

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

% *Judgment Reserved on : May 17, 2016*
Judgment Delivered on : May 30, 2016

+ **CRL.A. 125/2015**

DEEPAK MALIK Appellant
Represented by: Mr.R.N.Sharma, Advocate with
Mr.Ajay Satija, Advocate

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP with
Insp.Dinesh, P.S.Kanjhawala

CRL.A. 220/2015

SANDEEP YADAV Appellant
Represented by: Mr.Jaideep Malik, Advocate

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP with
Insp.Dinesh, P.S.Kanjhawala

CRL.A. 251/2015

MANJEET SINGH Appellant
Represented by: Mr.Jitendra Sethi, Advocate with
Mr.Akash Sharma, Advocate

versus

THE STATE (GOVT OF NCT) OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP with
Insp.Dinesh, P.S.Kanjhawala

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. Instant case is of a kind where, to do justice, a definite and exact knowledge of the events which took place in the evening of May 21, 2006 has to be formed so that an accurate crystal of what possibly happened that evening is extracted.

2. Being a case of rape, I shall be referring to the victim as '*Angel*' (pseudo name). She was a student of Rajkiya Pratibha Vikas Vidyalaya, Paschim Vihar and was born on March 11, 1991, a fact proved by the birth register Ex.PW-11/A maintained by Municipal Corporation of Delhi.

3. Process of criminal law was set into motion when, at 7:05 PM on May 21, 2006, ASI Kanwar Singh PW-3, recorded DD No.27A, Ex.PW-3/A, noting therein information received from mobile number 9213866512 that one white coloured Maruti car having registration No.DL 6CD 6807 – occupied by three boys and a girl who was shrieking was seen by him moving from village Rani Khera towards village Kanjhawala.

4. Entrusted with the investigation, HC Dalbir Singh PW-22, accompanied by HC Balraj PW-15, reached main road of village Rani Khera, where they found Angel stranded on the road who informed them that she has been raped by three boys in a Maruti car bearing registration No.DL 6CD 6807. The two claimed that they located Angel sometime after 7:00 PM – I have no evidence of the exact time. After sometime, Insp.Sudesh Dahiya PW-24, also reached the spot and took over investigation. A message was flashed on the zipnet to look out for a white coloured Maruti Car bearing registration No.DL 6CD 6807.

5. ASI Suresh Chand PW-7 intercepted the Maruti Car at village Karala in which, as per his testimony, three boys were present – one of whom ran away. The other two : Sandeep and Deepak were apprehended by him. Once again I have blurring of the evidence of the exact time when he intercepted the Maruti car. It is not emerging in the evidence. But I note that the arrest memos Ex.PW-22/B and Ex.PW-22/A respectively of Sandeep and Deepak show the arrest being made at 8:30 AM on May 22, 2006.

6. ASI Suresh Chand immediately conveyed on the wireless that the car had been intercepted and two boys were apprehended in the car; one having run away. Accompanied by Kamal Manna PW-14 and Munmun Manna PW-13, the father and the sister respectively of Angel as also Angel, Insp.Sudesh Dahiya reached village Karala and met ASI Suresh Chand who was having Sandeep and Deepak in his custody as also the car.

7. The crime team was summoned. Insp.Sudesh Dahiya recorded statement Ex.PW-4/A of Angel. She stated that she was a student of class 10 and was friendly with one Bobby and through whom she got acquainted with Sandeep over the telephone with whom she had spoken over the phone only twice earlier. On May 21, 2006 at about 4:00 PM she received a call from Sandeep on her mobile phone. He told her that Bobby wanted to meet her and had requested him to fetch her. Since she had never met Sandeep she asked him how she would recognize him. Sandeep told her the colour of the shirt and the pant he was wearing and told her to come to the bus stop at Nangloi and spot him. She left her house and reached the bus stop at Nangloi where she spotted Sandeep from the clothes he was wearing. He was in the company of two boys : Deepak Malik and Manjeet. They were sitting in a white coloured Maruti car bearing registration No.DL 6CD 6807.

Sandeep told her that Bobby was waiting at Peeragarhi bus stop. Trusting him she sat in the car which was driven by Manjeet. They reached Peeragarhi bus stop. She did not see Bobby and told Sandeep to drop her back. But the three drove away and took her to a farm in Ranikhera where Deepak and Sandeep tried to misbehave with her. She managed to get away from their clutches, but the two forced her back in the car. Deepak raped her on the rear seat when the car was being driven by Manjeet, and Sandeep facilitated the rape by holding her hands. She somehow managed to open the window of the car and screamed. To quieten her Deepak threatened her with a pistol. An old man saw the car and heard her screams. The moment the car slowed down she jumped out. Somebody informed the police and she desired action to be taken against Sandeep, Deepak Malik and Ranjeet.

8. After making the endorsement Ex.PW-24/B under the statement Ex.PW-4/A of Angel, Insp.Sudesh Dahiya proceeded to PS Kanjhawala, recording that the tehrir was dispatched at 12:15 AM on May 22, 2006 i.e. just past midnight. The duty officer ASI Kanwal Singh PW-3, registered the FIR No.63/2006, Ex.PW-3/B for the offence of abduction, forceful confinement and rape. Recording DD No.2A, Ex.PW-3/C that the FIR had been registered at the police station Kanjhawala on tehrir being dispatched at 12:15 AM. Relevant would it be to highlight that in the endorsement Ex.PW-24/B i.e. the tehrir, it is recorded that Sandeep and Deepak have been apprehended and the Maruti car has been seized. It has also been mentioned that the crime team has been summoned and has completed the search within the car.

9. As these events prior to the dispatch of the tehrir were occurring, the Crime Team reached village Karala : the place where Sandeep and Deepak were apprehended and the car was stationed. Insp.Ravi Singh PW-17,

inspected the car and prepared the report Ex.PW-17/A, recording therein the undernoted exhibits noticed in the car as also what more needed to be done and advised that the same may be seized therefrom :

- (i) White Maruti Car No.DL 6CD 6807, may be seized along with stereo, charger and small articles as papers, visiting cards etc. lying in the car.
- (ii) One cherry coloured underwear lying on the back seat of the car.
- (iii) On inspection one pubic hair and six long hair were found on the back seat of the car.
- (iv) One rose coloured condom, found near right back door between the door and back seat.
- (v) One white handkerchief found on left front seat.
- (vi) One Reliance-LG, grey coloured mobile phone found on front left seat.
- (vii) One pair of white-blue sports shoes make TRENZ found between front back seat.
- (viii) Complete back seat covers in two pieces grey coloured with yellow, blue and red circle spot.
- (ix) Clothes of accused persons and victim after the medical exam.
- (x) One pink coloured hair band.

10. Ct.Dalbir Singh PW-16, photographer, a part of the Crime Team, took ten photographs Ex.PW-6/A1 to Ex.PW-6/A10 of the car; negatives whereof are Ex.PW-6/B1 to Ex.PW-6/B10. Relevant would it be to note that the photographs Ex.PW-6/A1, ExPW-6/A7 and Ex.PW-6/A10 show that a Rim of a Maruti car is lying on the rear seat of the car.

11. The exhibits referred to in the Crime Team report were seized vide memos Ex.PW4/B, Ex.PW-24/A and Ex.PW-4/F. The white Maruti car

No.DL 6CD 6807 was seized vide memo Ex.PW-4/E. The rear seat cover of the car was separately seized vide memo Ex.PW-4/C.

12. W/Ct.Mukesh PW-19, took Angel to Sanjay Gandhi Memorial Hospital for being medical examined where Dr.P.C.Prabhakar PW-1, examined Angel and wrote the MLC Ex.PW-1/A recording that no external injury was seen and referred Angel for gynecological examination and Dr.Monika examined her and wrote on the MLC:-

“On local examination of breast – No marks of external injury seen. Few scratches on the neck. On local examination of perineum – No external mark of injury + ntHymen ruptured fresh torn bleeding On P/S examination – A fresh tear is +nt on the left lateral wall of vagina which is high up & bleeding. No ext. injury seen on exposed part.”

(Emphasis Supplied)

13. She took swab from vagina of Angel and also her pant and handed over the same to W/Ct.Mukesh who seized them and in turn handed them over to Insp.Sudesh vide memo Ex.PW-19/A.

14. At the trial, Dr.Monika not being available, the aforementioned writing on Angel's MLC Ex.PW-1/A, was proved by Dr.Manisha PW-2 who had worked with Dr.Monika and was familiar with her handwriting as Ex.PW-2/B.

15. Manjit was arrested from his house at 11:30 AM on May 22, 2016 vide memo Ex.PW-22/C.

16. The three accused : Manjeet, Deepak and Sandeep were taken to Sanjay Gandhi Memorial Hospital for being medically examined. The MLCs Ex.PW-12/A, Ex.PW12/B and Ex.PW-12/C of Sandeep, Deepak and Manjeet respectively authored by Dr.V.K.Jha PW-12 records that 'there is

nothing to suggest that person is incapable of performing sexual intercourse'. Dr.Jha took the blood sample and pubic hair of the three and along with their underwear, handed over the same to Ct.Ramesh Kumar PW-8, Ct.Rambir Singh PW-9 and HC Tej Singh PW-20, who in turn handed over the same to Insp.Sudesh Dahiya vide memos Ex.PW-8/A, Ex.PW-9/A and Ex.PW-20/A respectively.

17. All the seized exhibits were sent to FSL for scientific examination. Vide FSL report dated December 29, 2006 it was recorded that semen was detected on the pant worn by Angel at the time of incident; the vaginal swab of Angel; the underwear(s) worn by accused Sandeep, Deepak and Manjeet and the condom found in the car. The report records that the semen stains found on the pant worn by Angel belonged to a person having blood group 'O'; but the group of the blood of the accused and that of the semen stain on the underwear(s) of the accused as also the condom could not be detected either on account of no reaction or putrification.

18. Insp.Sudesh Dahiya obtained call records Ex.PW-21/B for mobile number 9899305610 (number used by accused Sandeep) for the period from May 19, 2006 to May 23, 2006. An analysis of call records Ex.PW-21/B for mobile number 9899305610 shows that the undernoted calls were exchanged between mobile numbers 9899305610 and 9313685650 the number used by Angel, which she admits during cross examination to be her mobile number:-

S. No.	Details of call	Date of call	Time of call	Duration of call (seconds)
1.	Call made from 9899305610 to 9313685650	May 19, 2006	09:13:36	1780

2.	Call made from 9899305610 to 9313685650	May 19, 2006	09:43:16	185
3.	Call made from 9899305610 to 9313685650	May 19, 2006	09:47:25	5
4.	Call made from 9899305610 to 9313685650	May 19, 2006	10:18:21	392
5.	Call made from 9899305610 to 9313685650	May 19, 2006	10:28:27	242
6.	Call made from 9899305610 to 9313685650	May 19, 2006	10:39:59	304
7.	Call made from 9899305610 to 9313685650	May 19, 2006	14:31:33	1780
8.	Call made from 9899305610 to 9313685650	May 19, 2006	15:01:13	1049
9.	SMS sent from 9899305610 to 9313685650	May 19, 2006	17:33:38	----
10.	SMS sent from 9899305610 to 9313685650	May 19, 2006	17:33:42	----
11.	Call made from 9899305610 to 9313685650	May 19, 2006	18:06:03	841
12.	SMS sent from 9899305610 to 9313685650	May 19, 2006	20:07:23	----
13.	Call made from 9899305610 to 9313685650	May 19, 2006	20:13:14	765
14.	SMS sent from 9899305610 to 9313685650	May 19, 2006	21:11:04	----

15.	SMS sent from 9899305610 to 9313685650	May 19, 2006	21:11:08	----
16.	SMS sent from 9899305610 to 9313685650	May 19, 2006	21:12:14	----
17.	Call made from 9899305610 to 9313685650	May 19, 2006	21:30:53	767
18.	Call made from 9899305610 to 9313685650	May 19, 2006	21:44:42	733
19.	SMS sent from 9899305610 to 9313685650	May 19, 2006	22:47:01	----
20.	Call made from 9899305610 to 9313685650	May 20, 2006	07:59:03	371
21.	Call made from 9899305610 to 9313685650	May 20, 2006	09:52:01	236
22.	Call made from 9899305610 to 9313685650	May 20, 2006	14:44:17	461
23.	Call made from 9899305610 to 9313685650	May 20, 2006	15:08:01	3
24.	Call made from 9899305610 to 9313685650	May 20, 2006	18:00:58	146
25.	Call made from 9899305610 to 9313685650	May 20, 2006	18:39:23	1012
26.	Call made from 9899305610 to 9313685650	May 20, 2006	18:59:33	124
27.	Call made from 9899305610 to 9313685650	May 20, 2006	19:10:56	1765

28.	SMS sent from 9899305610 to 9313685650	May 20, 2006	19:46:08	----
29.	SMS sent from 9899305610 to 9313685650	May 20, 2006	19:46:18	----
30.	Call made from 9899305610 to 9313685650	May 20, 2006	20:17:48	1780
31.	Call made from 9899305610 to 9313685650	May 20, 2006	20:47:28	1780
32.	Call made from 9899305610 to 9313685650	May 20, 2006	21:17:08	1780
33.	Call made from 9899305610 to 9313685650	May 20, 2006	21:46:48	1466
34.	Call made from 9899305610 to 9313685650	May 20, 2006	22:54:14	533
35.	Call made from 9899305610 to 9313685650	May 21, 2006	07:56:09	504
36.	Call made from 9899305610 to 9313685650	May 21, 2006	08:06:33	704
37.	Call made from 9899305610 to 9313685650	May 21, 2006	13:49:54	116
38.	Call made from 9899305610 to 9313685650	May 21, 2006	13:56:40	33
39.	Call made from 9899305610 to 9313685650	May 21, 2006	15:22:08	171
40.	Call made from 9899305610 to 9313685650	May 21, 2006	16:11:13	39

41.	Call made from 9899305610 to 9313685650	May 21, 2006	16:22:53	511
42.	Call made from 9899305610 to 9313685650	May 21, 2006	16:31:41	404
43.	Call made from 9899305610 to 9313685650	May 21, 2006	16:38:44	624
44.	Call made from 9899305610 to 9313685650	May 21, 2006	16:50:21	7
45.	Call made from 9899305610 to 9313685650	May 21, 2006	16:51:04	24
46.	Call made from 9899305610 to 9313685650	May 21, 2006	17:07:01	7
47.	Call made from 9899305610 to 9313685650	May 21, 2006	17:12:51	46

19. Needless to state, the three accused were sent for trial.

20. At the trial, the prosecution examined twenty four witnesses. I need not note in detail the testimonies of the witnesses associated with the investigation of the case for they have deposed on the lines, of the factual narratives noted by me in the foregoing paragraphs, but would be highlighting such testimonies or other evidence which needs to be brought out to evaluate the creditworthiness of the witnesses and proof of relevant facts wherefrom the fact in issue can be determined.

21. Angel PW-4, deposed on the lines of her earlier statement Ex.PW-4/A but with variations, which would be noted by me in the subsequent paras of this judgment.

22. On the aspect of her association with accused Sandeep, Angel deposited as under:-

“I am at present studying in class 12. In the year 2006 I used to learn ‘Judo’ at Bal Bhawan, New Delhi. One boy Bobby also used to undergo training of Judo over there and he was thus known to me. I had a close friendship with Bobby. However, one Sandeep who was a friend of Bobby took my mobile phone number from the mobile phone of Bobby and on his own he started ringing me up. He used to ask me to talk to him but when I refused then he stated that at least I can talk to him treating him as my brother. During all this Sandeep talked to me for about 2/3 occasions on telephone.”(Emphasis Supplied)

23. On the aspect of her being raped by accused Deepak Malik and the participation by the other two accused, Angel deposited as under:-

“However, the said three boys directly took me to a Farm House at Rani Khera which belonged to one cousin of Manjeet. They took me to a room over there. However, prior to it when I was not getting down from the car as I was resisting and opposing the said three boys as to why I was brought over there then Deepak showed me a pistol and thereby forcibly took me to the room inside after lifting me in his laps. Deepak after taking me inside the room locked it from inside and at that time Sandeep and Manjeet were sitting inside. Deepak tried to molest me as he asked me to take off my clothes and during all this I started raising hue and cry shouting loudly then upon this the cousin brother of Manjeet who was already present over there came and asked Deepak to take me away as I was raising a lot of hue and cry and he stated that if his father will come then he will give a beating to him. Upon this Deepak opened the door then I tried to run out then Manjeet caught hold me and made me again sit inside the car. This time now Deepak sat along with me on the rear seat and Manjeet started driving the car while Sandeep was sitting on the seat adjacent to the driver. Deepak pressed my mouth as I was raising lot of hue and cry.

On that day I was wearing jeans and a top. On the way back from the Farm House Deepak started molesting me but as I was trying to resist his attempts and was trying to hit Deepak and Deepak asked Sandeep to catch hold of my hands and thereafter Deepak took off my jeans and Deepak also took off his jeans and he had sexual intercourse with me against my wishes and consent. This all incident was taking place on the rear seat of the Maruti car and during all this time the car kept on moving as was being driven by Manjeet. Deepak also took off my underwear..... At the time of alleged incident Deepak had used a condom and the same was later on seized from the car.”

24. Being relevant, I note following portion of examination-in-chief of Angel:-

“At this stage, parcel no. 1 sealed with seal of FSL Rohini as brought by MHC (M) has been opened and from inside it a jeans of blue colour has been taken out and the witness identifies it to be of her. The said jeans is having some brown stains on it. The jeans is Ex.P-1.

At this stage, parcel no. 14 sealed with seal of FSL Rohini as brought by MHC (M) has been opened and from inside it a lady’s underwear of majenta colour has been taken out and the witness states that she does not identify it. She states that said underwear does not belongs to her as her underwear was of brown colour.

At this stage, parcel no. 16 sealed with seal of FSL Rohini as brought by MHC (M) has been opened and from inside it a pair of sports shoes make Tendz have been taken out and the witness states that the same does not belongs to her as her shoes which were seized by the police were of white and pink color.

At this stage two mobile phones in a polythene bag in an unsealed condition as brought by MHC (M), PS Khanzawla has been shown to the witness and witness identifies the LG Phone of Silver colour to be that of accused Deepak and the other phone Make Nokia to be

probably that of accused Manjit. The LG phone is Ex.P4 and the Nokia Phone is Ex.P5.

Further Examination by ld. APP.

It is wrong to suggest that the underwear produced in the court on 13-2-08 and shown to me as taken out from parcel No.14 belonged to me. It is wrong to suggest that due to passage of time I had forgotten the colour or identity of my underwear which I was wearing at the time of incident.”

25. Being relevant, I note following portion of cross-examination of Angel:-

“It is wrong to suggest that I and Sandeep used to talk with each other about 10 times a day. I do not remember the mobile number which I used to carry at that time, but it was of Reliance. It is correct that my mobile number was 9313685650. I was having only one mobile. I do not remember as to whether the mobile number of accused Sandeep was 989930560 or not. I do not remember whether on 19.5.06 I talked to accused Sandeep through my aforesaid mobile phone on his said mobile phone for about 19/20 times. Voltd. At times we did use to have talks many times or for longer hours. On 20.5.2006, we must not have talked for too many time viz. more than 10 or 15 times but on 21.5.2006 when I was being called, then there must have been a number of calls between us.

Only on 21.5.2006 when I was called by Sandeep, then only we had talks between us to meet but prior to that we did not use to talk to each other to meet.

I know Prashant Sharma @ Bobby from 6th standard as he used to practice Judo with me.

On 21.5.06, I met accused Sandeep at around 4.00 pm. Initially when I had come bus stand Nangloi, then when I found accused Manjeet and Deepak also present along

with Sandeep in the car, then I went back. Accused Sandeep however again rang me up and called me again to the stand stating that Bobby has come. The second call was received by me within 5-10 minutes of my returning back from the bus stand. After I had first come to the bus stand at around 4.00 pm, I must have talked to Sandeep 3-4 times as he was repeatedly calling me to the bus stand. I do not remember whether I stated about my first visit to the bus stand at around 4.00pm and thereafter returning back to my house, to the police in my statement or not. I did not rang up Bobby to check up whether he is coming to the bus stand or not at that time as I was not having sufficient balance in my mobile phone to make a call. I did not make any call to Bobby even through any PCO. I again reached the bus stand at about 4.30pm or so. At that time also the present three accused persons were only there in the car and at that time I also sat inside the car.....It is correct that the way travelled by the car must be 15-20 kilometers or so.....It is correct that at near village Karala, we had juice from a juice shop. Voltd. The car was at a slow speed and accused Deepak had gone and brought the juice for us.....

....On that day, I was wearing a brown colour jeans. I did resist the attempt of accused Deepak when he was taking off my jeans but my clothes were not torn in that process. I did try to hit my legs on the body and glasses of the car but it could not attract the attention of any passerby. After the incident I worn my clothes on my own.....

My statement was in fact recorded at hospital only and I cannot assign any reason as to why I stated earlier in my examination in chief that my statement Ex.PW-4/A was recorded at PS Khanjawala. At the time of recording of my statement my sister was with me. My sister had also signed the said statement of mine. In my presence the police did not take into possession anything pertaining to the present case....

Prior to 21.5.06 I had not seen accused Sandeep in person. Vol. I had only talked to him on phone. Accused Sandeep only used to ring me up even prior to 21-5-06. I myself did not use to ring him. I never questioned Sandeep as to why he is making me repeated calls. I did not complaint to my parents that one boy, named Sandeep is making me repeated calls. I did not lodge any complaint in this regard with police or any other authority. When I returned back to my house on 21-5-06 after 4pm when Bobby was not there at the bus stand then also I did not tell anyone in my family that Sandeep had called me over there so as to meet Bobby but Bobby was not there.....

....I was wearing sports shoes at the time of incident. I had not taken off my shoes at the farm house but they were taken off inside the car by accused Deepak forcibly. My height is 5.2 inches. It is correct that the width of Maruti car is about 4 feet. It is correct that as per my height I was not able to lie completely on the rear seat of the M.car and my legs had to be bent if I lie on that seat.

Q No rape can be committed if the legs are in folded position?

Though the witness denied this suggestion but, the question is otherwise also not allowed and can be addressed to the court and appreciated at the time of final arguments.” (Emphasis Supplied)

26. I also need to highlight that confronted with her statement Ex.PW-4/A, Angel stated:-

“I had stated in my statement Ex.PW-4/A made to the police that accused Sandeep had taken my phone number from Bobby and had started talking to me on his own or that whenever I used to refuse to talk to him, then he used to tell me that atleast I can talk to him treating him as my brother. (Confronted with statement Ex.PW-4/A where it is not so recorded). I do not remember whether I stated

in my statement Ex.PW-4/A or not that on 21.5.06 at around 4.00/4.15 p.m., accused sandeep rang me up and told me that Bobby is calling me at Nangloi bus stand as he was standing along with him over there itself. (confronted with statement Ex.PW-4/A where it is not so recorded). I had also stated in statement Ex.PW-4/A that I told Sandeep that if Bobby has any work with me, then he can on his own ring me up and that I will not go otherwise or that Sandeep however told me that Bobby has misplaced his mobile phone and is thus not able to contact me on phone or that therefore, I went to Nangloi Bus stand. (confronted with statement Ex.PW-4/A where it is not so recorded). I had also stated in statement Ex.PW-4/A that when I saw two other boys already sitting in the car, then I told Sandeep that I will not sit in the car or that Sandeep told me that the other two boys will get down from the car at Peera Garhi Chowk. (confronted with statement Ex.PW-4/A where it is not so recorded). I had stated in statement Ex.PW-4/A that at Peera Garhi Chowk when I found that Bobby was not present there, then I asked Sandeep to take me back to my house and upon which Sandeep told me that he will drop me at my house via Rani Khera. (confronted with statement Ex.PW-4/A where it is not so recorded but it is mentioned in the statement that the witness asked Sandeep to drop her at Peera Garhi Chowk but he did not stop the car). I had stated in my statement Ex.PW-4/A that the three boys did not allow me to get down and even locked the doors of the car from inside and thereafter Sandeep assured me that nothing will happen and he will certainly drop me at my house. (confronted with statement Ex.PW-4/A where it is not so recorded). I had stated in Ex.PW-4/A that the farmhouse where I was taken was of a cousin of accused Manjeet (confronted with statement Ex.PW-4/A where it is not so recorded). I had not stated in statement Ex.PW-4/A that at the farm house when I resisted the attempt of accused persons to make me get down, then accused Deepak showed me a pistol and thereby forcibly took me to a room after lifting me in his lap. I had however stated in Ex.PW-4/A that Deepak took me inside the room and bolted it from inside

and at that time, accused Sandeep and Manjeet were sitting outside. (confronted with statement Ex.PW-4/A where it is not so recorded)

I had stated in my statement Ex.PW-4/A that inside the room Deepak asked me to take off my clothes and upon which I started raising hue and cry and hearing which cousin brother of Manjeet came over there and he asked Deepak to take me away as I was raising a lot of hue and cry and if his father will come, then he will give up beatings to him. (confronted with statement Ex.PW-4/A where it is not so recorded). I had stated in my statement Ex.PW-4/A that upon this when Deepak opened the door of the room then I tried to run out but accused Manjeet caught hold of me and made me to sit again in the car and that this time, Manjeet was driving the car and Sandeep was sitting on the other seat in the front and Deepak sat alongwith me on the rear seat (confronted with statement Ex.PW-4/A where it is not so recorded but it is recorded that witness has tried to run away but was forcibly made to sit in the car by Sandeep and Deepak Malik). I do not remember whether I stated in statement Ex.PW-4/A or not that Deepak pressed my mouth as I was raising a lot of hue and cry. (confronted with statement Ex.PW-4/A where it is not so recorded). I had stated in my statement Ex.PW-4/A that when inside the car, Deepak started molesting me, then I was trying to resist his attempts and was trying to hit Deepak and upon Deepak had asked Sandeep to catch hold of my hands and thereafter Deepak took off my jeans and also took off his jeans also. (confronted with statement Ex.PW-4/A where it is not so recorded but it is mentioned that accused Sandeep had caught hold of her hands). I had stated in my statement Ex.PW-4/A that during all this time when the car was moving, Deepak took off my underwear and was also giving beatings to me. (confronted with statement Ex.PW-4/A where it is not so recorded). I had stated in my statement Ex.PW-4/A that after committing rape upon me Deepak sat on one side of the seat and when I tried to pull down the window pane, then also he was giving beating to me and was also

pressing my neck. (confronted with statement Ex.PW-4/A where it is not so recorded). During all this incident though I did not sustain any bruises etc but I did have finger marks of Deepak on my face and neck. I had not shown the said marks to the doctor at the time of my medical examination.

I had stated in my statement Ex.PW-4/A that the old aged persons alongwith the other ladies had requested certain motorcyclists to stop the car of the accused persons and they managed to stop the car by bringing their motorcycles in front of the car of the accused persons. (confronted with statement Ex.PW-4/A where it is not so recorded). I had also stated in my statement Ex.PW-4/A that the car of the accused persons could be stopped only after great persuasion and that too when the ladies threw stones on the car and thereafter when the doors of the car were opened then as a result I fell down on the road. (confronted with statement Ex.PW-4/A where it is not so recorded). I had not stated in my statement Ex.PW-4/A that accused Deepak and Sandeep were caught hold of by the persons present over there but accused Manjeet fled away from there after leaving the car.

My statement was in fact recorded at hospital only and I cannot assign any reason as to why I stated earlier in my examination in chief that my statement Ex.PW-4/A was recorded at PS Kanjhawala. At the time of recording of my statement my sister was with me. My sister had also signed the said statement of mine. In my presence police did not take into possession anything pertaining to the present case.”

27. Devraj PW-10, deposed that one day in the year 2006 at about 7:00-7:30 PM he was standing in front of his house when a white coloured Maruti car drove past and he heard a girl screaming inside. Since the car was moving at a high speed he could not see the occupants. Public persons gathered and he made a call to the police from his mobile number

9213866512. Since Devraj deviated from his statement recorded under Section 161 Cr.P.C. he was cross-examined and during cross-examination said:-

“It is correct that on 28.5.06, I was standing in front of my house at about 7 PM. I do not remember whether the registration no. of Maruti car was DL 6CD 6807....I do not know whether in the said car three boys were seating. It is incorrect that on 10.06.06 W/SI Sanjeeta recorded my statement....

I have seen the Maruti Car of white colour bearing registration No. DL 6CD 6807. It is incorrect to suggest that it is the same car which I had seen on the date of incident i.e. 25.5.2006. It is incorrect to suggest that I am deposing falsely being won over by the accused persons.”

28. Munmun Manna PW-13, sister of Angel, deposed that on May 21, 2006 she, along with her father went to village Rani Khera on receiving information that some mishap had taken place with Angel. On reaching there, Angel told her that she had been raped by a boy named Deepak in the car and two other boys Sandeep and Manjeet assisted Deepak in raping her. She had accompanied Angel to Sanjay Gandhi Memorial Hospital. The police had seized one panty of Angel and one used condom from the car where Angel had been raped.

29. Being relevant, I note following portion of the cross-examination of Munmun Manna:-

“The panty was shown to Angel in my presence in the hospital and same was seized in the hospital.”

30. Save and except recovery of panty and condom from the car, Kamal Manna PW-14 the father of Angel deposed in sync with his daughter Munmun.

31. Prashant Sharma PW-16 (Bobby), deposed that Angel and Sandeep were his friends and Sandeep had taken Angel's mobile number from him and the two used to talk to each other but he did not know what they were talking about.

32. Israr Babu PW-21, Alternate Nodal Officer, Vodafone Essar Mobile Service Ltd. proved call details Ex.PW-21/B of mobile number 9899305610. He further deposed that as per record of the telecom company the registered subscriber was one Surender Yadav R/o Village Khera, Delhi.

33. Holding Angel to be a trustworthy witness (and without evaluating critical features of the case as would be highlighted by me in the subsequent paras), vide judgment dated December 09, 2014 the learned Trial Judge convicted the three accused for having committed offences punishable under Sections 363/366/376(2)(g)/506-II/34 IPC and has sentenced all three for the offences committed and the maximum sentence is to undergo RI for 10 years for the offence of gang rape. All sentences have been directed to run concurrently.

34. Needless to state it all would depend upon an analysis of the testimony of Angel. But before analyzing her deposition I highlight that the MLC Ex.PW-1/A and the writing Ex.PW-2/B thereon establish beyond any doubt that Angel was subjected to a sexual intercourse. Her hymen was bleeding on account of a fresh tear rupture. The FSL Report is to the effect that semen was detected on her vaginal swab and pant.

35. Commencing my discussion from the call record details Ex.PW-21/B, I find that from May 19, 2006 till the evening of May 21, 2006 i.e. the day of the incident, 38 calls have been made by Sandeep to Angel. He has sent 9 SMSs to her. The contents of the SMSs are not known. What did the two talk is also not known. But the duration of the calls and especially at serial

No.1, 7, 8, 11, 13, 25, 27, 30, 31, 32, 33, 35, 36, 41 and 43 show that the two had talked to each other for between 10 minutes to 30 minutes during said calls. The two have been talking to each other for between 2 hours to 3 hours over three days. This is not in conformity with her initial testimony in Court that she did not know Sandeep, other than he being a friend of Bobby and she had spoken to him only two-three times earlier, and had never met him. Her version that he called her on the pretext that Bobby wanted to meet her and thus she was enticed out of her house and met Sandeep for the first time in the late afternoon i.e. around 4:00 PM on May 21, 2006 and recognized him because he had told her the colour of the shirt and the pant he was wearing, is obviously not an accurate account of the attending circumstances in which she came to meet Sandeep on the fateful day. The call detail records show that the two spoke to each other for 171 seconds at 3:22 PM, 39 seconds at 4:12 PM, 511 second at 4:22 PM, 404 second at 4:31 PM, 628 seconds at 16:38 PM, 7 seconds at 16:50 PM, 24 seconds at 16:51 PM, 7 seconds at 5:07 PM and 46 seconds at 5:12 PM.

36. Thus, the initial version of Angel with regard to the circumstances in which she met Sandeep is like an overcast sky – nimbus clouds, and thus it renders one's task difficult to catch a glimpse of the rays of the Sun. But it is the duty of the Court to make every effort to arrive at the truth.

37. Far from being enticed out of her house, the call detail records record the wakening pulse heralding the brink of womanhood in Angel. She was more than an acquaintance with Sandeep. Acquaintances do not speak to each other 15 to 20 times a day and that too for between 2 hours to 3 hours. That the two are of opposite sexes cannot be overlooked and she was nearing sweet 16. Sandeep was aged around 19 years. In fact, Angel could not hide the truth emerging from the call record details because in her cross

examination, relevant part whereof I have extracted in paragraph 25 above, she admitted that she had been speaking to Sandeep through her mobile phone many a times and that sometimes the two chatted for longer hours. She admitted that on May 20, 2006 the two chatted for more than 10 or 15 times. She then speaks the truth of what happened on May 21, 2006 when she reached Nangloi bus stand and as per her claim did not find Bobby there and hence returned, but was enticed to go back to the bus stand because Sandeep rang her up repeatedly. She has said that during cross-examination and I find from the call record details, tabulated by me in paragraph 18 above that on May 21, 2006, after she and Sandeep had a long chat of 624 seconds duration at 16:38:44 hours. Sandeep had called her at 16:50:21 hours and the talk lasted only 7 seconds, meaning thereby one of the two switched off the phone. Within less than a minute, at 16:51:04 hours Sandeep made another call to her and the talk lasted for 24 seconds. At 17:07:01 hours Sandeep made another call to her which lasted for 7 seconds and then at 17:12:51 hours Sandeep made another call to her and the talk lasted 46 seconds. It is obvious that Sandeep was desperate to meet her.

38. She claims that when the car reached the bus stop of Peeragarhi where she was told that Bobby would be meeting her and was not there she protested and requested to be dropped home, but Manjeet drove the car to a farmhouse at Ranikhera belonging to Manjeet's cousin. She was taken to a room. She was subdued when Deepak showed a pistol to her. Deepak tried to molest her. She raised a hue and cry. Cousin of Manjeet came and said that if his father came he would beat them and therefore they were forced to leave. Once again back in the car her mouth was pressed. Deepak started molesting her and she resisted the attempt. Sandeep caught her hands and Deepak removed her jeans and had sexual intercourse with her against her

consent. Deepak used a condom. During cross-examination she admitted that on the way in the car after it was driven 15 to 20 kms they stopped at the shop of a juice vendor in village Karala and all had juice.

39. Now, if the car was stopped at a juice corner in village Karala, a very densely populated area, it is evident that Angel got an opportunity to summon aid by shrieking, shouting and crying if she was being taken against her will. Evidence thus suggests that Angel moved around with the three boys with consent till this point of time and no force was used to subdue her will, much less her body till the sun started setting.

40. But unfortunately for her, the three boys had plotted it all very well. They gave her juice to drink and moved around gaining her confidence. Some polite conversation must have taken place. None tried to act smart with her. They were waiting for the sun to set.

41. The process of criminal law was set into motion at 7:05 PM when DD No.27A, Ex.PW-23/A was recorded upon telephonic information conveyed by Devraj PW-10 who saw three boys and a girl in a white coloured maruti car bearing registration No.DL 6CD 6807. A girl was shrieking. He conveyed said information to the police disclosing further that the car had sped from village Ranikhera towards village Kanjhawala and this set the police on a hot pursuit. Evidence establishes that the three boys in the car were molesting the girl inside, who was Angel. She was dropped by the boys enroute because people started throwing stones at the car and the boys knew that there was trouble. HC Dalbir Singh and HC Balraj found Angel stranded on the road who informed them that she had been raped and three boys had fled in the white coloured maruti car. ASI Suresh Chand intercepted the car the same day at night. A used condom, on which semen has been detected was found inside the car.

42. Too often the female world is bounded hard and fast within the limits of the commonplace and when she finds herself in an awkward company it becomes her compulsion to weave a fairy tale.

43. It became Angel's compulsion to weave so much into the fabric because she could not admit to her parents and her family that she voluntarily moved around with the three boys. She had to cook up a version which was exculpatory of her involvement with the three boys and this is the chaff which I can easily separate without much trouble. Interestingly, the residence of Angel, as disclosed in the MLC Ex.PW-1/A is : House No.XXX/Y, Bhooton Wali Gali, Nangloi Delhi i.e. the street where ghosts live. But it is not difficult for me to give a reason why Angel spun yarn into the fabric of her story. It was not that ghosts propelled her to say so. It was her compulsion, stemming from societal ethos, to do so. The fact that she even attempted to suppress the circumstance of her prior friendship with Sandeep and the truth being evinced from the call detail records is also indicative of said conclusion i.e. Angel's compulsion, in the Indian setting, where a girl moves about voluntarily but subsequently her trust and confidence is belied and her body is defiled. She cannot admit to her parents and her family that she was having an affair with a male who betrayed her love, her trust and her confidence.

44. It may be true that Devraj PW-10 did not support the case of the prosecution by stating that he did not remember whether registration number of the Maruti car was DL 6CD 6807. But he has stood by the prosecution stating that it was he who conveyed information on the mobile phone to the police that he saw a white coloured Maruti car driving past towards village Kanjhawala and had seen three boys and a girl inside the car and that the girl was shrieking. DD No.27A, Ex.PW-3/A notes call being made from the

mobile number 9213866512, which he admits was his and it records the number of the car. Nothing therefore turns on PW-10 not deposing said fact. It could well be a memory loss. But the number of the car being recorded in the DD entry is a telling circumstance. The same car was intercepted a few minutes later by ASI Suresh Chand PW-7. Sandeep and Deepak were apprehended in the car and as per ASI Suresh Chand the third boy, who turned out to be Manjeet fled.

45. Regarding Sandeep and Deepak shown as being arrested at 8:30 AM on May 22, 2006, the apparent reason is a hiatus of time between apprehension and arrest. Every arrest is preceded by an apprehension and repeatedly Courts have emphasized that the time of arrest should be with least possible gap of time with that of apprehension, but it is regretful that the police pays no heed and this time lag gives birth to fanciful arguments, burdening a Court with extra reasons to be given and recording evidence which corroborates the facts as claimed by the prosecution. In the instant case ASI Suresh Chand has said that he intercepted the car soon after it was flashed on the Zipnet that a white coloured maruti car bearing registration No.DL 6CD 6807 should be intercepted. The tehrir was dispatched at 15 minutes past midnight and it records that Sandeep and Deepak had been apprehended and thus there is proof of the two being apprehended much before midnight and it is irrelevant that the arrest memo shows the time to be 8:30 AM of May 22, 2006.

46. Thus Sandeep and Deepak have been proved to have been apprehended as claimed by the prosecution somewhere around 8-8:30 PM of May 21, 2006. They were the two occupants of the car. The car was in village Karala. As disclosed by Devraj and as recorded in DD No.27A the car was coming from village Ranikhera and was moving towards village

Kanjhawla. The distance between village Karala and village Kanjhawala is about 3 kms.

47. The tell tale evidence of Angel being subjected to sexual intercourse lies in her MLC Ex.PW-1/A. She had scratches on the neck. Hymen was ruptured with a fresh bleeding torn. A cherry coloured underwear and a used condom was picked up from the car and this establishes sex in the car. She was heard shrieking by Devraj PW-10 and thus I have evidence of her will being subjugated and her body being enslaved.

48. The crime obviously took place in the car. The hurdle to be crossed is the photographs Ex.PW-6/A-1, Ex.PW-6/A-7 and Ex.PW-6/A-10 which show the rim of a car tyre lying on the left side of the rear seat of the maruti car. It has been urged that it would be difficult for a male to rape a female on the rear seat of the maruti car if there was a rim lying on the seat and in particular without causing injuries to the girl, who as per her claim was resisting. The argument overlooks that, unless it is the compulsion of two persons to squeeze themselves and sit most uncomfortably, stupidly keeping a rim of the car on the rear seat and not in the dicky of the car, no reasonable person would keep a rim on the rear seat of the car with two persons sitting in the rear seat. Apart from Angel saying that apart from her there were three other boys in the car, Devraj say so. So does ASI Suresh Chand. It is in this context I need to note that as per Devraj's testimony he saw the car with three boys and a girl inside at 7:05 PM. HC Dalbir Singh and HC Balraj found Angel who had been de-boarded from the car. The car moved on and was intercepted by ASI Suresh Chand. The boys had an ample opportunity to create evidence in their favour and pick up the rim lying in the dicky and put it on the rear seat to discredit Angel that she was forcibly made to lie on the back seat of the car and then raped.

49. The apprehension of Sandeep and Deepak from the car by ASI Suresh Chand and the third boy : Manjeet running away shows that the three were present in the car and the three were duty bound to explain wherefrom the used condom and the cherry coloured underwear came in the car. It was a fact in their knowledge which they were bound to explain and when put to them as an incriminating circumstances, no satisfactory explanation rendered becomes another link in the chain of incriminating evidence. What were the three boys doing with a toy pistol in the car? The three were just about crossing the bridge of teens to manhood. Sandeep was the youngest, around 19 years and the other two had crossed the bridge and had entered manhood. They were about 20 years of age. They were not children playing around with toy pistols. They had obviously purchased the toy pistol to threaten the innocent Angel. It is evident that the dastardly plot was conceived meticulously in concert and the accused prepared themselves to the hilt to succeed in their designs.

50. That Angel identified the pant Ex.P-1 which she was wearing when she was raped, which happened to be of a blue colour, but in cross-examination said that she was wearing a brown coloured pant is too trivial a matter of an issue being raised. Memory fades and thus one may not recollect the exact colour of a wearing apparel one was wearing on a particular day. The embarrassment and agony of a rape victim recounting the horror of a rape while deposing in Court has to be kept in mind. Similarly, Angel stating that the panty recovered from the car was not the one she was wearing is explainable as a lapse, and in respect whereof I may note that her sister Munmun has said that a panty was seized from the car.

51. The law is that a rape victim is not an accomplice and is rather akin to an injured witness thus her testimony does not require corroboration if the

same is of sterling worth and found unassailable. However, even if the testimony is found unreliable in part, the maxim *falsus in uno, falsus in omnibus* cannot be applied and the Courts would ordinarily seek corroboration qua the remainder before acting upon the same. In the instant case, after removing the chaff from the testimony of Angel i.e. embellishments on the fringe area regarding circumstances in which she met Sandeep, there is substantial evidence corroborating the core of her testimony regarding the three appellants acting in unison and commit the offence of gang rape, by Manjeet driving the car, Sandeep overpowering her physically to facilitate rape by Deepak.

52. Angel's testimony is found corroborated by :-

- (i) The call record details Ex.PW-21/B which show that on May 21, 2006 Sandeep repeatedly rang up Angel, and the call record details which I have expanded upon in paragraph 37 above corroborate her version that enticed by Sandeep on the pretext that Bobby wanted to meet her, when she reached Nangloi bus stop and did not find Bobby she returned, but Sandeep rang her repeatedly and requested her to come over.
- (ii) Further corroboration to her testimony is to be found in a used condom found in the car. As per her Deepak raped her inside the car. The MLC establishes Angel being subjected to a sexual intercourse. If it was not in the car, the offender would have used and thrown the condom at the place where sex was indulged in and not to bring it in the car.
- (iii) She is further corroborated by the recovery of the toy pistol from the car. Her claim that she was threatened into silence when the accused used a pistol is corroborated.
- (iv) Her shoes found between the front and the back seat in the car corroborate her that she was stripped inside the car, and in respect of the

shoes I find that she may have said during cross-examination that the shoes were not hers, but neither to the crime team members who deposed nor to the investigating officer any questions have been put during cross-examination on this aspect.

(v) Though the investigating officer has remained lapse in not seeking expert opinion regarding one pubic hair and six long hair found on the back seat of the car, but the same suggest that somebody having long hair rubbed the head on the back seat and as a result six long hair got plucked from the head and fell on the back seat of the car. One pubic hair being found on the back seat of the car also suggests that a person who was undressed either sat or laid down on the back seat.

(vi) Telephonic information conveyed by Devraj to the Police Control Room at 7:05 PM that he had seen a white coloured maruti car bearing registration No.DL 6CD 6807 speeding towards Kanjhawala in which there were three boys and one girl who was screaming.

(vii) Sandeep and Deepak being apprehended in the said car by ASI Suresh Chand at Village Karala.

(viii) Angel's MLC revealing fresh hymen tear and bleeding therefrom with scratches on the neck.

52. The crime being of the vintage when the Criminal Law Amendment Act 13 of 2013 had not been promulgated, the Explanation 1 to Section 376(2)(g) guides that where a woman is raped by one in a group of persons acting in furtherance of their common intention, each of the person shall be deemed to have gang rape within the meaning of Section 376(2)(g) IPC.

53. What has happened is thus : Sandeep who was friendly with Angel, entice her to leave the security of her home. The wakening pulse heralding the brink of womanhood in Angel led her out. She reached the place where

Sandeep had called her. In the company of Manjeet and Deepak, she moved about voluntarily ignorant of the devil lurking in the minds of the three boys. They gave her juice. They drove around. They were waiting for the sun to set. As the sun was about to set it was 7:00 PM. They struck in concert. Manjeet, as deposed by Angel drove the car. Deepak raped her and was assisted by Sandeep. The chaff which is clearly discernible can easily be removed and the grain of truth easily emerges.

54. The appeals are accordingly dismissed.

55. Conviction of the appellants and the sentence imposed is maintained.

56. Deepak and Sandeep have been admitted to bail. The bail bond and the surety bond furnished by the two are cancelled. They are directed to surrender and undergo the remaining sentence. As regards Manjeet he is still undergoing incarceration and thus copy of the present decision be sent to the Superintendent Central Jail Tihar for updating of the jail record and thereafter to be supplied to Manjeet.

57. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

MAY 30, 2016

mamta