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

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*Judgment Reserved on: May 16, 2016*

*Judgment Delivered on: May 26, 2016*

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**CRL.A. No.1466/2013**

CHAMAN

..... Appellant

Through: Mr.R.K.Tarun, Advocate.

versus

STATE

..... Respondent

Through: Mr.Sudershan Joon, APP for the  
State.

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRATIBHA RANI, J.**

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than seven years and upto ten years).
2. Briefly stating, FIR No.14/2011 under Sections 376/506/509 IPC PS Ashok Vihar has been registered on the basis of statement made by the Prosecutrix 'A' (name withheld to conceal her identity). In the FIR, she has stated that on the night intervening 13/14.01.2011 she was alone at home and mourning the death of her daughter who expired a few days back. The door of the room was open when appellant Chaman entered her room and committed rape on her. Next day, after taking bath and performing pooja, she went to the police station and reported the matter.
3. After registration of FIR, she was taken to Babu Jagjiwan Ram

Hospital for medical examination. As per the MLC, there was no external injury and Prosecutrix refused for internal medical examination. Statement under Section 164 Cr.P.C. of the Prosecutrix was also got recorded before the learned Metropolitan Magistrate.

4. The appellant was arrested and also subjected to medical examination. After completion of investigation, the appellant was sent to face trial for the offences complained of.

5. After committal of case to the Court of Sessions, the appellant was charged for committing the offence punishable under Section 376/506 IPC to which he pleaded not guilty and claimed trial.

6. The prosecution has examined twelve witnesses to bring home the guilt. The appellant has also been examined under Section 313 Cr.P.C. to enable him to explain the incriminating evidence appearing against him. The appellant denied having committed rape on the Prosecutrix.

7. After conclusion of trial, the appellant was convicted for committing the offence punishable under Section 376/506 IPC and sentenced to undergo RI for ten years with fine of ₹10,000/- and in default to pay the fine, to undergo RI for two years for the offence punishable under Section 376 IPC and further to undergo RI for three years with fine of ₹5000/- and in default to pay the fine, to undergo RI for six months for the offence punishable under Section 506 IPC.

8. I have heard Mr.R.K.Tarun, Advocate for the appellant and Mr.Sudershan Joon, APP for the State and carefully gone through the record.

9. Mr.R.K.Tarun, Advocate for the appellant has submitted that the Prosecutrix was in live-in relationship with the appellant which fact she had admitted repeatedly in various communications sent to the different police

authorities including Commissioner of Police. He has further submitted that prior to this incident, the Prosecutrix had borrowed ₹11,000/- from the appellant. Since the appellant was insisting for repayment of the said amount, she has falsely implicated him in this case. It has been submitted that the appellant was just above 18 years of age at that time whereas the Prosecutrix was aged about 24 years and a married lady living away from her husband. Learned counsel for the appellant has submitted that the Prosecutrix is in the habit of making false complaints against the appellant and his family and after registration of the FIR, due to the strained relations she lodged another FIR No.21/2011 under Sections 365/506/34 IPC PS Bhlaswa Dairy. Learned counsel for the appellant has drawn the attention of this Court to the various improvements made by the Prosecutrix at different stages and submitted that it being a case of live-in relationship wherein the Prosecutrix was a consenting party, the appellant who had just attained the majority at the time of registration of this FIR, may be acquitted.

10. Mr.Sudershan Joon, learned APP for the State has submitted that the Prosecutrix was living all alone in a room in Village Wazir Pur, Delhi. Taking advantage of her situation, on the night intervening 13/14.01.2011 the appellant had committed rape on her. Thus, in view of the nature and gravity of the offence and that statement of the Prosecutrix is sufficient to base the conviction, the appeal may be dismissed.

11. I have considered the rival contentions and carefully perused the record.

12. The learned Trial Court has recorded the conviction of the appellant placing reliance on the statement of the Prosecutrix examined as PW-7. The defence version has been rejected by the learned Trial Court.

13. Before considering the testimony of PW-7 'A', it is necessary to

record that while lodging the FIR, she had mentioned herself to be wife of Mewa Lal, permanent resident of Village Shanichara, Choki Khalilbad, PS Mahuli, Distt. Basti, U.P. During trial of this case, summons have been sent to her number of times at her local address as well as at her permanent address. It was reported on 10.10.2011 by Ct.Udey Singh on the summon sent for 22.11.2011 that Smt.Meena, W/o Mewa Lal, R/o Village Shanichari Chaubey, PS Mahuli, Distt. Sant Kabir Nagar, U.P. that she was wife of Mewa Lal and she had never been to Delhi. They did not know anybody with the name 'A' and somebody has given wrong address. She also stated that her husband Mewa Lal was residing in Delhi.

14. Statement of CW-1 ASI Urmil Sharma was also recorded on 24.09.2012 wherein she has specifically stated that Prosecutrix was untraceable. However, on 15.10.2012 the Prosecutrix 'A' appeared in the Court of her own and examined as PW-7.

15. Before examining the testimony of the Prosecutrix as to whether her version is inspiring confidence and can be made basis for conviction of the appellant, it is necessary to consider the legal position in this regard.

16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an

accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Ref.: *Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Anr.* MANU/SC/0015/2003 : AIR 2003 SC 818; and *Vishnu v. State of Maharashtra* MANU/SC/2156/2005 : AIR 2006 SC 508).

17. In the case ***Jai Krishna Mandal and Anr. v. State of Jharkhand*** (2010) 14 SCC 534, the Apex Court while dealing with the issue held as under:

*‘The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed.’*

18. In the decision reported as ***Rajoo and Ors. v. State of Madhya Pradesh*** AIR 2009 SC 858, the Supreme Court held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The court however, further observed:

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

19. In *Tameezuddin @ Tammu v. State (NCT of Delhi)* (2009) 15 SCC 566, it was held 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.'*

20. If the statement of Prosecutrix is appreciated, the following facts emerge:

(i) As per DD No.21A dated 14.01.2011 Ex.PW12/A, on 14.01.2016 the complainant came to the Police Station at about 3.55 pm and reported about the rape being committed in her rented room by Renu's brother Chaman. DD was marked to SI Urmil Sharma.

(ii) Thereafter the Prosecutrix 'A' made statement Ex.PW7/A stating her age to be 25 years. She reported that she had been living in Wazir Pur Village in the house of Mahesh for last 6-7 months on rent and had been working as Beldar. She is illiterate. Her husband has deserted her for the past six years and she had no relation in Delhi.

(iii) On that night (aaj raat) i.e. 13/14.01.2011 she was feeling sleepless because of death of her daughter and had kept the door of the room open. In the meantime, one boy Chaman entered the room. He is younger brother of Renu, resident of the same village and previously known to her. He had also caught her hand two months prior to that incident and at that time his sister came to her room and threatened not to report the matter to the police. On that night, Chaman entered her room and bolted the door from inside. He forcibly put her on the floor and committed rape on her. When she tried to

raise alarm, her mouth was shut and she was also threatened to be falsely implicated in some case in connivance with the police and threatened to stab her. Thereafter Chaman left the room,

(iv) The Prosecutrix was medically examined at Babu Jagjiwan Ram, Hospital on 14.01.2011 at 06.05 pm. The alleged history given by her at the time of preparation of MLC is as under:-

*'Patient gives alleged history of sexual assault at night 1.00 am on 14.1.11. As per patient, she was alone at her home as usual at night. One person from outside came to her home for sexually assaulted her. He used condom for the act. According to patient, she had once some arguments with that fellow earlier. As well that fellow threatened her also if she would say it to anybody he would kill her. Patient has taken bath today morning and changed her clothes.*

*C/o pain abdomen.*

*O/H -P1+OLO, LCB - NVB, 10 year back, baby expired one month back*

*M/H - LMP : - NEK/20-25 days back*

*Cycles Regular*

*O/E = pt. G/C fair*

*Well oriented to time, place and person.*

*Afemine.*

*PR - 80/min.*

*BP : 120/80*

*Breast - soft, no signs of injury.*

*Chest - B/L clear.*

*CS - NAD*

*P/A - Soft, NAD.*

*No external marks over the body of any injury.*

*MAIN APNI MARZI SE DOCTARI ANDRUNI JHANCH  
NAHI KARANA CHAHTI HOON'*

21. In her statement under Section 164 CrPC recorded on 15.01.2011, she stated that on 14.01.2011 at about 1.00 am, she was unable to sleep because of death of her daughter and she had kept the door of her room

open. During that time, one boy Chaman who is younger brother of Renu, entered her room and committed rape on her. When she tried to raise alarm, he threatened to kill her with a knife and thereafter he left.

22. The Prosecutrix 'A' was examined as PW-7 on 15.01.2012. In her statement recorded before the Court, she stated as under:

*'I have residing in Delhi since last about 7-8 years. I had been residing at address of Ashok Vihar since about 6 months prior to the incident. I am doing work of Beldari. I am illiterate. I am married but I am not staying with my husband as he is a drunkard and used to beat me.*

*It was night of 13/14, I do not remember the month and the year except that it was winter month about two years ago. My 10/11 years daughter had expired  $\frac{3}{4}$  days prior to that. I was sitting in my room and was depressed thinking about my daughter. Accused Chaman came into my room at about 12/1.00 midnight. His brother Satish and  $\frac{3}{4}$  other boys also came there. I do not know name of  $\frac{3}{4}$  other boys, who came with accused. Accused Chaman did wrong act with me. I knew accused Chaman as he had fought with me on earlier occasion and I had inquired about his name. A few days ago, accused Chaman had caught my hand while I was going to bring rice for my daughter who was sick. At that time, I had abused accused Chaman and he too abused me and told me "Renu Ko Bulau Chaku Marne Ke Liye". I was saved by the public persons.*

*In the night of 13/14 accused Chaman did wrong act with me.*

*Ques. What do you mean by wrong act?*

*Ans. Usne mere sath balatkar kiya.*

*When accused Chaman did wrong act with me, his brother Satish also came to do wrong act with me. I was crying very hard. Satish could not commit wrong act with me. Satish told me that he would have me stabbed with a knife.*

*In the morning, I had bath and said my prayers and then I went to PS to file my complaint.'*

23. From the above testimony of the Prosecutrix, it can be seen that she had been changing her version at every stage. The appellant Chaman was well known to her. In her cross examination, she had admitted having received ₹11,000/- from Chaman on 31.01.2010 but tried to explain it by saying that he had given that money to change her statement in presence of her counsel but on the way, he had taken back the said money. She has admitted her thumb impression and signature on Ex.PW7/DA to DD. Ex.PW7/DA is a writing dated 31.10.2010 acknowledging the receipt of ₹11,000/- from Chaman and agreeing to repay the same within one year. This acknowledgement is bearing her signature as well thumb impression. There is a friendship deed Ex.PW7/DD bearing photograph of the appellant as well of the Prosecutrix attested by the Notary. In the said friendship deed she mentioned that both of them are major and her male friend is about 18 years and she is aged about 25 years and in live-in relationship. Thereafter, there is another document Ex.PW7/DB addressed to one Usha Kashyap addressing her as Auntie wherein she has informed her that due to some petty quarrel she made a complaint against Chaman though he did not rape her. There is another communication Ex.PW7/DC addressed to the Commissioner of Police requesting for withdrawal of her complaint pertaining to FIR No.14/2011 under Sections 376/506/509 IPC PS Ashok Vihar informing that no rape was committed and that she and appellant was in live-in relationship.

24. From the above documents, which have not been considered in right perspective by learned Trial Court, it is clear that the Prosecutrix who had been living alone away from her husband in Delhi, was in live-in

relationship with the appellant. She admitted having received ₹11,000/- on 31.10.2010 i.e. much prior to the alleged rape incident on the night intervening 13/14.01.2011. Thus, her statement that this amount was paid to her for changing her statement is falsified from the record.

25. The incident is stated to be of mid January after midnight when the winter is at its peak. The Prosecutrix claims to be living all alone and in such a situation even if a person is in grief would not keep the door open because of security reasons. Unfortunately, there is no investigation in this case as to whether the Prosecutrix was having any daughter who had expired 3-4 days prior to registration of FIR. The site plan Ex.PW12/C shows that room of the Prosecutrix is in centre having adjoining rooms on both the sides.

26. The place of occurrence is stated to be a residential area in Wazir Pur Village where raising of alarm by the Prosecutrix would not have gone unnoticed by the persons sleeping in the adjoining rooms. Again it is painful to note that the persons residing in the adjoining room have not been examined about this incident. There is another aspect of the matter. The Prosecutrix had claimed that she had been deserted by her husband six years back. On 15.10.2012 when she was examined as PW-7, she stated her age to be 24 years. Thus, in January, 2011 her age was 22 years plus. She claimed that her daughter aged about 10-11 years had expired just 3/4 days prior to this incident thereby leading to the inference that she had given birth to a daughter when she herself was about 10-11 years old which does not appear to be probable.

27. Again it is surprising that a person who was well known to her would enter her room at about 1.00 am in the night and would commit rape using condom as recorded in her MLC. It appears that she refused to undergo

internal medical examination and deliberately mentioned about condom at the time of preparation of her MLC to avoid taking of samples. Unless the Prosecutrix herself tell that she would keep the door open during night, nobody could have entered her room after knocking the door at odd hours i.e. 1.00 am as that would have drawn the attention of the persons residing in the adjoining room.

28. It is not the case of the Prosecutrix that the appellant was carrying any weapon with him so as to intimidate her to the extent that she was unable to raise alarm. She has been medically examined within eighteen hours of incident and though she stated that she was raped after forcibly pushing her on the floor there was not even a single abrasion found on her body.

29. Further in her examination as PW-7, she stated that after taking bath and performing pooja, she reached the police station at about 10.00 am but DD No.21A shows that she reached the Police Station at 3.55 pm.

30. In the last, the improvement made by the Prosecutrix that the appellant was accompanied by his brother Satish and 3-4 other boys makes her entire version untrustworthy and wholly unreliable. Rather it appears that somehow or other she wanted to settle the score with appellant and his family and that could have been the reason that while appearing in the Court as PW-7, she entirely changed her version and tried to bring his brother Satish and 3-4 other boys also in the dock.

31. In view of the deliberate improvements made by the Prosecutrix on material points and finding her testimony to be suffering from serious infirmities, I am of the considered opinion that her testimony does not inspire confidence. Thus, her testimony was not sufficient to convict the appellant for committing the offence punishable under Section 376/506 IPC.

32. Resultantly, the impugned judgment dated 19.10.2013 and order on

sentence dated 23.10.2013 are set aside.

33. The appeal is allowed. The appellant is acquitted of the charges under Section 376/506 IPC.

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

35. A copy of this order be sent to the concerned Jail Superintendent with the direction that the appellant be released forthwith if not wanted in any other case.

**PRATIBHA RANI, J.**

**MAY 26, 2016**

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