

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl.Appeal No.S-1135-SB-2013

Date of decision : 13.01.2015

Ved Parkash

.....Appellant(s)

Versus

State of Haryana

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Atul Lakhanpal, Senior Advocate with Mr. R.S. Chahal, Advocate for the appellant.

Mr. Deepak Bura, Public Prosecutor for the State of Haryana.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 13.3.2013 vide which appellant-Ved Parkash has been held guilty and convicted for the offence punishable under Section 376 of the Indian Penal Code (for short the 'IPC') and order of sentence of the even date vide which he has been sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of ₹ 5,000/-. In default of payment of fine, he was

ordered to further undergo rigorous imprisonment for a period of 3 months.

2. The brief facts of the prosecution case are that on 31.8.2010, the prosecutrix moved a written complaint Ex.P5 to the SHO, Police Station City, Fatehabad, alleging therein that her marriage was solemnised with Gaurav Chhabra on 21.6.2010. Her husband was running a shop of selling shoes in Main Bazar, Fatehabad, in partnership with appellant-Ved Parkash. That on 5.7.2010 at about 5 P.M, she was taking bath in the bathroom of her house. Accused-appellant Ved Parkash came to their house and took her nude photographs while she was taking bath through a ventilator of the bathroom. When she came out after taking bath, accused appellant-Ved Parkash blackmailed her by showing her nude photographs and forcibly committed rape upon her and threatened if she raised a noise or told to her husband, he will kill her. Due to fear she did not tell her husband about the incident. That on 21.7.2010, appellant again came to their house and called her inside but due to fear she ran outside the house in the street. Thereupon, the appellant also went away. The prosecutrix narrated the incident to her husband. They keep on thinking as to whether the matter should be reported to the police or not. They consulted the sister-in-law (Nanand) of the prosecutrix and it was decided that the appellant should be got punished. So, the matter was reported to the police vide written complaint Ex.P5 on the basis of which the formal FIR Ex.P8 was registered. The Investigating Officer moved an

application Ex.P3 to the doctor for the medical examination of the prosecutrix. The doctor handed over the Investigating Officer the parcel containing the clothes of the prosecutrix vide memo Ex.P6. The Investigating Officer inspected the spot on 1.9.2010 and prepared the rough site plan of the place of occurrence Ex.P9.

3. The accused-appellant absconded and could not be arrested. Ultimately, he was declared as proclaimed offender vide order dated 30.11.2010 passed by the learned Chief Judicial Magistrate, Fatehabad. Co-accused Jai Parkash, the brother of the appellant, was arrested on 2.12.2010 for harbouring the appellant and report under Section 173 Cr.P.C against Jai Parkash was filed for the offence punishable under Section 216 IPC.

4. Thereafter, the case was investigated by the State Crime Branch, Hisar. Ultimately, the appellant was arrested on 22.7.2011 by PW-9 Inspector Parveen Kumar. On interrogation, he suffered the disclosure statement Ex.P-18 and got recovered the mobile phone allegedly used by him to take the nude photographs of the prosecutrix. Accused-appellant was also got medico legally examined. After his medico legal examination, the doctor handed over two parcels and one envelope containing the sample seal. On 19.8.2011, the Investigating Officer moved an application for the DNA test of the appellant in the Court of Chief Judicial Magistrate, Fatehabad. The blood sample of the appellant for DNA test was taken. The blood sample, the clothes of the prosecutrix and the accused were sent to the Forensic Science Laboratory (FSL) for

examination. On completion of the formalities of investigation, the report under Section 173 Cr.P.C was presented in the Court.

5. The present appellant was charge-sheeted for the offences punishable under Sections 292, 376 and 506 IPC. Co-accused Ved Parkash his brother, was charge-sheeted for the offence punishable under Section 216 IPC.

6. In order to substantiate its case, the prosecution examined as many as 12 witnesses. The reports of the FSL Ex.P26 and Ex.P27 were also tendered into evidence.

7. When examined under Section 313 Cr.P.C, appellant-Ved Parkash pleaded that Gaurav Chhabra, the husband of the prosecutrix, had entered into an agreement to sell his house with him for a sale consideration of ₹ 4,00,000/- on 12.10.2009 and had received ₹ 3,00,000/- as earnest money. The date for registration of the sale deed was fixed as 11.10.2010. However, he did not get the sale deed registered. Accused-appellant got registered the criminal case against the husband of the prosecutrix on 17.11.2012. He pleaded that the present case has been got falsely registered against him in order to grab the said amount of 3,00,000/-. He further pleaded that he has neither taken any photograph of the prosecutrix nor committed any rape upon her. In the defence evidence, the appellant examined Krishan Kumar, the attesting witness of the agreement dated 12.10.2009 as DW-1. Appellant himself appeared in the witness box as DW-2 after seeking permission from the learned trial Court under Section 315 Cr.P.C to

support his defence plea.

8. The statement of co-accused Jai Parkash under Section 313 Cr.P.C was dispensed with.

9. On appreciating the evidence on record and contentions raised by the learned counsel for the parties, the learned trial Court held guilty and convicted appellant-Ved Parkash for the offence punishable under Section 376 IPC and was sentenced to undergo the imprisonment as mentioned in the upper part of the judgment. Co-accused Jai Parkash, his brother, was acquitted of the charges.

10. Aggrieved with the aforesaid judgment and conviction and order of sentence, the present appeal has been preferred.

11. I have heard Sh. Atul Lakhanpal, learned Senior counsel for the appellant and Sh.Deepak Bura, Public Prosecutor for the State of Haryana and have meticulously gone through the record of the case.

12. Initiating the arguments, Sh. Atul Lakhanpal, learned Senior Advocate, contended that there is only the solitary statement of the prosecutrix on the point of occurrence. He contended that there is delay of about 1 month and 26 days in lodging the FIR which has not been satisfactorily explained and renders the prosecution version doubtful.

13. He further contended that the photographs of the prosecutrix allegedly taken by the accused were the basis for the commission of the rape upon the prosecutrix. The mobile phone of the accused has been recovered by the Investigating Officer but the

said mobile phone has not been subjected to any scientific examination to ascertain the taking of any such photograph. He further contended that even as per the prosecution version, the accused has taken the photographs of the prosecutrix while she was taking the bath. These type of photographs can never be a ground to blackmail a female rather it is the encroachment upon her privacy and a ground for lodging the complaint.

14. He further contended that the husband of the prosecutrix has not been examined. There is absolutely no evidence on record to establish that the appellant and the husband of the prosecutrix was running any footwear shop in partnership. In the absence of this evidence, the appellant had no occasion to visit the house of the prosecutrix.

15. He further contended that the conduct of the prosecutrix is highly unnatural. She did not narrate anything to her husband for a considerable long period. She was a newly married. It is not plausible that she will keep mum and will not disclose this type of incident to her husband immediately. The prosecutrix has also stated that even after coming to know about this occurrence her husband kept on working with the appellant in the said footwear shop which shows that in fact no such occurrence took place.

16. He further contended that the place of occurrence is situated in busy locality. The prosecutrix is a well built young lady. It is not plausible that an aged person like the accused can single handedly rape her. She could have offered resistance. No injury has

been found on the person of the prosecutrix. She did not raise any alarm. She is a teacher by profession and is not an illiterate lady and is well aware of all consequences.

17. He further contended that the DNA Report Ex.P-26 does not connect the appellant with the semen found on the clothes of the prosecutrix which totally negates the commission of rape by the appellant.

18. He further contended that in fact the appellant has been falsely implicated as the husband of the prosecutrix has executed the agreement to sell Ex.D1 in his favour to sell his house. He also received a sum of ₹3,00,000/- as earnest money but he was not even the owner of the said house. He got this case registered only to grab the earnest money advanced by the appellant. Later on, the appellant has also got registered a criminal case of cheating against the husband of the prosecutrix. Thus, he contended that it is a case of false implication in order to settle the dispute of property.

19. On the other hand, learned State counsel contended that the prosecutrix has deposed in detail about the entire facts. She categorically deposed that her nude photographs were taken by the appellant with the help of his mobile phone and thereafter, by blackmailing her, the appellant forcibly raped her on the same day. He again tried to commit rape on 21.7.2011. This time the prosecutrix saved herself by running out of the house in the street. He contended that the statement of the prosecutrix is fully corroborated from the testimony of PW-4 Smt. Kusum Taneja her

sister-in-law. The delay in lodging the FIR is well explained as the honour of the family was at stake. He further contended that the prosecutrix was a newly married. It is not plausible that she will come forward to put her honour at stake by projecting false story of rape upon her just to help her husband in property dispute. No respectable and newly married woman will come forward to level such type of false allegations. Thus, he contended that there is no reason to disbelieve the statement of the prosecutrix and other evidence brought on record by the prosecution. He further contended that the conviction of the appellant has been rightly recorded by the learned trial Court.

20. I have duly considered the aforesaid contentions. The learned trial Court has recorded the conviction of the appellant on the statement of the prosecutrix predominantly due to the reason that it is wholly unlikely that a woman under such circumstances would be projected to falsely register a case and no woman would level a false charge of rape against anyone by putting her honour at stake and that of her family. Keeping this view in mind the learned trial Court has disbelieved the defence plea set up by the accused.

21. On the point of the occurrence virtually there is the solitary statement of the prosecutrix when she stepped into the witness box as PW-3. PW-4 Kusum Tajena is not a witness of occurrence, rather the facts were disclosed to her by the prosecutrix on 26.8.2010 i.e after 1 month and 21 days of the occurrence. She has admitted in the cross examination that before this day, neither

the prosecutrix nor her husband told her anything about this case. So, her statement is hearsay and based only on the information given to her by the prosecutrix. Thus, the entire case of the prosecution is based on the solitary statement of the prosecutrix.

22. There is absolutely no dispute with the proposition of law that the conviction can be recorded in the cases of sexual offences solely on the testimony of the prosecutrix but at the same time the sole statement of the prosecutrix in that eventuality should be probable, truthful, reliable and free from any doubt.

23. The Hon'ble Supreme Court in case **Ramdas and others versus State of Maharashtra 2006 (4) RCR (Criminal) 967** has laid down as under:

“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. In the instant case we do not find her evidence to be of such quality.”

24. In case **Tameezuddin @ Tammu versus State of (NCT) of Delhi 2009(4) RCR (Criminal) 345**, the Hon'ble Supreme Court

has laid down as under:

“It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

25. In view of the aforesaid ratio of law, the sole statement of the prosecutrix can be acted upon to warrant the conviction but in that case, the statement of the prosecutrix should be unimpeachable and there should be no circumstance which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such a quality only then it can sustain an order of conviction. Thus, we are to see as to whether the statement of the prosecutrix in this case satisfies the aforesaid yardsticks or not and version of prosecution is probable, reliable, logical and inspires confidence.

26. There is also no dispute that normally a woman will not put her honour at stake by levelling the false allegations of rape upon her but again this principle cannot be applied universally. There can be exceptional cases in which such like false allegations can be raised to settle some scores. In the cases of that type, the statement of the prosecutrix could not be taken as a gospel truth to come to the conclusion that such incident had taken place. To support this view reference can be made to the case **State of Haryana versus**

Dilawar 2009(3) RCR (Criminal) 200 (DB). The Hon'ble Apex Court also in case **Pandurang Sitaram Bhagwat versus State of Maharashtra 2005(1) RCR (Criminal) 858** has laid down as under:

“The approach of the learned trial Judge as noticed supra that ordinarily a lady would not "put her character at stake" may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 of IPC have been found to have been falsely advanced.”

27. In the aforesaid authority, the Hon'ble Apex Court has also laid down the principle that ordinarily a lady would not put her honour at stake, may not be wrong but it cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof.

28. The prosecutrix while appearing in the witness box as PW-3 has stated that she was married with Gaurav Chhabra on 21.6.2010. There was partnership between her husband and appellant accused Ved Parkash. On 5.7. 2010 at about 5 PM, she was bathing in the bathroom. Accused Ved Parkash took her photographs from his mobile from the ventilator of the bathroom. He showed the said snaps to her in naked condition and started blackmailing her. He committed rape upon her against her wishes. He threatened her if she told this fact to anybody he will kill her. She

did not disclose this fact to anybody due to fear. On 21.7.2010, accused Ved Parkash again came to her house and called her inside the room and she ran towards the street due to fear. Thereafter, accused Ved Parkash left her house. After 2-3 days, she told the above said incident to her husband. Her husband discussed this matter with his family and on 31.8.2010, she along with her husband and other family members went to the police station and moved an application Ex.P5 which is in her handwriting and bears her signature at point "A". Thereafter, the police took her to hospital. Her medical examination was conducted. The doctor took possession her underwear, pyjama, swabs and pubic hairs vide memo Ex.P6. On the next day, police came to her house and on her demarcation, prepared the site plan. PW-4 Smt. Kusum Taneja, the sister-in-law (Nanand) of the prosecutrix, has deposed that Gaurav Chhabra is her brother and the prosecutrix is her Bhabhi. Thereafter, she deposed about the facts narrated to her by the prosecutrix with respect to the occurrence and their reporting the matter to the police. The statement of the prosecutrix was also recorded under section 164 Cr.P.C by the Chief Judicial Magistrate on 1.9.2010. The same is Ex. P7 wherein also she has repeated the similar allegations.

29. There are various infirmities in the present case making it very difficult to rely upon the sole and uncorroborated statement of the prosecutrix. It is alleged that accused/appellant committed rape upon the prosecutrix by entering her house. As per the prosecution case, the basis of acquaintance between the accused and the

prosecutrix and the opportunity for the accused to visit the house of the prosecutrix was that the husband of the prosecutrix was running a footwear shop with accused Ved Parkash in partnership. The prosecutrix has stated in the cross examination that Ved Prakash was earlier known to her. He used to visit their house after their marriage occasionally. Her husband had started partnership with the accused before her marriage. Thus, the only reason that accused Ved Prakash was having access to the house of the prosecutrix was that he was the partner of her husband but absolutely no evidence has been brought on record to show that any shop was being run by the husband of the prosecutrix in partnership with accused Ved Parkash. PW-5 SI Balwant Singh, the initial investigating officer of the case, has stated that he did not collect any record or proof regarding partnership in between accused appellant Ved Prakash and Gaurav Chhabra. He further deposed that he does not know about their partnership. The prosecutrix has stated that she also does not know whether the shop was on rent or owned by accused and her husband. If the husband of the prosecutrix would have been running any such shop in partnership, she must have the knowledge about this fact. So, there is absolutely no evidence on record to establish that the accused and the husband of the prosecutrix were partners. In the absence of this evidence, the version of the prosecutrix that the accused used to occasionally visit their house is not reliable.

30. It is not a case where the prosecutrix is a village rustic

lady. As per her statement under section 164 Cr.P.C Ex. P7, she is highly educated and is M.A pass. Her occupation has been mentioned by the doctor in the medico legal report as a teacher. So, the prosecutrix is a highly educated and serving woman. It is presumed that she must be aware of her legal rights. It is not believable that such a highly educated serving lady if subjected to the sexual assault will keep mum and depend upon her husband who is merely a shopkeeper. Non-action on the part of the prosecutrix for long period of 1 month and 26 days creates a serious doubt about the veracity of her testimony.

31. The basis for committing rape upon the prosecutrix by the accused is that the appellant has taken her nude photographs while she was taking bath. He blackmailed her by showing her nude photographs but this version of the prosecutrix is also highly doubtful. As per the prosecution version, the prosecutrix was alone at the house at that time. The prosecutrix has stated that at that time, the main gate of their house was not bolted. However, the door of the bathroom was bolted from inside. It is not believable that the prosecutrix would have gone to take bath by leaving the main gate of the house open when no other family member was present in the house.

32. As per the statement of PW-5 SI Balwant Singh, the ventilators of the bathroom were constructed at the height of 5 or 5 ¼ feet. However PW-7 Balwant Singh, Draftsman, has stated that the height of the toilet was about 8 ½ feet and ventilators were at the

height of about 7 feet. Prosecutrix also stated that the height of the ventilator was 6/7 feet. As per the memo of arrest Ex. P-17, the height of the accused was only 5 feet. It is improbable that with such a height the accused could have able to take the photographs of the prosecutrix while she was taking bath, through the ventilator.

33. It is alleged that the accused has taken the photographs with the help of his mobile phone. The said mobile phone has been recovered on the basis of the disclosure statement of the accused by PW-9 Inspector Parveen Kumar, the subsequent investigating officer of the case, and was taken into possession vide memo Ex.P-19. In the cross examination, he deposed that the battery of the mobile was weak so the same was not in working condition. He further deposed that he did not take the mobile in action while putting the another battery in the mobile to check its working system. The mobile phone is alleged to have been recovered by the investigating officer but no effort has been made to operate the mobile phone in order to find out whether it contains the nude photographs of the prosecutrix or not. It is a serious lacunae in the prosecution case as the entire case of the prosecution was based on the allegations that the accused has committed rape upon the prosecutrix by blackmailing her by showing her nude photographs. So, there is no evidence on record to establish that any photograph of the prosecutrix was taken by the accused.

34. Moreover, such photographs of the prosecutrix cannot be a source of blackmailing her. The prosecutrix was not found in any

objectionable position in those photographs as she was just taking bath in the bathroom. These type of photographs could not have become the basis to blackmail the prosecutrix to such an extent that she will be compelled to immediately submit her body to the accused. Thus, the version of the prosecutrix that her photographs were taken by the appellant and on the basis of those photographs he committed rape upon her by blackmailing her is also not substantiated and is improbable. It is also not believable that accused could have dared to commit such act with the main gate of the house lying open.

35. The prosecutrix had stated that she raised alarm when accused was committing rape upon her. If that would have been so some neighbourer must have been attracted, as the house of the prosecutrix was situated in residential locality.

36. The prosecutrix has further stated that on 21.7.2010, when she ran in the street from her house many persons were coming and going through the street. She further deposed that she did not disclose about the incident to anybody on 21.7.2010. If the accused would have been present in her house in order to ravish her and she has to fled away to the street in order to save her she must have sought the help of the passersby but even at that stage, she did not report the matter to anybody and kept silent. This further creates doubt about the veracity of the prosecution version.

37. The husband of the prosecutrix was very material witness. He was the first person to whom the prosecutrix had disclosed about the incident. He has been given up as unnecessary

by the learned Public Prosecutor vide statement dated 23.1.2013.

This witness was to explain so many things. He was to depose about the partnership between him and the accused, narrating of the incident to him by the prosecutrix and the discussions held by him with his family members before reporting the matter to the police but he has been given up simply being unnecessary. The non-examination of such a material witness raises the adverse inference against the prosecution. It appears that he has been withheld by the prosecution with some ulterior motive as he wanted to avoid the cross examination with respect to the agreement to sell Ex. D1 which could have exposed the real dispute.

38. The conduct of the husband of the prosecutrix totally renders the prosecution case doubtful. As per the testimony of the prosecutrix, she narrated the entire incident to him after 2-3 days of the incident dated 21.7.2010. The prosecutrix has stated in the cross examination that her husband even after this incident kept on visiting the shop of accused Ved Parkash off and on. She further deposed that upto 31.8.2010, her husband remained going to the shoes shop of the accused and remained running the business of selling the shoes. It is highly improbable that if the husband of the prosecutrix would have come to know that his newly married wife has been ravished by the accused by blackmailing her by showing her nude photographs he would have still meekly associating the accused in running the business. This conduct of the husband of the prosecutrix strongly negate the happening of any such occurrence.

39. The medical evidence in this case is having no significance as the prosecutrix was medico legally examined after about 1 month and 26 days of the occurrence of rape. It is very surprising that even then an effort has been made to create evidence. The doctor has taken into possession the underwear and pyjama of the prosecutrix. But, the DNA profile of source of pyjama and underwear of the prosecutrix did not match with the DNA profile of accused Ved Parkash. So, this effort of the prosecution to create evidence has also gone futile.

40. It is settled principle of law that the accused is not to prove the defence plea beyond the shadow of reasonable doubt. The accused is only to probalise the defence version in order to create doubt in the prosecution case. In the instant case, the accused has raised the plea that the husband of the prosecutrix has executed an agreement to sell dated 12.10.2009 in his favour for the sale of his house for a consideration of ₹ 4,00,000/-. He received earnest money of ₹ 3,00,000/- from him but he did not execute the sale deed as per the said agreement and in order to grab that money he has been falsely implicated. The learned trial Court has disbelieved the defence plea of the accused on flimsy grounds that he has not obtained the possession of the house even though the substantial amount was paid, that he did not file any suit for specific performance of the said agreement to sell and that he did not take any action even having knowledge of the fact that the husband of the prosecutrix was not having the ownership rights. These factors may be relevant in the

civil litigation but in the present case, it is established from cogent and convincing evidence that there was some dealing between the appellant and Gaurav Chhabra, the husband of the prosecutrix. DW-1 Krishan Kumar, the attesting witness of the said agreement to sell, has deposed about the execution of the agreement to sell dated 12.10.2009, copy Ex.D1, by the husband of the prosecutrix in favour of the accused and having received ₹ 3,00,000/- as earnest money. Even the prosecutrix in her cross examination at the first instance admitted that her husband had agreed to sell his house to the accused, but then retracted. Even then she has categorically admitted that her husband had borrowed 3,00,000/- from accused Ved Prakash before her marriage and an agreement had taken place though she has denied that said agreement was an agreement to sell his house by her husband. So, it is an admitted fact that husband of the prosecutrix had received a sum of 3,00,000/- from the appellant. The defence plea so raised by the appellant certainly raises the doubt about the genuineness of the prosecution story. To clear the aforesaid doubts the examination of the husband of the prosecutrix was very essential but he has been withheld.

41. As per the prosecution version, the occurrence of rape has taken place on 5.7.2010. The prosecutrix did not disclose anything to anybody. She disclosed about this occurrence to her husband 2-3 days after 21.7.2010 when the appellant again visited their house and asked her to come inside the room. In this manner, she first time disclosed to her husband after about 18/19 days of the

occurrence but her husband did not take any action. The prosecutrix has deposed that her husband discussed the matter with his family and on 31.08.2010, she along with her husband and other family members moved the application Ex.P5. The husband of the prosecutrix came to know about this occurrence on 23/24.7.2010 but no action was taken till 31.8.2010. In this manner, there is delay of 1 month and 26 days in reporting the matter to the police from the date of incidence of rape.

42. There is no dispute with the proposition of law that the delay in lodging the report in the cases of sexual offences is immaterial as the honour of the family is at stake and it requires a deep consideration before reporting the matter to the police but at the same time, the inordinate delay in reporting the matter to the police sometimes taken together with other circumstance may prove fatal to the prosecution. The Division Bench of this Court in case **State of Haryana versus Dilawar (supra)** has laid down that such delay is hardly of any significance but it assumes significance coupled with other circumstances.

43. It is no doubt true that mere delay in lodging the First Information Report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the Court must take notice. The object of insisting upon prompt lodging of the report with the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of

the actual culprits, the part played by them as well as the names of the eye-witnesses, present at the scene of crime. The delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of advantage of spontaneity, danger creeps in of the introduction of coloured version as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging the First Information Report should be satisfactorily explained.

44. In the instant case, no satisfactory explanation has been given to explain the inordinate delay of 1 month and 26 days in lodging the report with the police. The prosecutrix has admitted in the cross examination that she did not tell anybody about the incident including her husband. She further deposed that till 21.7.2010 she did not tell anybody about the incident. She further deposed that she told her husband about the incident after about 2-3 days (she has deposed so while narrating about the incident dated 21.7.2010). She further deposed that her husband even after this incident kept on visiting the shop of Ved Parkash off and on. Even after coming to know about the incident, the husband of the prosecutrix kept mum for more than one month. The only explanation given for this long delay in reporting the matter to the police is that her husband was discussing the matter with his family. It is very difficult to believe that a period of more than one month shall be spent in discussing the matter with the family in order to make up the mind to report the

matter to the police. PW4 Kusum Taneja, the sister-in-law of the prosecutrix, has categorically deposed that for the first time the prosecutrix told her all the facts on 26.8.2010. This version of PW4 Kusum Taneja even belies the testimony of the prosecutrix that her husband was discussing the matter with the family. Gaurav Chhabra, the husband of the prosecutrix, did not step into the witness box to explain the delay in reporting the matter to the police. His examination was essential as the prosecutrix has taken the stand that she had narrated the incident to her husband after 2-3 days of the incident dated 21.7.2010 and thereafter, her husband had been discussing the matter with his family members. Non-examination of husband of the prosecutrix is a serious handicap to explain the delay in lodging the FIR. Thus, there is unexplained delay of 1 month 26 days in reporting the matter to the police. This inordinate and unexplained delay coupled with the circumstances discussed above creates the doubt about the veracity of the prosecution case.

45. Thus, in view of no proof regarding any partnership between husband of the prosecutrix and the accused, the story of the prosecution of taking the nude photographs of the prosecutrix being highly improbable and no efforts on the part of the investigating officer to operate the said mobile phone in order to ascertain the factum regarding such photographs, withholding of the husband of the prosecutrix (the material witness of the prosecution) who was to unfold the prosecution version on certain material aspects, the unnatural conduct of the husband of the prosecutrix associating with

the appellant in running the business even after coming to know about the incident, the prosecutrix being highly educated and serving lady who is supposed to be fully aware to her legal rights and is not expected to keep mum for such a long period, the unexplained inordinate delay of 1 month and 26 days in lodging the FIR and the defence plea raised by the appellant, the statement of the prosecutrix is not of such a quality which can be acted upon without any corroboration to base the conviction. In the instant case, as already discussed, there is no corroboration to the statement of the prosecutrix. Consequently, the appellant deserves the benefit of doubt.

46. Thus, keeping in view my aforesaid discussion, the prosecution has not been able to establish its case beyond shadow of reasonable doubt against the present appellant. Consequently, the present appeal is hereby allowed. The impugned judgement of conviction and order of sentence dated 13.3.2013 are hereby set aside. As a result of benefit of doubt, the accused appellant stands acquitted. The appellant is in custody. He be set at liberty forthwith if not detained in any other case.

January 13, 2015
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(DARSHAN SINGH)
JUDGE

