

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

% *Judgment reserved on :05.05.2014.*
Judgment delivered on :09.05.2014

+ CRL.A. 378/2003
JAI NARAIN MALIK Appellant
Through Appellant with his counsel Mr.
R.S. Malik and Mr. Sahil Malik,
Advs.

Versus

STATE GOVT. OF N.C.T. OF DELHI Respondent
Through Mr. Varun Goswami, APP

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 28.04.2003 & 20.05.2003 respectively wherein the appellant has been convicted under Section 376 and Section 506-II of the IPC and has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo SI for 3 months for the offence under Section 376 of the IPC; for the offence under Section 506-II of the IPC, he has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo SI for 1 month.

2 The version of the prosecution is that on 05.12.1994, the appellant had committed rape upon the prosecutrix 'R' (PW-4); the incident had occurred in the house of the appellant. The victim was threatened by the appellant and she did not disclose the incident to her parents till January, 1995. On 16.01.1995, the victim had filed a written complaint (Ex.PW-4/A) before the concerned DCP pursuant to which the present FIR had been registered.

3 On the aforementioned allegations, the charge-sheet had been filed; charges had been framed and apart from the version of the prosecutrix, testimony of her parents i.e. her father Vineet Sharma examined as PW-6 and her mother Kalawati Sharma examined PW-7 coupled with the testimony of their neighbor Madan Lal Mehta (PW-8), the appellant had been convicted. The defence sought to be set up by the appellant that he had been falsely implicated by the victim for the reason that he had agreed to purchase the house of the victim at Krishna Nagar of which part payment of Rs.1,72,000/- had been paid by him and on his demand to transfer of the house in his favour, this case has been falsely planted upon him had been disbelieved by the trial Judge.

4 On behalf of the appellant, arguments have been heard in detail. Written submissions have also been filed. The first submission of the learned counsel for the appellant is that there is a delay of four months in lodging of the present FIR which has been registered only on 03.04.1995 when the incident is dated 05.12.1994. There is no justifiable explanation on this count. Submission being that an FIR in a criminal case is a vital and valuable piece of evidence and where the delay in lodging this information remains unexplained, benefit of doubt must accrue in favour of the appellant. To support this submission reliance has been placed upon AIR 1973 SC 501 Thulia Kali Vs. The State of Tamil Nadu. For the same proposition reliance has also been placed upon 1980 CrL. L.J 446 Marudanal Augusti Vs. State of Kerala. It is pointed out that the first complaint which was made by the father of the victim is dated 22.12.1994 (Ex.PW-6/DA) where there is no mention of any rape by the appellant upon the victim; attention has also been drawn to the second complaint filed by PW-6 dated 05.01.1995 (Ex.PW-6/DB) in which also there is no allegation of rape; submission being that all this is an afterthought and a concocted version. Attention has been drawn to the testimony of PW-4 wherein she has stated that she had

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disclosed the gory incident to her parents one day after i.e. on 06.12.1994 and she and her brother had remained out of town for 15-20 days and thereupon the parents of the victim were informed of this incident; meaning thereby that it was in the month of December itself that the parents of the victim had learnt about this incident but the complaint of 22.12.1994 being silent on this aspect clearly shows that this case is a falsity. The next submission being that the version of the prosecutrix does not inspire confidence; her conduct is highly unnatural; she has admitted that she used to stay in the house of the appellant even on earlier occasions; submission being that she was an adult and fully conscious of her acts and it would be difficult to believe that where admittedly the appellant had never on earlier occasions misbehaved with her, he had chosen to misbehave with her at a later date. No medical examination of the victim had been conducted; there is also no scientific evidence. In fact the uncorroborated version of the prosecutrix, on the basis of which the conviction has been sustained, is clearly an illegality as her testimony is infirm, incoherent and was liable to be rejected. The defence projected by the appellant was consistent right from the inception i.e. from the cross-examination of the witnesses of the

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prosecution and was corroborative even in the statement of the appellant recorded under Section 313 of the Cr.PC which is to the effect that the appellant had agreed to purchase the house of the father of the victim at Krishna Nagar for which he had paid an advance sum of Rs.1,72,000/-; on his request to get the house transferred in his name, he evaded the issue and finally this false story has now been set up by the victim only at the behest of her father and to get out of this transaction. Reliance has been placed upon a judgment of a Bench of this Court reported as 2001 VIII AD (S.C.) 742 Dilip & Anr. Vs. State of M.P. as also 2014 (2) LRC 284 (Del) Sunil Chand Gupta & Others to support a submission that where the testimony of the victim of rape is itself untrustworthy and unnatural, it must require corroboration and in the absence of which the guilt of the appellant cannot be sustained. Learned counsel for the appellant has also placed reliance upon a judgment of a Bench of this Court reported as 25 (1984) DLT 33 Shakuntla & Others Vs. State to support a submission that emotions and sentiments should not come into the way of judicial pronouncements; cases have to be decided strictly on evidence however cruel or horrifying the crime may be. Submission being reiterated that a false charge of rape also causes distress and

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humiliation not only to the victim but also to the accused who also has rights which are to be protected and possibility of false implication has to be ruled out. On all counts, benefit of doubt must accrue in favour of the appellant.

5 Arguments have been refuted. It is pointed out that on no count, does the impugned judgment call for any interference. Attention has been drawn to the version of PW-4, the prosecutrix; submission being that she had detailed the incident in her complaint (Ex.PW-4/A) and has given a justifiable explanation for not lodging the complaint earlier than on 16.01.1995 as she was under dire threats by the appellant who being a police official and working in the Crime Branch since the last several years had exerted a coercive and threatening influence upon the victim and her family. Further submission being that not only have the parents of the victim (examined as PW-6 & PW-7) but also their neighbour i.e. PW-8 (who is a Government employee and being an independent person) given consistent versions and there would also have been no reason on the part of PW-8 to make a false statement. Learned public prosecutor has also place on record an order passed by a Special Judge

in RC No.36(A)/1995 CBI Vs. Jai Narain Malik dated 09.01.2009 to substantiate his argument that the appellant has till date been nursing a grudge against the victim for having narrated the truth about the acts of the appellant; submission being that in this RC which was a case under Section 13 (1)(e) of the Prevention of Corruption Act, 1988 filed by the CBI against the present appellant, the appellant had sought to summon five witnesses in defence which included the present husband and in-laws of the complainant; this was only to malign the complainant as is evident from the observations made by the Special Judge noting that none of these witnesses have been cross-examined by the appellant on his disproportionate assets; noting the contention that not a single question had been put to these witnesses and they had been summoned only to harass the complainant (Rita Sharma). The complainant was also present in Court.

6 Arguments have been heard. Record has been perused.

7 PW-4 is the star witness of the prosecution. It is her testimony which has to be scrutinized and examined by this Court to answer the

argument of the learned counsel for the appellant as to whether the conviction of the appellant was proper or not.

8 There is no doubt to the legal proposition that the testimony of a victim of rape, if coherent, credible and cogent can form the basis of conviction even without corroboration. This has been reiterated by the Apex Court time and again. The Supreme Court in JT 2007 (9) SC 558 B.C. Deva @ Dyava Vs. State of Karnataka had noted that if the report of the Gynecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse yet in the absence of this medical evidence, the oral testimony of the prosecutrix having been found to be cogent, reliable, convincing and trustworthy has to be accepted. It is in this background that the version of PW-4 has to be tested.

9 The incident is dated 05.12.1994. Admittedly the first written complaint made by the victim was on 16.01.1995 (Ex.PW-4/A). Before advertng to this complaint, there are certain other intervening facts which have to be noted. As per the version of the victim (Ex.PW-4/A) after the gory incident of rape had taken place on 05.12.1994, since she was being threatened, she was terrified; not only the honour of her

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family being at stake but also she having been attacked with life threats to her brother and herself; she thus did not disclose this incident to her family on the same day. The following day i.e. on 06.12.1994, the victim went to her office. On 06.12.1994 from the office, she spoke to her mother (PW-7) on telephone; she was weeping. She disclosed that she had been beaten by the appellant on the previous evening; her mother (PW-7) accompanied by her husband (both of whom were government servants and working at Patel Chest Institute) having been joined by three of their other colleagues Pradeep Kumar Gupta (PW-3), Madan Lal Mehta (PW-8) and Dinesh Chand (PW-5) went to the office of victim.

10 PW-3 and PW-8 have deposed that the victim come out of her office in a frightened condition; as per PW-3, there was an injury on her lips and blood was oozing out. So also is the version of PW-8. The third colleague Dinesh Chand (PW-5) however did not support the version of the prosecution; he only admitted that he was working as Technical Assistant in Patel Chest Institute along with PW-6 & PW-7 and was known to them.

11 On 22.12.1994 (Ex.PW-6/DA), the complaint was lodged by PW-6. Vehement submission of the learned counsel for the appellant being that this document was not disclosed by PW-6 in his examination-in-chief but it had emanated only in the cross-examination of this witness when this document had been put to him; additional submission being that this complaint is totally silent about the visit of the victim to the house of the appellant on 05.12.1994 besides being silent on any allegation of rape and as such is liable to be discarded.

12 In this background, it would be relevant to extract this complaint which had been addressed to the Lt. Governor and which reads herein as under:-

“To

The Lt. Governor
Raj Niwas,
Delhi

Request:- Protection of life from a Sub Inspector of Delhi Police.

Most Honourable Sir,

With due respects I wish to bring to your kind information that Mr.Jai Narain Malik, Sub-Inspector, Crime Branch, Delhi Police, posted at Dev Nagar Police Post has made the lives of my family and myself miserable. He has threatened to get my children killed by criminals while being himself on duty or transfer my house situated at Krishna Nagar East, Delhi through Power of Attorney without any money in his name.

We are so much frightened that since 9th of Dec. me and my wife are not attending our office because of his goondas are always following us and we are afraid of being kidnapped.

Sir, we are service people working at V.P.Chest Institute, University of Delhi and have no other sources of income except our service. In this connection on 9th

Dec.94 I met Addl. C.P.And D.C.P. (Crime) but still his people are visiting our office and are enquiring about us from our office colleagues.

Sir, we pray that he may kindly be instructed not to get us followed. I wish to submit that in case anything untoward happens to me or my family than only Mr.Jai Narain Malik may be held responsible for that event.

With best regards.

Yours faithfully,

(Vineet Sharma)
C-11 East Krishna Ngr.
Delhi

P.S.: Having no alternative left I have sent my daughter out of state.

My son has closed down his shop at because he threatens to get him
Involved in illegal cases.”

13 The gist of this complaint discloses two important facts. It discloses that PW-6 was frightened and terrified. It discloses that since 07.12.1994 (PW-7 having learnt of beatings having been given by the appellant to the victim on 06.12.1994) PW-6 and his wife who were both Government servants were not attending their office as gunda elements were following them and they were afraid of being kidnapped; inspite of PW-6 visiting the office of DCP on 09.12.1994, these threats continued to be given to them. The threats meted out to PW-6 appear to be so large that the complainant has gone on to recite that in case any untoward incident happens to him or his family, the appellant would be responsible. The footnote of the complaint further states that his younger

son (younger to PW-4 by 4-5 years) has closed his shop because of threats by the appellant of involvement in illegal cases. This complaint also makes a reference to PW-6's house of Krishna Nagar; the appellant pressurizing PW-6 to have it transferred in his name.

14 This complaint is admittedly silent on PW-4 having visited the house of the appellant on 05.12.1994 or any such incident having taken place on that date.

15 Thereafter on 05.01.1995, a telegram was sent by PW-6 to the Deputy Commissioner of Police gist of which reads herein as under:-

*“MOST HONOURABLE SIR KINDLY ARRANGE PROTECTION TO ME AND FAMILY SJA(N)
NARAIN MALIK SUB INSPECTOR DEV NGR POLICE POST CRIME BRANCH
THREATENS GET US KILLED IN ACCIDENT OR INVOLVE IN FALSE CASES
WHILE ON DUTY”*

16 Learned counsel for the appellant has highlighted that this complaint is also silent upon the details of the incident of 05.12.1994.

17 Let us now examine the further version of PW-4 and what she has to say for this delay in lodging the complaint which was hand-written and given by her to the ACP only on 16.01.1995. The victim PW-4 had come into the witness box on 03.05.2001 wherein on oath she has given

her age as 33 years meaning thereby that on the date of the incident i.e. December, 1994, she would be approximately 25 years of age. She has deposed that she knew the accused (working as Sub-Inspector in the Crime Branch) during the time when her divorce case was pending and the accused had helped her in lodging the report in CAW Cell, Ashok Vihar. On 05.12.1994, the accused had telephoned her inviting her to his house on the pretext that he would help her in getting a permanent job. She went to his house at 04:45 pm. The accused was living in police quarters at Ashok Vihar. The accused had earlier helped her in getting the job and since she was on probation and was looking for a permanent job, she had accepted the invitation of the appellant to go to his house. Her father had also reached there. She prepared tea for him and her father. At around 08:00 pm, when PW-4 was ready to leave with her father the appellant requested them to take food; it was cold being the month of December; the appellant had in fact requested PW-4 and her father to stay back for the night. At about 10:30 pm, a telephone call was received that the mother of PW-4 was not well. The appellant offered to drop PW-6 who reached his house at 11:30 pm and this was confirmed on telephone by PW-6. The appellant then returned back. He rang the

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bell and asked the victim to open it. Thereupon the appellant made undesirable advances upon the victim; on her resistance, he slapped her; she was threatened that in case she raised any alarm, she would be beaten; her brother would also be involved in a TADA case. Her father and mother would also be met with dire consequences; she would be sold at kotha. PW-4 was perplexed and she did not know how to react; she was unable to speak; inspite of resistance by the victim, rape was committed upon her by the appellant. The victim was also forced to sign a blank piece of paper; this signed paper was threatened to be used for involving her and her brother in false cases. The following morning, PW-4 was dropped to her office by the driver of the appellant who stood waiting outside her office for 1- 1- ½ hours; the victim had injury marks on her face and knee. She returned home in the evening. On the following morning, PW-4 woke up late. On query, she again did not disclose the incident to her parents. This was on 07.12.1994. She went to her office. After reaching the office, she received a telephone call from her mother where she started weeping and disclosed to her mother (PW-7) that the accused had beaten her and had also threatened to kill her and her brother. She did not disclose the incident of rape to her

parents as they were already depressed due to her matrimonial problems and after learning of this incident, they would have been shell-shocked. Her mother (PW-7) accompanied by her husband (PW-6) reached the office of the victim. Testimony of PW-3 and PW-8 is also corroborative on this point. They had also disclosed that at the request of PW-6 and PW-7, they had accompanied them to the office of their daughter where they had noted that PW-4 had come out of the office in depressed state of mind; she was weeping; there was injury mark on her lips and blood was oozing out. Thus the factum of injuries having been received by the victim stood corroborated. Further deposition of PW-4 being that her mausa and mausi had also accompanied her parents to her house. Submission of the learned counsel for the appellant on this score being that mausa and mausi have not been examined. This Court is of the view that non-examination of mausa and mausi does not make any difference and even if they have not been examined and there being no doubt to the legal proposition that the testimony of a rape victim even without corroboration is sufficient to nail the accused.

18 Thus it is clear that on 07.12.1994 only a part of the incident i.e. that PW-4 was beaten by the appellant, was revealed by PW-4 to her parents. Further deposition of PW-4 being that since her parents had got so terrified on learning about this incident that on the advice of her mausa and mausi, PW-4 and her younger brother were dropped at her mausi's house at Surya Nagar, Ghaziabad; thereafter on the following day, she was taken to an undisclosed place at the house of a relative where they stayed for 15-20 days meaning that after 08.12.1994 another 15-20 days have to be counted to determine as to when the parents of the victim finally learnt about the incident as the version of PW-4 is that it was only after 15-20 days period when her parents came to meet her that she disclosed to them about the incident of rape of 05.12.1994. Calculating the dates in the aforementioned manner, counting 20 days w.e.f. from 08.12.1994, it would be 28.12.1994 and even if the lesser limit of 15 days is counted, it would be 22.12.1994.

19 Ex.PW-6/DA does not have a date. In fact a perusal of Ex.PW-6/DA shows that it was first received in the office of the Lt. Governor on 20.12.1994 vide diary No.19169. Thus whether it was 22.12.1994 or

28.12.1994 now becomes irrelevant as admittedly this complaint was first lodged by PW-6 before the Lt. Governor on 20.12.1994 by which time the incident had not been disclosed by PW-4 to her parents and as such the question of this incident having been narrated in this complaint does not arise.

20 Further testimony of PW-4 reveals that since the appellant had helped her in getting her complaint lodged before the CAW Cell and other related matters relating to divorce proceedings with her ex-husband, PW-4 and her family had developed close ties with the appellant. She has admitted that after every proceeding, she along with her father first attended the proceedings and then went to the house of appellant to inform him about the proceedings. In her cross-examination, she admitted that she used to prepare tea and food in his quarter. On 3-4 occasions prior to this incident, she had stayed in his house along with her father. She denied the suggestion that she had stayed alone in the house of the appellant prior to this incident. She admitted that a flat at Krishna Nagar had been allotted to her by her

father and they did not stay in the said flat but were living in government accommodation of the Patel Chest Institute.

21 She denied the suggestion that there was a money transaction of Rs.1,72,000/- between her father and the appellant which amount was paid as an advance for the purchase of this house at Krishna Nagar by the appellant and only when the balance amount was demanded by the appellant that this false case has been implanted upon the appellant. This is the main line of defence which has been adopted by the appellant. Submission being that this defence has emanated right from the inception i.e. from the cross-examination of the witnesses of the prosecution. However, it is relevant to point out that in the entire statement of the accused recorded under Section 313 of the Cr.PC, this defence has thereafter not emerged. It has been forgotten and obviously for the reason that it was not a genuine defence.

22 PW-6 is the father of the victim. He had in his examination-in-chief not disclosed either about Ex.PW-6/DA or Ex.PW-6/DB which documents had been revealed only in his cross-examination. PW-6 has deposed that he came to know the accused in 1993 and he was

introduced to him by his friend PW-5. PW-5 has however been hostile on this aspect. Be that as it may, it is an admitted fact that the appellant and PW-6 were known to each other since 1993.

23 PW-6 has corroborated the version of his daughter that on 05.12.1994, his daughter had informed her mother (PW-7) that she was going to the house of the appellant; PW-6 also reached there; after dinner at about 10:00 pm since public transport was not available, the appellant offered to drop PW-6 on his motor-cycle; PW-4 stayed back. This has been corroborated by PW-4 who in one part of her cross-examination admitted that on receiving a call that her mother was not well, she and her father went to bus stop; they could not get a bus or three wheeler; the appellant thereafter offered to drop PW-6 on his motor-cycle and it was in this background that PW-4 remained alone in the house of the appellant. On the following day i.e. on 06.12.1994 PW-6 noticed that his daughter was looking scared and frightened and not talking to anyone; she had an injury mark on her lips; on 07.12.1994 on a telephonic conversation between PW-7 and PW-4, PW-7 was informed by PW-4 that she had been beaten by the accused. Version of

PW-6 is further corroborative by the fact that PW-4 was terrified because of the threats meted out by the appellant not only to herself but also to her brother and her family; PW-4 along with her brother were taken to Surya Nagar and thereafter to another undisclosed destination where they stayed there in the house of their relative away from the coercive influences and pressure of the appellant. Till that point of time, nothing was disclosed by PW-4 to them. PW-6 has further disclosed that in January, 1995 when he had gone to visit his son and daughter, the incident of 05.12.1994 was disclosed by PW-4 to her mother (PW-7) and the matter was then reported to the police.

24 In his lengthy cross-examination, this stand has been affirmed. PW-6 denied the suggestion that he has falsely implicated the appellant in connivance with the ACP. Relevant would it be to note that in the cross-examination of PW-6, there is a different line of defence which has been adopted. Defence being that it was in connivance with the ACP that a false case has been set up and not because of the property transaction i.e. house at Krishna Nagar.

25 PW-7, the mother of the victim has also corroborated the versions of PW-4 and PW-6. She has disclosed that her daughter called her from her office two days after 05.12.1994; she was weeping on the phone; PW-7 accompanied by PW-3 and PW-8 and her husband followed by her brother-in-law and sister reached the office. Her daughter was scared when she disclosed that she had been beaten by the appellant and had been given life threats to her and to her younger brother. Accordingly, PW-7 left PW-4 and her younger son at Surya Nagar and they shifted to another accommodation of a relative. It was only in January that the incident of 05.12.1994 was disclosed by the victim to PW-7.

26 Thus the version of the witnesses of the prosecution i.e. PW-4, PW-6 & PW-7 are cogent and coherent; they all state that it was only in the month of January, 1995 that they learnt about the incident of rape committed by the appellant upon the victim. The documents Ex.PW-6/DA and Ex.PW-6/DB which have been vehemently harped upon by the learned counsel for the appellant thus do not come to his aid as at that point of time when these complaints were sent to the higher authorities i.e. on 20.12.1994 and 05.01.1995, the incident of rape had

not been revealed to the parents of the victim; thus rightly they were not a part of these complaints.

27 The victim has explained the circumstances in which she finally gave her complaint on 16.01.1995 to the ACP Jai Narain. This complaint runs into five pages and is in the hand-writing of the victim. The details of the entire incident have been revealed. A perusal of this complaint shows that the victim is an educated girl. She was around 25 years of age at that point of time. Queries had also been put to her by the ACP which have been noted and written in his writing. These queries have been attested and signed by the victim again at the end.

28 This Court is of the view that the delay in lodging the complaint by the complainant on 16.01.1995 has been justifiably explained. Facts reveal that after the incident of 05.12.1994, the victim only partly disclosed the incident i.e. the incident of beatings by the appellant upon her and giving life threats to her and her family only on 07.12.1994; on 08.12.1994, she was taken by her parents to Surya Nagar and then on the following day to some other undisclosed destination where she remained. In January, 1995 when her parents came to meet her and her

brother, she finally disclosed the incident to them. PW-7 as also PW-4 has stated that a verbal complaint was made to the DCP and a written complaint was made only on 16.01.1995. PW-4 as noted supra, from a reading of her complaint appears to be matured and educated girl. She was in her mid-twenties at the time when this gory incident had occurred. The complaint reveals that the appellant was 20 years older than her i.e. 46 years of age and she used to address him as 'uncle' and 'chacha'. The entire gist of her complaint show that PW-4 was threatened and terrified by the appellant who was in position of power and influence having continuing to serve in the Crime Branch since the last several years and it was in this capacity that she had been acquainted with him; his overwhelming power and influence was great not only upon the victim but also upon her entire family including her parents and so much so in Ex.PW-6/DA, both PW-6 and PW-7 have admitted that although they are Government servants working as Senior Technicians in the Patel Chest Institute yet after they were threatened by the appellant; they stopped attending their office after 09.12.1994; they had taken their daughter and son to Surya Nagar and then to an undisclosed destination and so much so even in Court, the victim did not

disclose that place of stay to the Court again highlighting the fact that the victim was totally terrified by the appellant. Apart from the fact that the appellant was helping them in the divorce proceedings pending between the victim and her husband, the appellant in the misuse of his powers had also arranged a job for the victim and this was another reason for the trust that the victim and her family had in him.

29 In this background, the delay of less than 15 days in the complainant giving her complaint to the police is fully explained especially keeping in view the fact that earlier complaints had been made by her father, all attributable to the acts of the appellant. Ex.PW-6/DA as noted supra appears to have been hand-written in a great sense of apprehension. PW-6 fearing not only for his own life but also for the life of his wife and two children; Ex.PW-6/DA also disclosing that in case any untoward incident does take place, it should be attributable to the appellant.

30 The Apex Court in this context has time and again noted that where the delay in lodging any FIR has been explained, the version of the prosecution cannot be discarded on this ground.

31 In this context, the Honble Apex Court in Ravinder Kumar Vs. State of Punjab, VI (2001) SLT 471 has held as under:-

“The law has not fixed any time limit for lodging of FIR and delayed FIR is not illegal. Through prompt lodging of FIR is ideal, that by itself does not guarantee the genuineness of the version given in it. Whenever there is delay in lodging FIR, the Court ought to look for reasons, if any. But, delay by itself cannot be the sole ground to doubt and discard the entire case of the prosecution through it does not put the Court, on guard, to look for explanation, if any. As regards delay in lodging of FIR in rape case, the Court cannot be oblivious to the fact that such cases involve honour of the family and reputation of the prosecutrix and, therefore, a cool thought may precede lodging of FIR in such cases.”

32 The Supreme Court in Karnel Singh v. State, IV (1995) CCR 10 (SC) has held as under:-

“The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society’s attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.”

33 In State v. Gurmeet Singh IV (1996) CCR 134 (SC), the Hon’ble Supreme Court, inter alia observed as under:

“The Courts cannot overlook the fact that in sexual offence delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complaint about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.”

34 In Gian Chand v. State, II (2001) SLT 740, the Hon’ble Supreme Court has observed as under:-

“That mere delay in filing FIR is no ground to doubt the case of the prosecution and not believing the testimony given by the prosecutrix in the Court. It was held that delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on that ground.”

35 Three Court witnesses had also been examined. CW-3 ACP Jai Narain has deposed that the complaint handed over by the victim dated 16.01.1995 had serious allegations and accordingly it was handed over to his senior officer. Ex.CW-1/A dated 31.03.1995 is a communication of the DCP (Crime) pointing out that since Ex.PW-4/A, the complaint of PW-4 has specific allegation of rape, a regular case be got registered. Thus this document shows that since there was an involvement of Sub-Inspector of police, inspite of hand-written complaint having been given by PW-4 on 16.01.1995, the FIR did not materialize and was finally

registered only after the higher authorities intervened i.e. at the level of the DCP and was registered only on 03.04.1995.

36 It is in this background, that the delay in lodging of the complaint and the registration of the FIR has to be viewed.

37 This Court is thus of the view that the delay if any in lodging the FIR has been justifiably and satisfactorily explained.

38 Testimony of PW-4 has also been corroborated by the versions of PW-6 and PW-7 who are her parents as also by PW-3 & PW-8 who have also corroborated the incident to the effect that the victim had received injuries which were apparent on her face on 07.12.1994 which was just two days after the incident.

39 In this background, even if the victim was not medically examined, it would make little difference. The trial Judge had rightly noted that this was because of the fact that the victim was a married women; she was not a virgin.

40 The Supreme Court in AIR 2013 SC 3077 Md. Iqbal & Anr. Vs. State of Jharkhand while relying upon the observations of Narender

Kumar Vs. State (NCT of Delhi) AIR 2012 SC 2281 had noted that even if a woman is of easy virtue or used to sexual intercourse, it cannot be a licence for any person to commit rape and it further held:

“24.Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. IN case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.”

41 The prosecution has proved its case to the hilt. The defence sought to be projected by the appellant is wholly untrustworthy. The line of defence that the appellant had purchased the house of the father of the victim for a part consideration of Rs.1,72,000/- has not been established by any documentary evidence. A specific query had been put to the learned counsel for the appellant as to how this payment of Rs.1,72,000/- had been made by the appellant to PW-6 to which there was no answer. That apart, this line of cross-examination which had appeared in the testimony of PW-1 somehow disappeared in version of

PW-6 & PW-7 and never emanated in the statement of the appellant recorded under Section 313 of the Cr.PC. In fact a different line of cross-examination was adopted qua PW-6 & PW-7 where suggestions given to these witnesses were that this case has been falsely planted at the behest of the ACP in connivance with the appellant. Defence was thus rightly rejected.

42 This Court also notes with pain and regret that a Sub-Inspector in the Delhi Police who is entrusted with the duty of protecting the citizens of the State has used all weapons at his end to exert undue and coercive pressure upon the complainant and so much so that the Special Judge while dealing with his application seeking summoning of certain defence witnesses had been constrained to note that the defence witnesses summoned by the appellant (in DA case filed by the CBI against the appellant) none of them have been questioned regarding his disproportionate assets; this could be for no other reason but for the obvious reason which was to continue to harass the complainant; the appellant having gone to the extent to summon even her in-laws and

husband to malign her at every step. Such a person who was holding a post of responsible public servant deserves absolutely no sympathy.

43 The conviction of the appellant calls for no interference. Appeal is without any merit. Dismissed. Appellant be taken into custody to serve the remaining sentence. Bail bond cancelled. Surety discharged. File be consigned to Record Room.

INDERMEET KAUR, J

MAY 09, 2014

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