PW16/A). The learned APP also relied upon the testimony of H.C. Lal Chand (PW14) to demonstrate that both at the time of receipt of the sealed parcels on 28.04.2004 as well as on 02.05.2004 and also at the time of their despatch to the FSL and their inward receipt in the malkhana the case property remained intact. The learned APP thus submitted that there was no suggestion made in the cross-examination to PW16/PW14 that how is it that what was handed over to them was an undergarment of the prosecutrix whereas, what was sent for analysis to the FSL was a salwar. It was, therefore, the submission of the learned APP that inaccurate description of the prosecutrix's apparel cannot enure to the benefit of the defence.

5.6 The learned APP relied upon the testimony of Taranjeet Singh (PW7), Paramjit Kaur (PW11) and Bagicha Singh (PW12) to substantiate the prosecution's version. He specifically referred to the fact that the appellant's guilt was also evident from the fact that he attempted to get away when he realized that the prosecutrix had revealed his crime, to the female help (sewadars) of the Gurudwara.

5.7 The learned APP also submitted that the defence has taken diametrically opposite stand. On the one hand the defence has taken a stand that the appellant had been falsely implicated and that he had nothing to do with the prosecutrix; and on the other hand, in the cross-examination of PW1 it has come through that the defence sought to take up a stand that the prosecutrix was involved in prostitution, and that Sati Ram (PW9) had accepted money on her behalf for sexual favours.

5.8 The learned APP referred to the pointing out statement (Ex. PW18/A) as also the disclosure memo (Ex. PW22/B). He submitted that a perusal of the same would show that it was based on the pointing out of the appellant, that the spot, where the crime was committed, was identified. It was at that spot that the police recovered the

undergarment of the prosecutrix. The said undergarment was shown to the prosecutrix, who identified the same.

5.9 The learned APP submitted that the prosecution's case has been established beyond a reasonable doubt and in this regard he referred to the following: testimony of PW1; the MLC of PW1 (Ex. PW4/C) which showed that the prosecutrix had bruises and abrasions on her cheek and back and swelling on the face; the testimony of Dr. Akash Jhangee (PW17) which revealed in great detail the injuries on the person of the appellant and, in particular, indicated the absence of smegma on the penis of the appellant; the semen stains on the undergarments of both the accused as well as the prosecutrix as also the serological report, which showed that both the semen stains on the undergarment of the appellant as well as that of the prosecutrix had a blood group 'B'.

6. I have heard the learned counsel for the appellant and the respondent-State. I am of the view that the prosecution has been able to establish its case, but for some minor discrepancies, beyond a reasonable doubt. My reasons for coming to the said conclusion are as follows:

7. The core aspects of the offence committed by the appellant have come through in the testimony of the prosecutrix. A close scrutiny of the prosecutrix's testimony reveals a tale of sordid penury where illiterate migrants, who come to the city in search of work, get ensnared by unscrupulous and anti-social elements into situations which expose their physical well-being to grave danger. The present case is one such instance. On 24.04.2004 the prosecutrix had left Jalpaiguri in West Bengal alongwith Sati Ram (PW9) for Delhi with the sole objective to find work to eke out their living. At the station, she and Sati Ram (PW9) met up with the appellant, who inveigled them into believing that he alongwith his friend would be able to get them a job. Somehow, the appellant and his friend Rakesh managed to put Sati Ram (PW9) out of the picture.

Prosecutrix, who is a village belle, was taken from one place to another by the appellant

and his friend Rakesh, till they finally reached a lonely spot in the fields next to the railway station. There, the prosecutrix was molested, threatened and raped by both the appellant, and his friend Rakesh. This crime was committed on the prosecutrix between night of 27.04.2004 and the early hours of 28.04.2004. In the morning she was housed in the precincts of the Gurudwara. Had it not come to the notice of a vigilant sewadar Paramjit Kaur (PW11) the prosecutrix's sordid and horrific experience would not have come to light. The appellant, at that point in time, was with the prosecutrix: On being discovered he attempted to flee. Fortunately, the appellant was caught and brought to trial.

8. The learned counsel for the appellant in order to create a doubt, as regards the prosecution version, has referred to the different versions given by the prosecutrix with regard to her relationship with Sati Ram (PW9) as also with regard to who out of the two, i.e., the appellant or Rakesh was responsible for weaning away Sati Ram (PW9) from her. The learned counsel for the appellant has also referred to the fact that there was no reference to the prosecutrix having visited the cinema hall with the appellant and his friend Rakesh, in her first statement to the police. In my view, these are discrepancies which cannot have any impact on the prosecution's case that the prosecutrix was subjected to sexual intercourse without her consent. The prosecutrix perhaps, was embarrassed about the relationship with Sati Ram (PW9). At one place she claimed him to be her cousin brother, while at another, she claimed that he was her boyfriend. The fact of the matter is; that she did acknowledge — that she has had a physical relationship with Sati Ram (PW9). The fact also remains that — her physical relationship with Sati Ram (PW9) was consensual. Nevertheless she at no point in time stated that Sati Ram (PW9) had subjected her to sexual intercourse without her consent. On the contrary she consistently stated that the appellant and Rakesh had lured her to a lonely spot near the railway station in Ghaziabad on the pretext that they would seek help from their friends to look for Sati Ram (PW9); she has not deviated from her

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statement made either before the police or before the magistrate or even before the court that the appellant and Rakesh forcibly subjected her to sexual intercourse. The submission of the learned counsel for the appellant that Sati Ram (PW9) had admitted in his cross-examination that he had committed rape on her is, according to me, inaccurate description of the relationship that subsisted between Sati Ram (PW9) and the prosecutrix. This is clear from the very next statement which Sati Ram (PW9) made before the Court in his cross-examination wherein he voluntarily made two crucial statements. First, that a consensual sexual relationship obtained between him and the prosecutrix. Second, that the prosecutrix had been in love with him since childhood.

9. As regards the appellant's submission with regard to the delay in recording the FIR, I find that no such submission was made before the trial court. Even the grounds of appeal do not raise any such ground. In my view the delay by itself cannot enure to the benefit of the defence if otherwise prosecutrix's testimony is trustworthy. In the first instance, the delay was perhaps caused on account of the fact that the intimation regarding the crime had been received at police station Kotwali near the Gurudwara at 6.00 p.m. This is alluded to by Insp. Shashi Bala (PW6) in her deposition. It was thereafter revealed that police station Kotwali may not have jurisdiction to deal with the case and hence, an intimation was sent to police station, at R.M.D. The case was handed over to SI Sushila Rana (PW22) for investigation. The rukka was sent to the police station at 9.00 p.m. This aspect of the case was brought in the testimony of H.C. Kunji Lal (PW13) who was on duty at police station R.M.D. on 28.04.2004 between 4.00 p.m. and midnight. S.I. Sushila Rana (PW22) in her deposition stated that it took her one and a half hour to record the statement (Ex.PW1/A) of the prosecutrix. PW22 also deposed that prosecutrix was taken to the hospital for medical examination at about 11.00 p.m. on 28.04.2004, and that the examination took about two hours. While there is admittedly a delay between when the incident was first noticed at 9.00 am in the

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morning by the helps (sewadars) of the Gurudwara and it being reported to the police station at 6.00 p.m.; the defence did not confront the prosecution witnesses Insp. Shashi Bala (PW6), H.C. Kunji Lal (PW13) & S.I. Sushila Rana (PW22) with regard to this aspect of the case. They perhaps may have had an explanation. However, as observed by me above, the delay by itself would not enure in favour of the defence. It is not unheard that where parties, against whom offences are committed, belong to the poorer strata of the society, the police personnel often adopt a lackadaisical approach in attending to their grievances with promptitude. As stated by me before, the delay on the part of the police in recording the crime will not by itself come to the aid of the defence.

10. The submission of the learned counsel for the appellant that eventhough the salwar, evidently worn by the prosecutrix, was not seized, but somehow was sent for analysis to the FSL; does not in my view, appear to be correct. As rightly pointed out by the learned APP the prosecutrix has maintained that at the time of her medical examination her '*clothes*' were seized. It has been recorded in the MLC (Ex. PW4/C) of the prosecutrix that '*under clothes*' had been preserved. W/H.C. Rajesh (PW16), who accompanied the prosecutrix, for medical examination has adverted to the fact that at the hospital she was handed over a slide and a pulanda (packet) with the hospital seal which she seized vide memo (Ex. PW16/A). It is referred to in the seizure memo (Ex. PW16/A) that the undergarments of the prosecutrix had been seized. There was no suggestion made to PW16 that what was seized was the undergarment of the prosecutrix and whereas what was sent to the FSL was the salwar of the prosecutrix. Moreover, the testimony of H.C. Lal Chand (PW14), i.e., the Malkhana Incharge, clearly establishes that at no stage, that is, while receiving the case property, it's despatch to FSL, and thereafter on its inward receipt again, was there any tampering with the case property. As a matter of fact there was no suggestion made to PW14 to the effect that; as against what was received as case property, was different from what

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was sent to FSL for analysis. In particular, there was no reference whatsoever to the fact that salwar of the prosecutrix was not part of the case property.

11. An appreciation of the evidence placed before me leads to conclude that while the prosecutrix is very clear in her testimony that her clothes had been seized for analysis in the hospital; the seizure memo different versions appeared. In the MLC (Ex. PW4/C) it is recorded as '*under clothes*' while somehow PW16 has recorded the same as undergarments. There is nothing to suggest that the case property, which was received at the FSL, had been tampered. Therefore, I cannot but come to a conclusion that this is a case of perhaps usage of incorrect expression by police personnel not very familiar with the English language. As observed above, the defence did not make any suggestion to the said witnesses with respect to this aspect of the matter. As a matter of fact even before the trial court there is no submission with regard to this aspect of the matter. In any event, the prosecution, in my view, has been able to prove its case. It is well-settled that the ineptness of the investigation team need not always necessarily come to the aid of the defence [See *Dhanaj Singh vs State of Punjab AIR 2004 SC 1920*; *Amar Singh vs Balwinder Singh (2003) 2 SCC 518* and *Allarakha vs State of Gujarat AIR 2002 SC 1051*].

12. The submission of the learned counsel for the appellant that there was no reference to the undergarments of the prosecutrix in the disclosure statement (Ex. PW22/B) of the appellant hence it is not admissible, is also untenable. The pointing out memo (Ex. PW18/A) indicated the site, at which the offence had been committed. Constable Arvind Kumar (PW18) in his evidence testified as follows: On 02.05.2004 when he was posted at police station R.M.D.; he alongwith ASI Harjinder Kaur and S.I. Rajesh Rana at the instance of the appellant reached the fields near village Sadulpur near Maripat railway station, Ghaziabad, U.P. It is at that place that the investigation team recovered an undergarment and a water bottle. The said undergarment and the water bottle were seized. He further testified that the investigation team also lifted a

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sample of earth from the spot. He proved the pointing out memo (Ex. PW18/A). PW18 also identified the undergarment (Ex. P2) as well as the water bottle (Ex. P1). Importantly, PW18 was not subjected to any cross-examination by the defence. In my view, therefore, no fault can be found with the admissibility of the undergarment found at the site of the incident; as a piece of evidence.

13. There are crucial aspects of this case which, according to me the learned counsel for the appellant has lost sight of, while pointing out discrepancies in the prosecution's version. This in one sense has resulted in the learned counsel missing wood from the trees. First, the principle, which is, that an accused can be convicted even on the sole and uncorroborated testimony of the prosecutrix, if found trustworthy. A prosecutrix who is a victim; her testimony is at par with that of an injured person. Corroboration, if required by the Court, is not of the same nature as in the case of the testimony of an accomplice. This principle is encapsulated in the following judgment of the Supreme Court in *Sri Narayan Saha vs State of Tripura (2004) 7 SCC 775*.

The relevant extract is set out hereinbelow:-

*“ 6. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short 'The Evidence Act') nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and **her evidence must receive the same weight as is attached to an injured in cases of physical violence**. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to **her testimony, short of corroboration required in the case of an accomplice**. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding, the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of*

the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.”

The aforesaid case is followed in ***S. Ramakrishna vs State (2009) 1 SCC 133.***

13.1 In the instant case, notwithstanding the small but insignificant discrepancies, the core testimony of the prosecutrix that she was subjected to sexual intercourse without her consent by the appellant and his friend Rakesh has remained consistent right from the inception. Corroboration, in adequate measure has come in the form of testimony of Dr. Akash Jhangee (PW17) and the testimony of Dr. Parekh (PW4) who examined the appellant and the prosecutrix, respectively. The testimony of Dr. Akash Jhangee (PW17) and his opinion on examination of the appellant on 04.05.2004 being relevant is extracted hereinbelow:

- “1. Patterned Rail road, bruises 7 X 0.5 cm over inner aspect back of left side chest, upper half over lying scapula, bluish black in colour.***
- 2. Patterned Rail road, bruise 5 X 0.5 cm over back of left side chest, lying 2.5 cm below injury no. 1, bluish black in colour.***
- 3. Patterned Railroad, bruise 7 X 1 cm over back of lower half middle portion of the chest over lying mid line, 1 cm below injury no. 2, bluish black in colour.***
- 4. Patterned Rail road, bruise 6.5 X 1 cm over back of upper half abdomen middle half over lying mid line portion, 4.5 cm below injury no. 3, bluish black in colour.***
- 5. Scabbed separating abrasion 1 X 0.5 cm over outer aspect of right elbow region.***
- 6. Scabbed separating abrasion 1 X 0.5 cm over inner aspect of right elbow region.***
- 7. Scabbed separating abrasion 3 X 1.5 cm over back of right forearm middle half.***

On genital examination, Pubic hairs well developed, 100% brownish black over outer public region extending onto sides of the thighs, scrotal sac well developed and contained 2 testies, penis adult type

with no smegma and no circumcision. No injury present over the scrotal sac and the shaft of the penis.”

14. Similarly, the MLC (Ex. PW4/C) of the prosecutrix would show that she had a three inch bruise on her lower spine, minor bruises scattered around it; swelling on the face; abrasion on the cheek and a ruptured hymen. It is when the testimony of PW17 and PW4 is examined in the light of FSL report wherein it is opined that Exhibit 3d (which was the underwear worn by the appellant) and Exhibit 5 (which was the underwear of the prosecutrix), both had semen stains on it, having the same blood group ‘B’; leaves no doubt in my mind about the involvement of the appellant in the rape of the prosecutrix. Therefore, the mere absence of semen on the vaginal swab was not material. Furthermore, the fact that the incident was brought to light by the sewadars of the gurudwara - Paramjit Kaur (PW11), Taranjeet Singh (PW7) and Bagicha Singh (PW12) also reinforces the version of the prosecutrix that she was threatened and subjected to sexual intercourse without her consent. The fact that the appellant attempted to flee and the co-accused Rakesh is absconding does not help the cause of the defence. The defence of the appellant that he was falsely implicated is untenable. There is nothing on record to suggest that there was any animosity or any other motive in the prosecutrix falsely naming the appellant as the perpetrator of this horrific offence. No such motive was also attributed to the police. Therefore, there is nothing on record to disbelieve the prosecution version of the events as they transpired. What has compounded the misery of the defence is its stand that the prosecutrix was involved in prostitution. The stand of false implication and prostitution cannot co-exist.

15. Let me deal with the authorities cited by the learned counsel for the appellant.

15.1 The facts in ***Radhu*** (*supra*) were entirely different from the one in the instant case. The Supreme Court in that case allowed the appeal and set aside the conviction in the background of the following facts: The prosecutrix in that case had set out to

purchase some groceries; on the way she was invited by a relative to her house. As soon as the prosecutrix entered the relative's house her son dragged the prosecutrix into a room and confined her in the said room throughout the night. During the night the prosecutrix was sexually assaulted. The prosecutrix in her testimony stated that the accused had gagged her mouth with a piece of cloth; and that she was set free by the accused only the following day in the morning. It also emerged during the course of her examination that she had lost consciousness at the time the accused committed the assault on her. The Court, therefore, found her testimony to be false for the reason that, if as stated by the prosecutrix that she had regained consciousness only next morning, how is it that she left the house where she was confined without any obstruction while, at night her confinement was explained on the ground that she had been gagged and had been subjected to sexual intercourse against her will by the accused. The Court was also persuaded to acquit the accused as crucial witnesses were not examined as also the fact that the medical evidence of the prosecutrix revealed minor injuries such as abrasion on her arm and a contusion on her leg. It was categorically opined that there was no injury on her private parts; even though her hymen was ruptured, the rupture was old. It was the cumulative appreciation of the facts of the case that the court acquitted the accused.

15.2 ***Pohalya*** (*supra*) case was cited by the learned counsel for the appellant in the context of recovery of the undergarments of the prosecutrix from the field. It was submitted that there was nothing to connect the accused to the recovery. It was the argument of the learned counsel of the appellant that the disclosure statement (Ex. PW22/B) of the appellant does not refer to any undergarment. In the facts of the present case PW18 had prepared a pointing out memo when PW18 alongwith ASI Harjinder Kaur and S.I. Rajesh Rana reached the fields where an undergarment and a water bottle were recovered. In the facts of the instant case, the appellant has been connected to the offence of having committed rape by virtue of the testimony of various

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witnesses, in particular, that of the prosecutrix, therefore, the said case has no applicability to the instant case. It may be noted that in *Pohalya (supra)* there was an additional factor which persuaded the court to acquit the accused, which was that eventhough the deceased was last seen in the company of the accused and another person and the trial court had acquitted the other person and had only convicted the appellant; the State had not preferred an appeal against the acquittal of the other person. It is in these peculiar circumstances that the court concluded the fact that a blood stained spear was recovered would not lead to the conviction of the accused unless the accused can be connected to the crime. The facts, as observed above, are entirely distinguishable from the instant case.

15.3 ***Sadashiv Ramrao (supra)*** is also distinguishable. Briefly, the facts in this case were as follows: The appellant/accused was a doctor and running a clinic. On a given day the prosecutrix alongwith her husband and a small child came to visit the appellant. Several patients were waiting for consultation by the appellant, in the clinic. The prosecutrix had first, got her child examined and, thereafter was examined by the appellant. It was the prosecutrix's allegation that while she was being examined in private, by the appellant, he had sexual intercourse with her against her will. The prosecutrix evidently came out of the examination room weeping and narrated the tale of assault by the appellant to the persons outside. The Supreme Court after examining the evidence found that it was full of contradiction. The court observed that the accusation of the prosecutrix seem improbable for the reason that the appellant who was an able-bodied person could be assaulted without alerting the patients sitting outside the examination room. Furthermore, the absence of injuries on the body of the prosecutrix, in the opinion of the court, cast doubt on the prosecution's case notwithstanding the presence of semen stains on the undergarments of the appellant and the petticoat and sari of the prosecutrix. The Court also took note of the fact that the

prosecutrix had improved her version in the court, as against her first statement to the police. As noted above, the facts in the instant case are not para materia.

16. In these circumstances, I am of the opinion that the prosecution has been able to establish the guilt of the appellant in respect of offences under Section 376(2)(g) and Section 506, para (ii) of the IPC beyond a reasonable doubt. Accordingly, the judgment of the trial court is sustained. The appeal is dismissed.

RAJIV SHAKDHER, J

DECEMBER 21, 2009

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