

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

% Date of Decision : 01st August, 2014

+ CRL.A. 215/2013

KRISHAN KUMAR Appellant

Through : Appellant is produced from J/C.

versus

STATE

..... Respondent

Through : Ms.Rajdipa Behura, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. Being conscious of misuse of the provisions of rape and the impact it can have on the accused, in the context of evaluating the testimony of rape victim, following observations were made by the Supreme Court in ***Rajoo & Ors. v. State of Madhya Pradesh AIR 2009 SC 858*** :

‘...It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication.... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.’

2. The Appellant Krishan Kumar, who is father-in-law of Complainant/Prosecutrix ‘R’ (name withheld to conceal her identity) has been convicted for committing the offence punishable under Sections 376 IPC and sentenced to undergo RI for ten years with fine of Rs.20,000/-.

3. Feeling aggrieved by the order of conviction and sentence imposed on him, the Appellant has preferred this appeal challenging his conviction and sentence awarded to him for committing the offence punishable under Section 376 IPC on the following grounds :

(i) That the Appellant was falsely implicated in this case as the Prosecutrix had made complaint at the instance of her *jija* and deposed in the court at the instance of her father and *jija*.

(ii) That the only eye witness PW-11 Ved Prakash i.e. *Chachia Sasur* of the Prosecutrix had not supported the case of the prosecution.

(iii) That there is inordinate delay of one week in reporting the matter to the police.

(iv) That the statement of the Prosecutrix has been recorded without oath by the Learned Trial Court as she could not even understand the meaning of oath.

(v) That the statement of the victim has not been corroborated by any other evidence and the Court committed grave error in convicting the Appellant on the basis of uncorroborated testimony of the victim which was in conflict with the testimony of other witnesses.

4. In order to appreciate the contention of the Appellant in the backdrop of testimony of Prosecutrix who is a sole witness to the incident, a brief look at the facts of the case is necessary. The complaint Ex.PW1/A which formed basis of registration of FIR No.189/2011 under Section 376/506 IPC, PS Baba Hari Dass Nagar reveals that on 16.11.2011, the Prosecutrix alongwith her father visited PS Baba Hari Das Nagar. The father of the Prosecutrix informed the police that her daughter had been sexually assaulted by her father-in-law on 10.11.2011 at about 3.30 pm. He further

informed that his daughter is mentally retarded.

5. The Investigating Officer recorded the statement of the Prosecutrix wherein she stated that she was residing at Gopal Nagar alongwith her two children aged about four years and three years respectively. On the date of occurrence i.e. 10.11.2011 at about 3.30 pm, her mother-in-law had gone to the neighbouring house for some local treatment of '*naabhi*' (*Dharan Uthhwane*). Her father-in-law called her in his room at upstairs. At that time, there was no male member in the house. She visited the room of her father-in-law on the first floor. Her father-in-law removed her clothes and forcibly did '*galat kaam*' with her. While her father-in-law was doing '*galat kaam*', brother of his father-in-law, who name is Ved, happened to come upstairs and through the window, he saw his brother doing '*galat kaam*'. Thereafter her father-in-law started quarrelling and opened the cylinder threatening to set on fire and run away. She requested for legal action against her father-in-law.

6. After the registration of FIR, the Prosecutrix was taken to RTRM Hospital, Zafarpur where her MLC was prepared. During investigation, the Prosecutrix was also produced before Learned Magistrate on 16.11.2011 for getting her statement under Section 164 CrPC recorded.

7. On receiving the secret information, the Appellant/Accused was arrested on 18.11.2011 from Chhawla Bus Stand and he was also sent for medical examination. After completion of investigation, Appellant was chargesheeted for committing the offences punishable under Sections 376/506 IPC.

8. After committal of the case to the Court of Sessions, the Appellant was charged for committing the offence punishable under Section 376 IPC

to which he pleaded not guilty and claimed trial.

9. In order to bring home the guilt, the prosecution has examined 15 witnesses in all in support of its case.

10. The Appellant pleaded innocence not only in his statement under Section 313 CrPC but had gone a step ahead by leading defence evidence to bring on record that he was not even in the house on the date of occurrence. This he tried to establish by summoning DW-1 Sh.Deepak, Nodal Officer from Vodafone Mobile Services Ltd. to prove that the mobile connection No.8930091253 is in his name and the location of the mobile on the alleged date and time of occurrence in Jhajjar (Haryana) which was far away from the place of occurrence.

11. I have heard the Appellant as well as learned APP for the State and also carefully gone through the record.

12. It is often quoted that every trial is voyage of discovery in which truth is quest. In our quest to ascertain the truth, we prefer to be guided by the following observation made by the Supreme Court in *Chandra Shashi v. Anil Kumar Verma* (1995) 1 SCC 421:

'To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.'

13. With a view to appreciate the rival contentions and unearth the truth, it is necessary to refer the testimony of Prosecutrix as well as of other material witnesses.

Version of the Prosecutrix as recorded in Ex.PW1/A on 16.11.2011 :-

- (i) On 10.11.2011 at about 3.30 pm, while her mother-in-law had gone to neighbouring house, **she was called upstairs by her father-in-law in his room.**
- (ii) **She went upstairs where her father-in-law removed her clothes and committed 'galat kaam' with her.**
- (iii) At that time, her *Chachia Sasur* namely Ved happened to reach upstairs and **through the window saw her Sasur committing 'galat kaam' with her.**
- (iv) On this, her father-in-law started making quarrel, opened the gas cylinder **and threatened to set on fire.**

Version of the Prosecutrix as recorded in statement under Section 164 CrPC on 16.11.2011

- (i) Her father-in-law used to tease her earlier also which was reported to her mother-in-law. However, it had no effect on her father-in-law.
- (ii) A day before the previous day (*Parson*) she was alone at home and her father-in-law was also present in the house. **Her father-in-law came to her room and closed the door. Thereafter he caught her and opened the string (*nada*) of her salwar and did 'galat kaam' with her.**
- (iv) After committing *balaatkaar*, he threatened her saying he would continue doing same and in case she inform someone, he would kill her.
- (v) Her father-in-law has done a very bad act and he must be punished.

It is relevant to mention her that Prosecutrix has been examined twice

by the prosecution i.e. firstly on 28.02.2012 and secondly on 07.07.2012 after the application under Section 311 CrPC moved by the prosecution was allowed by the court.

In her deposition before the Court on 28.02.2012:

(After recording that the witness had moderate level of mental retardation and having IQ of 37 only, she was questioned about the name of her family members and whether she had gone to the School. Since the witness was unable to understand the meaning of oath (*kasam*) her statement was recorded without oath).

The Prosecutrix stated that :

- (i) **Her father-in-law once came to her room** and after bolting the room, removed his clothes as well her clothes and committed rape.
- (ii) She told this fact to her mother-in-law. Her neighbours had also come.

This witness was cross examined by learned APP for the State wherein when the words were put in the mouth of witness in the form of suggestions, she admitted the same to be correct.

During her cross examination by the Appellant, she could not tell her date of marriage and date of birth of her children or when they were born. However, when she was asked :

Ques. 'Is it correct that your father-in-law had not done anything wrong with you?'

Ans. 'Yes'.

It was followed by Court Question that '*Whether accused had committed any galat kaam (rape) with you*', she answered '*Yes*'.

Her subsequent cross examination appears to be going to the root of

the matter and is as under :-

‘It is correct that my jija Raju had asked me to register a case against my father-in-law (accused). It is also correct that my jija Raju had asked me to register a false case against the accused.

Court Question : Why your jija Raju wanted to implicate your father-in-law (accused) in a false case?

Answer : Due to quarrel.

The Prosecutrix was again examined on 07.07.2012 wherein she stated that she made the complaint against the accused as he had committed rape with her. However, when cross examined by learned counsel for the Appellant/Accused, she stated that she did not know the contents of complaint Ex.PW1/A. Again she was questioned :

‘Whether your father had briefed you to depose against the Accused?

And. Yes.’

14. PW-6 Rajesh Kumar, father of the Prosecutrix stated that his daughter is mentally retarded and married to Ajay Kumar, son of the Accused and that she has two children. He further stated that on 13.11.2011 his wife received a telephone call and he came to know that accused had committed rape with his daughter. He went to the house of his daughter who confirmed the incident and thereafter he alongwith his daughter went to PS Baba Hari Das Nagar. His daughter was also medically examined.

15. PW-6 Sh.Rajesh Kumar refused to disclose the name of the relative who made a call to his wife about the incident. He reached Nazafgarh in the evening at about 4.00 pm. Accused was not present there but mother-in-law of his daughter was at home. **His another son-in-law Raju had directly**

reached the police station. After staying in the hospital for about two hours, they returned from the hospital after 3.00 am. He also admitted that he accompanied his daughter when her statement under Section 164 CrPC was recorded. He admitted that his daughter is suffering from mental retardation but volunteered to add that this was informed to her in-laws prior to marriage.

16. PW-11 is Sh.Ved Prakash (*Chachia Sasur*). He stated that he had been residing separately from his brother for 17-18 years. He has not supported the case of the prosecution and stated that he did not visit the house of his brother on the alleged date of occurrence. PW-11 Sh.Ved Prakash was cross examined by learned APP for the State but without any success.

17. PW-14 W/ASI Sudesh is the Investigating Officer of the case. She stated that on 15.11.2011 at about 6.00/7.00 pm, the Prosecutrix alongwith her father came to the police station. After making inquiries from her, she took them to RTRM Hospital where Prosecutrix was medically examined. Thereafter she alongwith Prosecutrix and Ct.Shalu visited the spot i.e. house of the Prosecutrix. She recorded the statement of the Prosecutrix, madd endorsement thereon and got the case registered through Ct.Shalu. She prepared the site plan Ex.PW14/B. Lady Ct.Shalu returned to the spot after getting the FIR registered and handed over to her copy of FIR and original rukka. Thereafter, she **seized bedsheet from the room of the Prosecutrix** as well salwaar of the Prosecutrix vide memos Ex.PW14/C and D respectively. Thereafter she brought the Prosecutrix to Dwarka Court and got her statement under Section 164 CrPC recorded. She deposited the case property in Malkhana. On 18.11.2011 on the basis of secret information, the

Accused/Appellant was arrested from Chhawla Bus Stand and his personal search was conducted. He was also sent to RTRM Hospital for his medical examination. Thereafter he was produced in the Court and case property was deposited in the Malkhana.

18. During investigation, exhibits were sent to CFSL and after recording the statement of witnesses and completion of investigation, chargesheet was filed.

19. PW-4 Lady Ct.Shalu was requisitioned by the investigating officer from South West Control Room. As per her version, on the night intervening 15/16.11.2011 at about **10.00/10.30 pm**, the Duty Officer informed her to reach PS BHD Nagar. When she reached PS BHD Nagar, she found the Prosecutrix present alongwith her father. She accompanied the Investigating Officer to RTRM Hospital where Prosecutrix was medically examined. After the medical examination, the doctor handed over to her eight sealed pullandas alongwith sample seal which were seized by the IO in her presence vide memo Ex.PW4/A. Thereafter they returned to the Police Station and Prosecutrix was dropped at her house. She does not depose even a single word about the seizure of salwaar and bedsheet from the room of the Prosecutrix, recording of statement of Prosecutrix by the Investigating Officer at her house or sending the rukka through her for registration of the case.

20. Here suffice it to mention that this witness has not uttered a single word regarding her association in the proceedings conducted at the house of the Prosecutrix after their return from the hospital. Thus to that extent, the statement of the investigating officer remains uncorroborated by her. This fact has been emphasised keeping in light the fact that as per the

Investigating Officer, seizure of bedsheet having stains of semen and salwar of the Prosecutrix vide seizure memos Ex.PW14/C and D was in her presence. **She is the person named in the FIR who has taken the rukka for registration of the FIR and returned to the spot alongwith copy of the FIR and rukka.**

21. PW-10 Dr.Arunima, Medical Officer, Rao Tula Ram Hospital medically examined the Prosecutrix and proved her MLC as Ex.PW10/A and after examination, she referred the Prosecutrix to Gynae Department for her internal examination.

22. After considering the entire testimony of the prosecution witnesses, learned APP for the State has been asked to explain the following material flaws in the prosecution case, which are going to the root of the matter :

(i) Admittedly the Prosecutrix is mentally retarded. Even on her MLC, it has been recorded that the Prosecutrix is not even able to give her address. Then how in her statement Ex.PW1/A, the Prosecutrix could narrate the incident giving date, time and place as well as the complete address.

(ii) PW-6 Sh.Rajesh Kumar, father of the Prosecutrix admits presence of his another son-in-law Raju at the police station and during the proceedings on the day of FIR but the IO is silent about his presence.

(iii) The Prosecutrix had admitted that Raju was playing a negative role in her life even to the extent that he had given beating to her.

(iv) The FSL report does not connect the presence of semen on the clothes of Prosecutrix to be of Appellant.

(v) Neither from the statement of the Prosecutrix nor from the site plan and statement of IO, the place of occurrence i.e. room of the Prosecutrix on the ground floor or room of the Appellant on the first floor, can be

identified.

(vi) Whether the rape was committed at the first floor in the room of the Appellant or at the ground floor in the room of the Prosecutrix, there is total confusion on this aspect. **It becomes necessary for the reason that bedsheet was seized from the room of the Prosecutrix whereas the FIR reveals that rape was committed on the first floor in the room of the Appellant.**

(vii) **PW-2 Sh.Ajay had stated that he was away from his house one week from the date of incident which is stated to be 10.11.2011.** The Prosecutrix nowhere mentions in the FIR or in her statement under Section 164 CrPC about the absence of her husband for a period of one week from the date of incident or his return on 18.11.2011. **It becomes necessary to note that PW-2 Ajay, husband of the Prosecutrix does not know the date of his return to his house as he has stated the date to be 18.10.2011 or 18.11.2011.**

(viii) The Prosecutrix has been taken for medical examination vide DD No.76-B dated 15.11.2011 at 10.40 pm in official vehicle No.DL-1C-J-4628 with Driver Brijesh, Ct.Shalu and father of the Prosecutrix. However, the time of arrival of the Prosecutrix in the hospital is recorded as 12.13 am whereas the hospital is in close vicinity of the police station. She has been medically examined at 12.45 am. Thereafter the Prosecutrix alongwith police party returned to the spot (as per the IO) and after seizure of bedsheet and salwar of the Prosecutrix vide memos Ex.PW14/C and D, rukka has been prepared and sent at 3.40 am on 16.11.2011 through Ct. Shalu. Surprisingly, within 20 minutes at 4.00 am vide DD No.6-A, FIR has also been recorded and the endorsement made at point Ex.PW13/B on the rukka

shows that PIS number has been filled subsequently with different ink and hand.

(ix) Learned APP for the State has been asked to go through the Application prepared by the IO for getting the statement of the Prosecutrix recorded under Section 164 CrPC which has been prepared on 15.11.2011. The application bears all the particulars of the case including FIR number, Sections, name of the Police Station, name of the Accused and his address. **How the application for recording the statement under Section 164 CrPC of the Prosecutrix could have been prepared a day in advance when the complaint Ex.PW1/A of the Prosecutrix was recorded at about 3.00 am (rukka has been sent at 3.40 am) on 16.11.2011 after her medical examination.**

(x) The Appellant has been stated to be arrested on 18.11.2011 at 7.00 am from Bus Stand Chhawla, Nazafgarh and in the arrest memo Ex.PW2/A in Column No.7 i.e. "Name, Address & Tel.No. Whomsoever to convey the arrest information", the name of Ajay Kumar, S/o Krishan, R/o H.No.380 near Mani Dharamshala, Surakhpur Road, Nazafgarh, 8059474356 (i.e. Son of the Appellant) has been mentioned. As per the IO, the Appellant was arrested at the instance of secret informer. The information of arrest was sent to his son. If it was so, then how PW-2 Ajay is a signatory to the arrest memo Ex.PW2/A bearing his signature at point-A. The arrest memo Ex.PW2/A also shows that while column No.1, 2, 3, 4 and 8 are in different hand and ink, Column No.5 i.e. Place of Arrest, Column No.6 i.e. Date and Time of Arrest and Column No.7 i.e. Name, Address & Tel.No. whomsoever to convey the arrest information are in different hand and ink. This also raises a question mark on the issue whether this arrest memo has

been prepared in accordance with the guidelines laid down in this regard.

(xi) The statement of the Prosecutrix Ex.PW1/A on the basis of which FIR was registered was recorded on 16.11.2011, her statement under Section 164 CrPC was also recorded on the same day by learned MM. While in her statement Ex.PW1/A, the Prosecutrix is very specific about the date, time and place of occurrence i.e. room of the Appellant, in her statement recorded under Section 164 CrPC, she refers the occurrence having been taken place 'Parson' (a day before previous day which could be 14.11.2011) in her room. How within a gap of few hours, she could not mention correctly the date, time and place of occurrence. It becomes necessary to ascertain whether Prosecutrix was making statement of her own or some other person was dictating the statement at the police station to settle some score with the Appellant.

(xii) If the Appellant had opened the gas cylinder and threatened to set on fire and there was a quarrel, as per the Prosecutrix, number of persons gathered at that time. They must have come to know about the cause of quarrel. In that circumstance, why the neighbours have not been associated during investigation on the night on 15/16.11.2011 when the Investigating Officer had allegedly visited the house of the Complainant to conduct the proceedings regarding seizure of articles, preparing and sending the rukka as well as preparing the site plan etc.

(xiii) Was there any evidence to disbelieve the statement of DW-1 Sh.Deepak, Nodal Officer, Vodafone Mobile Services Ltd, about the presence of subscriber of Mobile Connection No.8930091253 i.e. the Appellant in Distt. Jhajjar Haryana.

23. It is necessary to ascertain all these facts for the reason that

Prosecutrix has admitted in her statement before the Court on 28.02.2012 when questioned as under :

‘Q. Is it correct that your father-in-law had not done anything wrong with you?’

Ans. Yes.’

Further, when she was again examined on 07.07.2012, she was questioned :

‘Whether your father had briefed you to depose against the Accused?’

Ans. Yes.’

24. The submissions made by learned APP for the State on the above aspects of the case are as under :-

(i), (ii) & (iii) Learned APP submitted that due to the nature and gravity of unfortunate incident, the Prosecutrix must have been able to remember the details at the time of making the statement Ex.PW1/A. Only the Investigating Officer could have explained why Raju has not been associated with the investigation of the case. May be because of the father of the Prosecutrix was accompanying her and Raju was not a witness to the occurrence that he has not been associated as a witness by the Investigating Officer or named to be a person present alongwith PW-1 ‘R’ and PW-6 Rajesh Kumar.

(iv) Learned APP submitted that the presence of semen on the clothes of Prosecutrix that too when her husband was away for a week and there was no male member except the Appellant, corroborates the version of the Prosecutrix of she being sexually assaulted by the Appellant.

(v) & (vi) Learned APP for State submitted that Investigating Officer has prepared the site plan of the place of occurrence at the instance of

Prosecutrix. However, different version by the prosecution in this regard may be because of her mentally retarded condition.

(vii) Learned APP for the Stated submitted that PW-2, Mr.Ajay, husband of the Prosecutrix and son of the Appellant being admittedly away for a week from the date of incident, the confusion in his mind about when he returned home i.e. on 18.10.2011 or 18.11.2011 may be ignored as he came after one week from the date of incident.

(viii) & (ix) Learned APP could not submit in what circumstances the Investigating Officer has written application under Section 164 CrPC with the date 15.11.2011 i.e. even before registration of FIR and why PW-4 Lady Ct.Shalu is silent on the aspect of proceedings conducted at the house of the Prosecutrix after her medical examination.

(x) So far as discrepancies appearing in the arrest memo are concerned, learned APP submitted that use of different pen in different column may not have any serious effect as the date of arrest is not in dispute.

(xi) Learned APP submitted that may be because of her weak mental condition, which is certified by Hospital also, these discrepancies have occurred.

(xii) Learned APP submitted that most of the time, public witnesses are not willing to come against their neighbours and they disassociate themselves. Hence, it may not be considered a reason to disbelieve the otherwise trustworthy witnesses.

(xiii) Learned APP for the State submitted that learned Trial Court has already observed that mobile of the Appellant could be with some other person on that day.

25. After considering the response by learned APP for the State, I am of

the considered view that it was a case where there were serious flaws in the case of prosecution at the initial stage itself which make the entire case of the prosecution untrustworthy. Rather from the record it can be gathered that the Prosecutrix was playing in the hands of her family and due to that reason, she was made to file a case against her own father-in-law though even as per her, no incident had taken place.

26. The Appellant tried to prove his innocence by examining DW-1 Sh.Deepak, Nodal Officer, Vodafone Mobile Services Ltd who has proved the relevant record as Ex.DW1/A to D. It was only on the basis of record maintained by Vodafone Mobile Services Ltd. that its genuineness or authenticity was not under cloud. The call details record of mobile connection No.8930091253 of Appellant reveals that on the relevant date i.e. 10.11.2011 from 09.55 am to 10.01 pm, he was present in Distt. Jhajjar, Haryana, hence the presence of the Appellant on that day at his house is not established and that itself was sufficient to discard the testimony of the Prosecutrix who otherwise is not a sterling witness.

27. The self contradictory statements made by PW-1 i.e. the Prosecutrix have already been referred to above and a conjoint reading of all the statements made by the Prosecutrix reveals that she has changed her version at every stage.

28. So far as the clothes sent to the FSL are concerned, it is not the case of the prosecution that when the Prosecutrix was taken to RTRM Hospital for medical examination on 16.11.2011, she was wearing the same clothes which she had worn a week back at the time of incident. So there was no purpose of sending those clothes to FSL as she must have taken bath during preceding six days and changed the clothes repeatedly. So far as seizure of

bedsheet is concerned, if the rape was committed on the first floor on the bed of the Appellant then seizure of bedsheet from the room of the Prosecutrix on the ground floor could be only in respect of her physical relations with her husband. Seizure of another salwaar of Prosecutrix from her room was also not proved by PW-4 Lady Ct.Shalu.

29. Though the medical examination of Prosecutrix was conducted after a gap of 6 days and her clothes were seized in the hospital but there is no evidence to the effect that those clothes were same which she was wearing at the time of incident. Thus, the FSL report also does not connect the Appellant with the crime.

30. When the Prosecutrix alongwith her father was present in the police station at about 6.00/7.00 pm, except taking her for medical examination, the Investigating Officer has not done anything and even PW-4 Lady Ct.Shalu has been informed at 10.00/10.30 pm. It is not emerging on record that from 6.00/7.00 pm till her arrival in the hospital at 12.13 am for her medical examination, what the Investigating Officer was doing when the Prosecutrix and her father both were present alongwith her.

31. The learned Addl. Session Judge had convicted the Appellant and sentenced him to undergo RI for 10 years for committing the offence punishable under Section 376 IPC, observing that :

- (i) The Prosecutrix was having sufficient understanding and capacity to answer the questions and she answered independently and with maturity.
- (ii) Contradictions and discrepancies in her testimony are not material.
- (iii) She has identified the Appellant to be the person who committed the offence.
- (iv) DW-1 Sh.Deepak, Nodal Officer, Vodafone Mobile Services Ltd. has

proved the location of Mobile Connection No. 8930091253 and not that of Appellant and thus mere location of mobile in Distt. Jhajjar, Haryana cannot support the plea of alibi.

32. It appears that learned Addl. Session Judge got carried away by the heinous nature of the crime and that lost sight of the basic principles underlying criminal jurisprudence. In the absence of any credible evidence to prove the offence of rape by the Appellant, learned Addl. Session Judge could not have allowed him to be swayed by nature of offence especially when the manipulations at every stage is writ large on TCR. The Prosecutrix brought on record that she had been made to depose against the Appellant by her family because of quarrel. Even that did not prove an eye opener for learned Addl. Session Judge resulting into conviction of the Appellant for the offence which he never committed. Rather he was far away in Jhajjar, Haryana at the time of occurrence. Learned Addl. Session Judge has wrongly interpreted the CDR to be just describing the location of the mobile and not of the Appellant who is recorded subscriber of that mobile connection number. There was no material before learned Addl. Session judge to even draw an inference that Mobile Connection No.8930091253 of the Appellant was being used by some other person. The Appellant could not have done anything beyond what he had done by examining DW-1 Sh.Deepak, Nodal Officer, Vodafone Mobile Services Ltd and proving the relevant record including the CDR Ex.DW1/A to D showing his location far away in Distt. Jhajjar, Haryana during that period.

33. In *Rai Sandeep @ Deepu vs. State of NCT of Delhi (2012) 8 SCC 21*, the Supreme Court commented about the quality of the sole testimony of the

prosecutrix which could be made basis to convict the accused. The Supreme Court held as under:-

22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

34. In the case of Abbas ***Ahmed Choudhury v. State of Assam (2010) 12 SCC 115***, while observing that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully, the Hon'ble Supreme Court observed as under:-

'Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully. In the instant case, not only the testimony of the victim woman is highly disputed and unreliable, her testimony has been thoroughly demolished by the deposition of DW-1.'

35. In another case ***Raju v. State of Madhya Pradesh (2008) 15 SCC 133***, the Supreme Court stated that the testimony of a victim of rape has to be tested as if she is an injured witness but cannot be presumed to be a gospel truth. Para 11 of the judgment is extracted hereunder:-

'11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.'

36. The Appellant before this Court had been able to establish on record that on the date and time of alleged occurrence of rape, he was not even in

the vicinity of his house. His location at Distt. Jhajjar, Haryana stands proved by DW-1 Sh.Deepak, Nodal Officer who is an independent witness deposing on the basis of record maintained in due course and duly certified under Section 65(B)(4)(c) of the Evidence Act, 1872. The testimony of the Prosecutrix throughout had been full of material contradictions on vital aspects. Even at the cost of repetition, it can be said that on 16.11.2011 in her statement Ex.PW1/A recorded just before 3.40 am, the place of incident was referred to as the room of the Appellant at the first floor but on the same day in her statement recorded under Section 164 CrPC by learned MM, her version about the incident was totally changed and even the place of occurrence was shifted from first floor to ground floor in her room. It has come on record even at that stage, her father was accompanying her. It appears that her father was tutoring her to make full proof case against the Appellant to settle score with him.

37. Learned Addl. Session judge had convicted the Appellant without there being any material in the form of oral or documentary evidence to prove the guilt beyond reasonable doubt. Hence, the Appeal is allowed and the Appellant is acquitted of the charges. Appellant Krishan Kumar be released forthwith, if not required in any other case.

38. TCR be sent back alongwith copy of this order.

PRATIBHA RANI, J

August 01, 2014

'st'