

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

**RESERVED ON : February 11, 2013**

**DECIDED ON : May 10, 2013**

+ **CRL.A. 120/2011 & Crl.M.B.Nos.701/2013, 133/11,  
1892/12, Crl.M.A.Nos.3894/12, 12894/12 & 13240/12**

VIRENDER & ANR.

..... Appellants

Through : Mr.K.K.Manan with Mr.Nipun  
Bhardwaj, Advocates.

Versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

**CORAM:**

**MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. The appellants Virender @ Lalla @ Bhura (A-1) and Kailash @ Satyawar @ Sultan @ Kala (A-2) challenge judgment dated 13.12.2010 in Sessions Case No.109/2009 arising out of FIR No.729/2005 registered at Police Station Rohini by which they were convicted for committing offences punishable under Section 376 (2) (g) IPC. By an order dated 04.01.2011, they were sentenced to undergo RI for ten years with fine of ₹5,000/- each.

2. On 24.07.2005 at about 04.00 or 04.15 A.M. ASI Jaipal Singh, Head Constable Jagdish Prasad and Constable Raj Rao were on duty in PCR van at Madhuban Chowk, Rohini. An informer told them about hearing cries of a woman from a park towards Deepali Chowk. Immediately, they went to the spot and found a man committing rape upon a lady while the other wearing kurta-pyjama had caught hold of her hands. Constable Raj Rao apprehended him when he attempted to escape. The person who was performing sex with the lady was apprehended by ASI Jaipal Singh. Daily Diary (DD) No.9A was recorded at Police Station, Rohini. SI Harjinder Rana went to the spot and took custody of the appellants. She recorded ASI Jaipal Singh's statement and lodged First Information Report. Prosecutrix 'G' (assumed name) and both the appellants were taken to Sh.Baba Sahib Ambedkar Hospital (in short 'BSA) for medical examination. Statements of the witnesses conversant with the facts were recorded. The exhibits were sent to Forensic Science Laboratory. Pursuant to the appellant's disclosure statements their involvement in case FIR No.338/2005 under Section 457/380 IPC at Police Station, Rohini surfaced and their correct names were ascertained Virender @ Lala and Kailash. The prosecutrix 'G' was admitted for treatment at IHBAS. After completion of investigation, a

charge-sheet was filed against the appellants. They were duly charged and brought to trial. The prosecution examined 15 witnesses to substantiate the charges. In their 313 statements, the appellants pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment held both the appellants perpetrators of the crime and sentenced them.

3. Learned counsel for the appellants urged that there was no legal evidence against the appellants to base conviction. The Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of police witnesses with whom the appellants had an altercation on demand of bribe. Statement of the prosecutrix was not recorded during investigation. In her cross-examination, she categorically admitted that she was tutored by the Investigating Officer. Presence of ASI Jaipal Singh, Head Constable Jagdish Prasad and Constable Raj Rao at the spot is highly doubtful. No log book/register maintained in the vehicle was produced. The informer was not cited as a witness. The prosecution witnesses were unable to disclose the name of the informer and the vehicle in which he was travelling. The MLC and FSL reports do not establish appellants' involvement in the incident. Vital contradictions and inconsistencies have

emerged in the testimonies of PCR officials as to where they were stationed; at what distance the spot of occurrence was and at which specific place the prosecutrix was found. There were residential houses nearby, but no independent public witness was associated. It is highly unbelievable that none of the residents would hear cries of the lady from the nearby park. Test Identification Proceedings were not conducted. Learned Additional Public Prosecutor urged that the prosecutrix's statement has been corroborated by PCR officials and there are no good reasons to discard their statements.

4. I have considered the submissions of the parties and have examined the Trial Court record. The appellants have not challenged their presence and apprehension by PCR officials on the relevant date and time. They claimed that they had confrontation with the PCR officials and were falsely implicated when they did not accede to their demand to pay illegal gratification. A-2 had consumed liquor and it was detected during medical examination (Ex.PW4/B). A-2 in 313 statement admitted that they were drunk. They did not elaborate when and at which place, they had consumed liquor. They also did not offer any explanation as to from where they were coming at odd hours at 04.00 a.m. in Indica car No.DL3CU-130. They did not specify as to which of the police official

had demanded bribe from them. PCR officials came into motion when an unknown informer disclosed that he had heard cries of a woman in the park at Deepali Chowk. Both the appellants were apprehended from the park with the lady. There was no occasion for the PCR officials to have confrontation with the appellants at Madhuban Chowk. DD No.9A (Ex.PW-15/K) recorded at 04.31 a.m. at Police Station Rohini reveals that two men have been apprehended with a lady in the park, near Deepali Chowk from where her cries were coming. The prosecutrix 'G' a hapless lady lived alone on the footpath. She was mentally retarded. Dr.Kuldeep Singh, recorded in the MLC (Ex.PW-4/A) that she was talking 'irrelevantly'. She was produced before the learned Metropolitan Magistrate and vide order dated 24.07.2005, it was observed that she was mentally unstable and suffered from certain mental ailment. Considering her mental condition, she was sent to IHBAS for examination. On 28.07.2005, after considering report from IHBAS, she was admitted there for treatment. She was diagnosed having 'Unspecified Psychosis'. The Investigating Officer was not able to record her statement under Section 161 Cr.P.C. She was taken to Dr.Baba Saheb Ambedkar Hospital, Rohini at 07.20 a.m. on 24.07.2005 where her MLC (Ex.PW-4/A) was prepared. The MLC records that she was a victim of rape at about 03.45 P.M. that

day. It lends credence to the prosecution version that she was found in the park and was a victim of sexual assault.

5. The Investigating Officer lodged First Information Report on the statement of ASI Jaipal Singh (Ex.PW-2/A). He disclosed that at about 04.15 A.M. they got information from a vehicle owner that he had heard cries of a lady from a park at Deepali Chowk. When they reached in the park at A-3 Block, Sector-8, Rohini, they saw 'G' was lying naked on the ground and was crying. A boy wearing kurta-pyjama had caught hold of her hands and the other person was performing sex with her. The boy wearing kurta-pyjama attempted to escape but was caught hold by Constable Raj Rao. The man who was in naked condition was caught hold by him. Their names were ascertained Ravinder and Satyawar @ Sultan. He apprised the control room. Local police arrived at the spot.

6. The occurrence took place at 4/4.15 A.M. First information Report was lodged promptly without any delay at 06.00 A.M. ASI Jaipal Singh attributed specific role to the each accused in his statement Ex.PW2/A given to the police at the earliest- soon after the incident. While appearing as PW-2, he (ASI Jaipal Singh) proved the said version without any variation and deposed that on 24.07.2005, he was posted at PCR, North-West Zone. On getting information from some vehicle owner

at about 04.00 a.m. about hearing cries of a lady in the park near Deepali Chowk, he informed PCR Commander for further direction to reach the spot. On reaching in the park at A-3 Block, Sector -8, Rohini, they saw a lady crying. Two persons were there, one of them had caught hold of her hands while the other was committing rape upon her. The lady was asked to put on her clothes. On inquiry from the victim, he came to know that she was not of stable mind. SI Harjinder Rana reached the spot with senior officers and recorded his statement (Ex.PW-2/A). In the cross-examination, he stated that the distance between Madhuban Chowk and Deepali Chowk was 2.5 kilometer. He fairly admitted inability to furnish description of the informer. He was not able to refer to the make of the car. They entered inside the park from the ring road side. There were trees in the park. SI Harjinder Rana reached the spot after half an hour. He stayed there uptill 08.30 A.M. He further admitted that he did not hand over any report regarding calls made to headquarters. There were lights in the park. Information to the local police was sent around 04.15 a.m. He denied that the accused going in the car, were stopped at Madhuban Chowk and money was demanded from them. The place of occurrence was residential area. He was not aware if the accused's car was parked near the place of incident or not. On scanning his deposition,

it appears that no material discrepancies have emerged in the cross-examination to discard or doubt his version. His presence at the spot is highly probable being on official duty in the PCR van. He had no prior animosity with the accused to falsely implicate them in the incident. The investigation was carried out subsequently by local police at Rohini and PCR officials had no say to fabricate the evidence. He and his colleagues had reached the spot in the performance of their official duties and were able to apprehend the accused with the lady. No suggestion was put in the cross-examination that he was not on official duty that time. The accused did not deny their apprehension with the lady from the park. PW-2 (ASI Jaipal)'s statement that rape was being committed upon the lady while the other had caught hold of her hands has remained uncontroverted and unchallenged in the cross-examination.

7. PW-8 (Constable Raj Rao), another police official posted in PCR van has corroborated PW-2's testimony in entirety. He also deposed that on 24.07.2005 he was posted in PCR vehicle stationed near Madhuban Chowk. At about 04.15 A.M. some vehicle owner informed ASI Jaipal that a lady was crying in a park, Sector-8, Rohini. ASI Jaipal Singh immediately sent a message to command room. Thereafter, they rushed to the spot. They saw that a man was committing sex with a lady

and another person wearing kurta-pyjama had caught hold of her hands. The lady was crying. On seeing them, the person who had caught hold the lady's hands tried to run away. He immediately apprehended him and his name was ascertained Ravinder. The person committing rape was apprehended by ASI Jaipal Singh. He was not wearing any clothes at that time. He disclosed his name Satyawar. The prosecutrix was unable to furnish her details and it appeared that she was mentally retarded. ASI Jaipal directed her to wear her clothes. After 10-15 minutes, local police arrived and recorded their statements. In the cross-examination, he explained that the person who gave the information had come in a car at around 04.00 a.m. ASI Jaipal had not noted down the description of the person and the car. It had taken 7-8 minutes to reach the spot. They left the spot after 10-15 minutes on arrival of the Investigating Officer. He denied that the accused were implicated as they refused to pay bribe to them. He admitted that there were residential houses around the place of incident. Material facts regarding the incident remained unchallenged in the cross-examination of this witness. No suggestion was put to him that he with ASI Jaipal Singh had not gone to the park and prosecutrix 'G' was not recovered from there. It was not specifically put as to which of the

PCR officials had demanded bribe and for what reason. PW-8 was not acquainted with the accused prior to the incident.

8. PW-1 (Head Constable Jagdish Prashad) has supplemented the statements of PW-2 and PW-8 on material facts. He also deposed that on 24.07.2005, he was on duty with ASI Jaipal Singh and Constable Raj Rao in PCR vehicle Commander 41 parked at Madhuban Chowk. On 04.00 A.M. the informer told them that he had heard cries of a woman from the side of Deepali Chowk park. He along with other staff went near the park at A-3 Block, Sector-8, Rohini. ASI Jaipal Singh and Raj Rao went inside the park. They came back along with a lady and two persons. He identified both the appellants A-1 and A-2 brought by ASI Jaipal Singh and Constable Raj Rao. Message was given to the control room and police official of police station Rohini reached the spot. In the cross-examination, he stated that he remained at the spot for about ten minutes. He further stated that their statements are recorded by the Investigating Officer. Again nothing was suggested to PW-1 that ASI Jaipal Singh and Constable Raj Rao had not gone inside the park and had not returned with the prosecutrix and the appellants. PW-1 had no ulterior motive to fabricate a false story.

9. All the three police witnesses PW-1, 2 and 8 have corroborated each other on vital facts. They were not nurturing any grievance or ill-will with the appellants to falsely implicate them in the heinous offence. They were posted on duty in PCR van and on getting information about the commission of a serious offence, in the discharge of their official duties, they rushed to the spot and were able to apprehend the appellants and the lady with whom the sexual assault was committed. The officials were posted at a far away distance from the place of incident and came into motion on getting specific information from a vehicle owner who had heard the cries of a woman from the park. They had no occasion being posted in PCR vehicle to go inside the park otherwise. The information given by the informer proved true and they found the victim of sexual assault with the culprits. In *Govindaraju @ Govinda vs.State by Srirampuram P.S.& Anr.* AIR 2012 SC 1292 Supreme Court held:-

*“16.This Court in the case of Girja Prasad (Supra)(AIR 2007 SC 3106) while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favor of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a*

*police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.*

*17. Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of Girja Prasad (supra), this Court noticed the judgment of the Court in the case of Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favor of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefore. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder”.*

10. Crucial testimony is of PW-7, Prosecutrix ‘G’, aged 30 years.

She was mentally retarded and had taken treatment at IHBAS pursuant to the court’s order. The Trial Judge put preliminary questions to her to ascertain if she was capable to give rational answers and was mentally fit to depose. Learned Presiding Officer was satisfied that prosecutrix ‘G’

was competent to depose and recorded her statement. She deposed that when she was sleeping on the road on footpath, two men took her to a park 'when morning was to commence'. One of them caught hold of her and the other did 'jabardasti' with her. She further elaborated that the said person opened his pants and removed her salwar and did 'galatkam' with her forcibly. Then PCR van came and the police officials got her released from those two men. She identified and re-cognized Kailash who committed rape upon her and Virender who had caught hold of her hands. She further deposed that she was taken to the hospital where she was examined. She identified her clothes (Ex.P-1) seized at the hospital. In the cross-examination she stated that the incident took place about three months back. She used to reside permanently on the road. She had no jhuggi or pucca residence. Nobody else resided with her on the road at that time. The incident took place around 04.30 a.m. She could guess the time by 'seeing stars'. She elaborated that she was woken up by two persons present in the court and they dragged her. She did not shout as both of them did 'jabardasti' with her. Five police officials were present in the police vehicle. She further stated that the police vehicle came when she was on the road. She admitted that she identified Kailash and Virender at the instance of the Investigating Officer. She further admitted

that she did not know the accused prior to the incident. They were shown to her by the Investigating Officer when she attended the court on earlier two dates. She further admitted that when the incident took place she was not mentally fit. She denied the suggestion that Kailash did not commit rape upon her and the accused Virender had not caught hold of her. She further denied that the statement was made falsely by her at the instance of Investigating Officer. Prosecutrix's statement, who was mentally retarded, is to be examined as a whole. The whole of the evidence in chief and cross examination has to be read together to find out the truth. Mere reading of a portion of the cross examination, ignoring the chief examination would be misleading. It is true that at some places in the cross-examination she has admitted that both the accused were shown to her by the Investigating Officer and she identified them at her instance. PW-7 is a poor hapless lady who was leading a vagabond life. She used to sleep on footpath. She belonged to the poor section of the society. She was illiterate and rustic witness. She was not expected to recapitulate all minute details of the incident correctly and exactly. However, she was categorical in her deposition before the Court that Kailash committed rape while Virender caught hold of her. In the cross-examination no suggestion was put to her that Kailash and Virender were not found in the

park with her. Nothing was suggested that the prosecutrix was not subjected to sexually assault or that the police officials had not recovered her from the park with the accused. The case was investigated by the police officers of police station Rohini who were having no animosity with the accused. PW-7 'G' was also not acquainted with the accused to falsely identify them at the instance of the investigating officer. She attributed specific role to the each accused. She corroborated statements of PWs 2 and 8 on all material facts. Her testimony consistently matches with the version of every other witness. Minor deviation in the cross-examination on some aspects does not efface her entire deposition. In the decision reported as *State of Himachal Pradesh V. Asha Ram* AIR 2006 SC 381, Supreme Court highlighted the importance to be given to the testimony of the prosecutrix as under:-

*“.....It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well-settled principle of law that corroboration as a condition for judicial reliance on the*

*testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.*

11. Her version that she was sexually assaulted finds reflection in MLC (Ex.PW-4/A). PW-4 (Dr.Kuldeep Singh) examined her on 24.07.2005 at 07.20 a.m. She was taken to hospital by SI Harjinder Rana. In the MLC it is recorded that she was a victim of sexual assault. She was referred to senior gynecologist and was examined by Dr.Shilpa. PW-6 (Dr.Nidhi Tiwari) identified signatures of Dr.Shilpa at point 'X' on MLC (Ex.PW-4/A). There is no conflict between the ocular and medical evidence.

12. The conduct of the accused persons is unreasonable. They did not furnish their correct particulars and gave incorrect names. Subsequently, it was found that their correct name were Virender and Kailash. Both had consumed liquor. They did not explain as to from where they had come at the spot in the vehicle No. DL3CU-130. They did not explain their presence in the park at odd hours with the prosecutrix. The appellants who had consumed liquor exploited innocence of a mentally retarded lady whose mental faculties were under developed and who lived alone on footpath. They took her to a nearby park to satisfy

their lust and committed rape upon her. Due to her mental conditions, she was not able to put resistance. A young lady leading a vagabond life was subjected to gang rape under the cover of her mental condition.

13. Minor contradictions, discrepancies and improvements highlighted by the counsel for the appellants are inconsequential. They are not of such magnitude to materially affect the trial. These deviations on trivial matters without effecting the core of the prosecution case are not enough to reject her testimony in its entirety. Their presence with the prosecutrix inside the park has been established and proved beyond reasonable doubt. Both were apprehended at the spot and were taken to hospital for medical examination. Their vehicle was seized at the spot. Non-examination of informer or independent public witness from the locality is not fatal. The informer set the police machinery into motion. He was not a witness to the occurrence and had heard unusual cries of the lady from the park at odd hours. The Trial Court has dealt with appellant's contention regarding FSL report, absence of injuries etc. minutely and no interference is called for to disturb the said findings. In their 313 statements, the appellants did not offer plausible explanation to the incriminating circumstances proved against them. It is unbelievable that both the appellants would be falsely implicated in heinous offence on their

alleged refusal to pay bribe to the PCR officials. PW-7 'G' had no extraneous consideration to identify the accused as culprits. The testimony of all the witnesses including the prosecutrix is consistent and inspires confident.

14. In the light of the above discussion the appeal lacks merits and is dismissed. The conviction and sentence of the appellants are maintained.

15. All pending applications also stand disposed of.

16. Trial Court record be sent back forthwith.

**(S.P.GARG)**  
**JUDGE**

**May 10, 2013**

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