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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.L.P. 316/2015**

% *Judgment dated 25<sup>th</sup> April, 2016*

STATE ..... Petitioner

Through: Ms. Aashaa Tiwari, APP for State.  
Versus

LAXMAN PRASAD ..... Respondent

Through: Mr. Himanshu Gupta, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**SANGITA DHINGRA SEHGAL, J.**

1. Present leave to appeal petition has been filed by the State under Section 378 of the Code of Criminal Procedure against the judgment dated 10.12.2014 passed by the Additional Sessions Judge–FTC–2 (Central), Tis Hazari Court, Delhi in Sessions Case No. 05/2013, whereby the respondent was acquitted of the charges framed under Sections 376 (2) (g)/342 of the Indian Penal Code and under Section 506 read with Section 34 of the Indian Penal Code.
2. The brief facts of this case, as noticed by the learned Trial Court are as under :

*“1. The case in hand has been registered on the basis of statement dated 18.08.2011 made by the Prosecutrix ‘P’ (name withheld in order to protect her identity) wherein she has stated that she is a permanent resident of Balampur*

*District, Sant Kabir Nagar, UP and had studied up to Class VII. She also stated that her family comprises of her mother and brother Mithilesh, who used to work a Mason at Delhi for the last 4-5 years. She further stated in her complaint that about one year back her brother had brought her to Delhi and got her employed at the residence of accused Laxman Prasad Rai at E-367-B, Part-I, Delhi at a monthly salary of Rs. 3,000/-. The complainant used to do the work of maid at the house of the accused. The prosecutrix further stated in her complaint that the accused had two wives namely Reena Rai and Ruchi Jha, who had a quarrel about one month ago and accused shifted Ruchi Jha at House No.779, Vaishali, Sector-3, Ghaziabad, UP and had also deployed the Prosecutrix along with her and the Prosecutrix started living there and used to worked at a maid.*

*2. Prosecutrix 'P' further alleged in her complaint that on 17.08.2011, the accused took her from Vaishali in his car to his another house at Sarai Rohilla and asked her to clean that house as the same was lying closed for a long period of time. The accused also picked up two persons from Vaishali in his car by introducing them as his friends and told her that they are also going to Sarai Rohilla.*

*3. She further stated that after reaching at H. No. 19/20/1, West Moti Bagh, Sarai Rohilla at about 10 PM, the lock of the ground floor of the said premises was opened and she cleaned the said floor. After some time accused Laxman Prasad Rai and his friends came inside the house and asked her to bring water. Prosecutrix brought the water and also drank one glass of water out of it. After consuming the same, she felt giddy and that accused Laxman Prasad Rai caught hold of her and asked her to take off her clothes. Out of fear and under the state of intoxication, Prosecutrix took off all her clothes. Thereafter, accused Laxman Prasad Rai committed rape upon her against her wishes. Complainant further alleged in her complaint that thereafter the other two*

*friends of the accused had also committed rape upon her one by one and she lost her consciousness.*

4. *Prosecutrix 'P' further stated in her complaint that on 18.08.2011 at about 9 AM, accused Laxman Prasad Rai asked her to wear her clothes and threatened her not to disclose this incident to anyone otherwise she would be killed. She was then taken by the accused and one of his friend in the car and after leaving her at Shastri Nagar Metro Station they left from there. Complainant also stated in her complaint that she can identify those other two friends if shown to her.*

5. *Prosecutrix was got medically examined vide MLC No. 5696/11 dated 18.08.2011. During the course of investigation, statement of Prosecutrix was recorded under Section 161 Cr.P.C. and another statement under Section 164 Cr.PC was recorded before the learned MM. Charge sheet further reveals that during the course of investigation, the Prosecutrix initially pointed out the wrong place as scene of crime i.e. 19/20, West Moti Bagh, Sarai Rohilla, Delhi, but later she correctly pointed out the scene of crime i.e. 19/20/1, West Moti Bagh, Sarai Rohilla, Delhi. The same was inspected by the Crime Team and site plan and pointing out memo was also prepared.*

6. *As per th charge sheet Ruchi Jha came to the PS and introduced herself to be the second wife of accused Laxman Prashad Rai and further stated that she has got registered two other cases against the accused at PS Neb Sarai and Gazipur. Her statement under Section 161 Cr.PC was also recorded.*

7. *Accused Laxman Prasad Rai came to the PS on 20.09.2011 and joined in the investigation. He was produced before the learned MM and was also medically examined at Hindu Rao Hospital vide MLC No. 6563/11 and the exhibits so collected from the hospital were sent to the*

*FSL for opinion and consequent upon receipt of its result on 28.06.2012, accused Laxman Prasad was called to the PS and upon interrogation, he was arrested on 04.07.2012. During the course of further investigation, it transpired that two other co-accused were also mentioned by the Prosecutrix in her complaint. But, due to non-availability of Prosecutrix on account of her incomplete residential/native address, their whereabouts could not be ascertained."*

3. Charges for the offences punishable under Section 376 (2) (g)/342 of the Indian Penal Code and under Section 506 read with Section 34 of the Indian Penal Code were framed against the accused to which he pleaded not guilty and claimed to be tried.
4. To bring home the guilt against the accused, the prosecution has examined 18 witnesses in all. Statement of the accused was recorded under section 313 of the Code of Criminal Procedure wherein he reiterated his innocence and denied all the charges of the prosecution. The accused did not lead any defence.
5. Aggrieved against the judgment passed by learned Trial Court, Ms. Aashaa Tiwari learned APP for the State submits that the impugned judgment is based on imagination, presumption, conjectures and surmises and as such can not stand the scrutiny of law and the same is liable to be set aside. Learned counsel strenuously contends that the trial court has failed to take into consideration the settled law that the statement of the prosecutrix alone can be the basis of convicting the respondent for the offence under Section 376 (2) (g) of the Indian Penal Code and does not require any corroboration. She further contends that there is sufficient material available on record to show that the respondent was responsible for committing rape repeatedly

upon the prosecutrix on different occasions. She further contends that minor contradictions/lacunas in the testimony of the prosecutrix can not be held to be fatal to the case of the prosecution.

6. To substantiate her contentions, learned counsel for the State placed reliance upon *State of HP Vs. Asha Ram reported in AIR 2006 (SC) 381*, wherein the Hon'ble Supreme Court held that the testimony of the prosecutrix needs no corroboration and even minor contradictions and discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Reliance has been further placed upon *Narender Kumar Vs. State (NCT of Delhi)* reported in *AIR 2012 SC 2281*, wherein the Hon'ble Supreme Court held that the conviction can be based on the sole testimony of the prosecutrix and that the cases of rape shall be dealt with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions.
7. Ms. Tiwari further contends that the Trial Court failed to appreciate that the DNA analysis report which clearly establishes that the semen stains of the accused were found on the underwear of the prosecutrix.
8. Per contra, supporting the impugned judgment, Mr. Himanshu Gupta, learned counsel for the respondent submits that the instant case does not warrant any interference by this Court as the findings of acquittal recorded by learned Trial Court are neither perverse nor against the evidence. He further submits that the prosecutrix has made substantial improvements in her statement before the Court and there are material contradictions in her statements which belies the case of the prosecution.

9. We have heard learned counsel for the parties, perused the record and also examined the judgment in detail rendered by the Trial Court.
10. Undoubtedly, the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony.
11. In ***Md. Ali Vs. State of U.P. reported in (2015) 7 SCC 272***, the Hon'ble Apex Court has held that :

*22. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated*

*circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-Appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.*

12. In **Krishan Kumar Malik Vs. State : (2011) 7 SCC 130**, the Hon'ble Supreme Court has held that:

*“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement,*

*Section 161 statement (Code of Criminal Procedure), FIR and deposition in Court."*

*32. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. Record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the Appellant."*

13. In ***Rai Sandeep @ Deepu Vs. State*** reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court has held that :

*"15. 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."*

14. In ***Ramdas and Ors. v. State of Maharashtra*** reported in ***AIR 2007 SC 155***, the Hon'ble Supreme Court observed that :

*"22. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony."*

15. The sole question involved for consideration in this leave petition is whether the testimony of the prosecutrix is trustworthy, credible and worthy of reliance in order to convict the respondent herein? It is true that conviction in a case of rape can be based on the solitary testimony

of the prosecutrix provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. In order to test the veracity of the deposition of prosecutrix, it needs to be discussed thread bare.

16. In the complaint Ex.PW1/A, the prosecutrix stated that her brother Mithilesh brought her to Delhi on the pretext of getting her a job. She started working in the house of accused at Greater Kailash, Part-I, New Delhi as a domestic help. Accused had two wives namely Reena Rai and Ruchi Jha. About two months back, some differences had arisen between the wives of the accused and accused shifted his second wife Ruchi Jha to Vaishali, Sector-3, Ghaziabad, UP in a rented accommodation and prosecutrix also started residing with Ruchi Jha. On 17.08.2011, accused took her (the prosecutrix) in his car to his house at Sarai Rohilla, Delhi on the pretext to clean the house as the same was lying locked for a long time. Two other persons also accompanied them in the car. At about 10:00 p.m., they reached the ground floor of 19/20/1, West Moti Bagh, Sarai Rohilla, Delhi after which the prosecutrix opened the lock of the house and cleaned the house. It is further alleged that in the complaint Ex.PW1/A that after sometime, accused and his friends came inside the room and asked her to get water. The prosecutrix brought water and also drank the same after which she felt giddy. Accused asked her to take off her clothes. Out of fear and under the state of intoxication, the prosecutrix undressed herself. Accused also took off his clothes and committed 'Galat Kaam' with her against her wishes. Thereafter, two friends of the accused also committed 'Galat Kaam' with her and

she became unconscious. Next day i.e. on 18.08.2011, accused dropped her at Shastri Nagar Metro Station and threatened her not to disclose the incident to anyone otherwise she would be killed.

17. In her statement recorded under Section 164 of Code of Criminal Procedure she stated that

"Laxman Prasad ne lagbhag six mahine pahle apne Greater Kailash wale ghar me pehli bar mere saath galat kam kiya. Uski badi biwi Reena Rai bhi uska saath deti thi. Weh mujhe Laxman ke saath chorkar neeche chali jaati thi. Uski dono betiyaan bhi yehi kehti thi ki sab theek hai Papa, aap jo kar rahe ho theek kar rahe ho, hume iss baat se koi matlab nahi hai. Ghar mein do log aur aate the. Bahar se ve ye log jabardasti mujhe unke saath bhi galat kaam karvate the. Mere bolne par kehte the ki hum tujhe aur tere bhai ko bhi maarkar phenk denge ve koi bhi kuch nahi kar payega.

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Greater Kailash mein usne yeh sab kaam mere saath char baar kiya. Saath mein do log jo uske ghar mein aate the, unse bhi yahi kaam karwata tha.

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Vaishali mein bhi usne and uske anya doston ne (joki pehle waalon se alag the) mere saath 4-5 baar vahi wala galat kaam kiya. Ek Saptah pehle meri tabiyat bahoot kharab one par mein ghar chali gayi magar 16.08.2011 ko usne phone kiya ki choti wali biwi ki tabiyat bahoot kharab hai. Mein gaadi bhej raha hoon, tum jaldi se aa jao. Jab mein wapis aayi to dekha ki Vaishali me koi bhi nahi hai ve vanah tala band hai. 17.08.2011 ko raat lagbhag 10 baje Laxman Prasad do aadmiyon ko saath mein lekar aaya ve kaha ki Sarai Rohilla me mera makaan kayi dino se band hai ve ganda hai. Vanhi chalo, room ki safai karni hai. Vanha par mujhe kheera kaatkar laane ke liye kaha. Jab mein kheera kaatkar laayi to voh log daaru pee rahe the ve jabardasti ek glass sharaab mujhe bhi pila di.

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Sabse pehle Laxman Prasad ne mere saath pehle wala ganda kaam kiya ve baad mein baari-2 se uske dono dosto ne bhi mere saath vahi kaam kiya."

18. The prosecutrix stepped into witness box as PW1 and deposed on the lines of her statement recorded under Section 164 of Code of Criminal Procedure. PW1 was examined and cross examined at length.
19. A close scrutiny of her testimony shows that the prosecutrix not only improved her version before the court, as against her first statement Ex.PW1/A to the police but also concealed parentage since registration of the present case. In complaint Ex.PW1/A and before the Court, the prosecutrix gave her parentage as D/o Late Shri Ram Lal R/o Village Dhanoda, Post Chapra, PS-Balampur, District Sant Kabir Nagar, UP whereas in MLC Ex.PW3/A, the parentage of the prosecutrix was given as D/o Late Ramanand R/o Village Balampur, Distt. Satatya Nagar, UP. On the directions of the court, police officials visited the native village of the prosecutrix and obtained certificate Ex.PW17/DA4 from the member of 'Panchayat Samiti' which reveals that the prosecutrix was a resident of village Patwara (Jamdaha). Police officials also obtained a certificates Ex.PW17/DA-5, Ex.PW17/DA-6 and transfer certificate Ex.PW17/DA-6, which go to show that the posecutrix studied at Madhya Vidhalaya, Jamdaha, UP. Further, the photographs of the prosecutrix Ex.PW1/P1 and Ex.PW1/P2 were shown to Neeraj Kumar and Bhola Mandal, residents of native village of the prosecutrix and their statements Ex.PW17/DA1 and Ex.PW17/DA2 respectively were recorded wherein they identified

the prosecutrix in the photograph as Veena Kumari D/o Rudreshwar Jha R/o Village Patwara (Jamdaha), Post PS-Katoria, Distt. Banka, Bihar. The aforesaid conduct of the prosecutrix giving her false identity casts serious doubt on her credibility and trustworthiness.

20. Further, according to the prosecutrix, the accused took her to his house at Sarai Rohilla, Delhi on the pretext to clean the same as it was locked for a long time and when they reached there she found that the room was not very dirty and there was one bed and a table fan in a room. Accused persons used 'Kheera', plastic 'dabba', 'chabbdar', liquor bottle, table fan and battery at the fateful night. The said version of the prosecutrix falsified by the testimony of PW6 SI Satish Kumar, Incharge of Crime Team who prepared his report Ex.PW6/A of the Crime Team which suggests that *"No bed are lying, it is totally empty room. No fan, no electricity, pink (light) colour wall and white colour of roof. Neither any sign of any furniture, nor the sign of removal of furniture has been found the floor is dirty and jala (makary nest) is lying."* During cross examination, PW6 stated that "the floor of the house was dirty and grass grown on the floor and garbage was lying scattered over the floor. There were no signs of footprints on the floor of the room where the incident had occurred as stated by the prosecutrix who had also accompanied us. The grass was outside that room."
21. Another piece of evidence by way of Call Details Record Ex.PW8/A of the mobile phone of the prosecutrix, falsify the entire version of the prosecutrix regarding the alleged incident on 17.08.2011. As per Ex.PW8/A, both the prosecutrix and her so called brother Mithilesh

were in constant touch with each other through mobile phone on 17.08.2011 between 6:46 PM to 11:37 PM. The version of the prosecutrix that accused and his associates committed rape upon her in Sarai Rohilla is contrary to the Cell ID Chart Ex.PW8/C of the prosecutrix as Ex.PW8/C showing the location of the phone at Azadpur and Mukundpur. Moreso, the alleged call to 100 number made by the prosecutrix from her mobile does not support her claim as Ex.PW8/A does not show that any call was made at 100 number on 18.08.2016 from the mobile of the prosecutrix.

22. Further, the version of the prosecutrix does not inspire confidence and casts serious doubt on her trustworthiness from the following facts :

- i) That prosecutrix failed to identify the house at Sarai Rohilla, Delhi, where the alleged incident took place, at first instance and she identified the same subsequently.
- ii) That prosecutrix claimed that she had been raped by the accused and his associates on many occasions at his residence at Greater Kailash, Delhi and Vaishali, Ghaziabad, UP but she neither reported the matter to the police nor named any of the associates of the accused.
- iii) That in her statement Ex.PW1/A, the prosecutrix stated that after the alleged incident, the accused left her in Shastri Nagar Metro Station whereas in her statement recorded under Section 164 of Code of Criminal Procedure before the Magistrate and in her deposition before the Court she deposed that accused had left her in the park.

- iv) That the claim of the prosecutrix that she had been raped by the accused and his associates throughout the night is falsified by MLC Ex.PW3/A which suggests that there were no signs of continuous sexual assault.
23. In view of the legal position settled in catena of judgments passed by the Apex Court, it is now well settled that conviction in the case of rape can be based solely on the testimony of the prosecutrix provided the Court is convinced about the truthfulness of the prosecutrix and there are no circumstances to doubt or suspect her own conduct and veracity. If her evidence is truthful and of such quality, then only conviction can be based on her testimony alone. In the instant case as pointed out above, evidence of the prosecutrix is not of sterling quality which inspires confidence nor there is any other evidence which would lead some assurance that her evidence is truthful. Further, it has been emerged on record that the prosecutrix concealed the fact that PW2 Ruchi Kumar Jha D/o Shri Rudreshwar Jha R/o Village Patwara, Post Jamdaha PS Katoria, District Bakan, Bihar, is her real sister. This fact lends support to the defence taken by the accused in his statement recorded under Section 313 of Code of Criminal procedure that the prosecutrix in connivance of PW2 with a motive to extort money implicated him in the present case.
24. Another contention of learned counsel for the State is that the DNA analysis report clearly establishes that the semen stains of the accused were found on the underwear Ex.P1 of the prosecutrix. We find no substance in this contention as well. Perusal of the record shows that the prosecution has failed to connect Ex.P1 with the prosecutrix. The

prosecution has not made further efforts to establish that Ex.P1 belongs to the prosecutrix only. On mere exemption, that Ex.P1 belongs to the prosecutrix and holding the accused guilty on this count will be highly unsafe to convict him.

25. Limited scope of interference against judgment of acquittal has been repeatedly highlighted by the Hon'ble Apex Court in plethora of decisions. It is now well settled law that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse or if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The Court must take into account the presumption of innocence of the accused and the trial court's acquittal adds to the presumption of his innocence. We have no reason to disagree from the view taken by the trial court. There is no perversity in the appreciation of evidence. Accordingly, no grounds are made out and the present petition for leave to appeal stands dismissed.

**SANGITA DHINGRA SEHGAL, J**

**G. S. SISTANI, J**

**APRIL 25, 2016**

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