

\$~R-12A

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 190/2014**

Judgment reserved on: 29th August 2017
Judgment pronounced on: 27th October 2017

BALRAM

.....Appellant

Through: Mr. Dhan Mohan, Mr. Tanu B.
Mishra, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Akshai Malik, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present appeal has been instituted under Section 374 of The Code of Criminal Procedure, 1973, (hereinafter referred as 'Cr.P.C.') by the appellant assailing the impugned judgment dated 07.12.2013 and order on sentence dated 16.12.2013 passed by the Court of Additional Session Judge, Dwarka Courts, New Delhi, (FIR No. 99/2012, P.S. Dwarka North, New Delhi), whereby the appellant was convicted under Section 376 of The Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and was awarded rigorous imprisonment for ten years and a fine of Rs.30,000, and in default, to further undergo one year simple imprisonment.
2. The case of the prosecution as observed by the Trial Court vide its order dated 16.12.2013, is that: -

“As per the prosecution case, information was received at the police station on 07.05.2012 at about 2:35 p.m. regarding a quarrel at House No. A-489, near Mother Dairy, Sector-15, Dwarka. Same was reduced into

writing as DD No. 15A and was marked to SI Umesh Kumar for suitable action. Accordingly, SI Umesh Kumar reached the aforesaid spot and met the informant Arun Kumar, who told him that the victim girl has gone to House No. E-202, Bharat Vihar. SI Umesh Kumar reached the House No. E-202, where he met the prosecutrix 'S' (real name withheld in order to conceal her identity), who told her that she along with two other girls namely 'SR' and 'G' (real names withheld in order to conceal her identity) have been raped.

He brought all the girls to police station and produced them before the SHO. The SHO handed over them to SI Nirmal Sharma for further inquiries. SI Nirmal Sharma recorded the statement of prosecutrix 'S' who stated that she along with the prosecutrix 'G' had come to Delhi about ten days ago with a lady named Sunita in search of a good job and on reaching Delhi, Sunita took them to a house in Mahavir Enclave, where Kishan and his wife Monika were staying.

On 03.05.2012 the landlord of the house evicted them from the house. Monika took her along with the prosecutrix 'SR' as well as 'G' to Shani Bazar and left them on Shani Bazar road. After sometime, Kishan reached there and called his friend Balram. Balram reached there in his Maruti car and took three girls to a house where he committed rape upon the prosecutrix 'S' and Kishan committed rape upon the prosecutrix 'SR' and 'G'. She further stated that Kishan and Balram had threatened them not to narrate the incident to anybody or otherwise they would be killed. They became frightened as they did not know anybody in Delhi.

In the morning, Kishan brought them to Sector-14, Dwarka Metro Station, from where he took them to Pooja's house in Sector-15, Dwarka, on foot. After sometime, Kishan took 'G' and 'SR' to his room and left the prosecutrix 'S' at the house of Pooja. In the house of Pooja, 'S' was raped by a person on 04.05.2012 whom she did not know. She had refused to

permit that person to have intercourse with here but was threatened by Pooja. Thereafter, 'S' went to the house of Monika. Meanwhile, Monika had come to know that her husband Kishan had raped 'G' and 'SR' and upon this a quarrel took place between her and her husband. 'S' and 'G' told Monika that they want to go to their native village but she told them that they will have to compensate her for the expenses of these days by earning for her and confined them inside her house. In the morning, 'S' got an opportunity to come out of the house and asked a person to make a call at telephone no. 100, upon which the police reached that house and recovered them."

3. In order to substantiate its case, the prosecution in all examined 23 witnesses and got exhibited certain documents. The statements under Section 313 Cr.P.C were recorded wherein the appellant denied all the incriminating circumstances appearing against him in evidence and claimed his false implication in the case.
4. After considering the evidence on record and the contentions of the parties, the Trial Court held the appellant guilty for the offence under Sections 376 IPC. Hence the present appeal.
5. Mr. Dhan Mohan, learned Counsel for the appellant contended that the impugned judgement is based on conjectures and surmises and is not properly supported by the evidence/material on record; that despite material contradictions in the statement of the prosecutrix the Trial Court has relied upon the same which ultimately culminated into conviction of the appellant; that there were material contradictions in the testimonies of other prosecution witnesses also, however the same had been ignored; that the case of the prosecution was registered vide DD no. 15A at about 2:35

PM on 07.05.2012 with regard to a quarrel which took place at A-Block, Sector-15, Dwarka and not in connection with the commission of rape at House No. E-202, Bharat Vihar; that there was a time gap between the lodging of the complaint on 07.05.2012 and the arrest of the appellant by the police officials on 13.05.2012; that the Trial Court had further erred in not taking note of the fact that the MLC and FSL reports fail to support the case of the prosecution; that the site plan prepared by the police officials was false and fabricated; that PW-7 and PW-14 have turned hostile; that no independent public witness was examined by the prosecution; that the present case is wholly based on circumstantial evidence and the prosecution had miserably failed in completing the chain of events, to prove the guilt of the appellant.

6. Per contra, Mr Akshai Malik, learned Additional Public Prosecutor for the State contended that even though PW-7 and PW-14 have turned hostile, their statements under Section 164 Cr.P.C. have fully corroborated with the statement of the prosecutrix (PW-6); that except minor discrepancies, the statement of the prosecutrix was consistent and also withstood the test of cross-examination; that the prosecution had proved its case on all counts and hence no interference is called for by this Court.
7. I have heard learned counsel for the parties and have also perused the material available on record.
8. At this juncture, the appreciation of evidence brought on record requires to be appositely scrutinized to adjudge the fact whether the appellant is guilty of his culpability.

9. First it would be relevant to rummage through the statements of the prosecutrix/PW-6/'S' recorded at various stages.

PW-6 in her statement recorded under Section 164 Cr.P.C stated that she was brought to Delhi on 02.05.2012 and on 03.05.2012 she along with Sonu and Gudia was taken to Shani Bazaar by Monika. Thereafter, Monika left them in the market and went back to her house. After sometime, Kishan came to the market and called Balram, who took them to his house. He committed sexual assault on her throughout the night and even threatened her. Next day, Kishan took them to Pooja's place where he left all three of them in her house and went away. Kishan shifted to a new house in sector-14, Dwarka. Pooja brought them to Kishan's new house and left Sonu and Gudia there. On being asked by Pooja to come back along with her, Suman went back to Pooja's house where a man was already present, who thereafter committed sexual assault upon Suman. Pooja even took money from that person and shared the same with Kishan.

During Examination-In-Chief, PW-6 deposed as under:-

“In 1.05.2012, a lady named Sunita who resides in the same village in which I reside, met me and asked me to accompany her to Delhi as she would get me some work/ job there. We boarded the train for Delhi on the same day and reached Delhi on 25.05.2012. Another girl namely Guria of the same village Bahari, was also with us.

On reaching Delhi, she took us to a house in Prahlad Market, Sector-1, Dwarka, New Delhi. A person named Kishan and his wife Monika were staying in that house. Sunita told us that Kishan is her brother and Monika is her Bhabhi.

We remained there for about four/five days and thereafter, the said house was to be vacated and we shifted to another accommodation in Sector-14, Dwarka. In the night, I, Monika and Guria, went to Shani Chowk. From there Monika returned to her residence. Her husband Kishan met myself and Guria there and he took us to some other place i.e. the house of his friend. One person Balram was present in the house and he committed intercourse with me against my consent. Next morning, Kishan brought myself and Guria back to his place of residence. Thereafter a fight ensued between Kishan and his wife Monika as both held each other responsible for bringing us girls to Delhi. I told Monika that I want to go back to my native village. She said that she would drop me there but I insisted that I wanted to leave that day itself. She kept me confined for five or six days more and did not permit me to go to my native village. I asked a boy residing in the neighbourhood to call police and on my requests, he called police. Police came to that house and took myself, Guria, Sunita and Monika to police station. Kishan was not present in the house at that time as he had gone somewhere.

In the police station inquiries were made from me and I narrated the whole story to the police officials. The police official recorded my statement which Ex. PW6/A bearing my signatures at point A&B.

From the police station I and Guria, were taken to Hospital, where we were medically examined. From the hospital we were brought back to the police station where we were kept for the night. The next day we were brought to the court and produced before a Magistrate who recorded our statement.

I have seen my statement recorded u/s 164 CrPC. Same bears my signatures and thumb impression at point A. Same is already exhibited as ExPW3/A.....

I along with Police officials had gone to the house of Balram where Balram was arrested in my presence vide arrest memo which is Ex. PW6/B bearing my signatures

at point A. His personal search was taken vide memo Ex. PW6/C bearing my signatures at point A. I can identify accused Balram, if shown to me. He is present in court today. (witness has correctly identified accused Balram present in court today.)”

During Cross Examination by the learned APP for the State, the prosecutrix stated as under: -

“ It is wrong to suggest that Kishan had met me at my native village.(Confronted with the statement ex. PW6/A, wherein it is so mentioned).

It is correct that Sonu Rawat was also with us when I, Guria and Monika went to Shani Market.

It is incorrect that Kishan had made a telephonic call to accused Balram and that accused had come to the Shani Market in his car and I along with Guria and sonu were taken to the residence of Balram in his car. (Confronted with the statement Ex. PW6/A, wherein it is so mentioned).

I did not mention in my statement to the police that Kishan had committed sexual intercourse with Guria and Sonu Rawat. (confronted with the statement Ex.PW6/A, wherein it is so mentioned).

I also did not mention in my statement to the police Kishan had committed sexual intercourse with Guria and Sonu Rawat. (confronted with the statement Ex.PW6/A, wherein it is so mentioned).

I also did not mention in my statement to the police that after committing intercourse with me, accused Balram had threatened me not to disclose it to anybody or otherwise he would kill me. (confronted with the statement Ex.PW6/A, wherein it is so mentioned).

It is correct that a boy had committed intercourse with me in the house of Pooja also. Again also that boy did not do anything to me.

xxxx

I had shown the place of incident where accused Balram had committed rape upon me, to the police and the police had made a rough site plan of the same in my

presence which is Ex.PW6/D bearing my signatures at point A.

I did not point out the vehicle in which we were taken to the house of Balram, to the police and the said vehicle was not seized in my presence."

During Cross Examination by Mr. Aseem Bhardwaj, the learned counsel for Monika, the prosecutrix stated as under: -

"I have studied upto 5th class. I can read Hindi language.....

xxxx

I had mentioned in my statement to the police that after vacating the initial house, we were taken by Monika and her husband Kishan to another house at Sector-14, Dwarka.

xxxx

It is correct that I had come to Delhi for the first time with Sunita as stated by me herein above and before that I had not visited Delhi. It is correct that I was not aware about the topography of Delhi. It is correct that when I came to Delhi, I was having a mobile phone.

xxxx

It is correct that Shani Bazar was at a walking distance at about five to seven minutes from that house. It is correct that Monika had told me to see Shani Market and she had gone to guard her house hold articles. I was aware about the mobile phone number of Monika at that point of time but I have not saved the same in my mobile phone. It is correct that even Guria was having a mobile phone at that time. It is also correct that Guria was also aware about the mobile number of Monika. While leaving the Shani Market, we had not made any call to Monika informing her regarding the same.

xxxx

I had stated to the police in my statement that I told Monika that I wanted to go to my native village but Monika told me that she would drop me herself after some days and she did not permit me to leave for my

native village and she kept me confined for about five to six days."

During Cross Examination by Mr. Aseem Bhardwaj, the learned counsel for Kishan, the prosecutrix stated as under:-

"It is correct that I had gone along with Kishan to the house of Monika's Bhabhi. Sonu Rawat and Gudia were also with us. It is correct that in the house of Monika's Bhabhi, I along with Sonu Rawat and Gudia had slept in one room and it was bolted from inside by Gudia. It is correct that Kishan had slept in the drawing room along with the parents-in-law of Monika's Bhabhi. It is also correct that the door was opened in the morning by Gudia only. It is also correct that after taking breakfast in that house in the morning, we returned along with Kishan to the house where Monika was present."

10. In order to further determine whether the statement of prosecutrix (PW-6) corroborates with that of other prosecutrix(s) i.e. PW-7 & PW-14, perusal of their testimonies becomes imperative.
11. **PW-7/ 'SR'** in her statement recorded under Section 164 Cr.P.C. stated that Kishan took them to Balram's house from Shani Market. Kishan had committed sexual assault with all the girls. He had committed assault with Gudia, then he committed the same act upon her. Balram took 'S' to another room. Next morning, he took them to Pooja's house via metro.

PW-7 during her Examination-in-Chief deposed as under:-

"About one year ago, I was brought to Delhi by a lady who resides in our neighbourhood in my native village. She had brought me to Delhi for doing the job of maid servant. She kept me for two days in her room. I do not know the locality in which her room was situated. Thereafter I was shifted to the room of Monika. I stayed

in her room for two days. Thereafter, three girls Gudia, Suman and Sunita also came to that room.

After two days a quarrel took place between Monika and her landlord and the landlord threw out the goods of Monika. We remained outside the house till evening. Then Monika gave 100/- to each of us and asked us to go and eat something in the market.

We returned from the market at about 11PM and found that accused Kishan was sitting along with Monika. On the asking of Monika, Kishan took us to the room of Monika's Bhabhi and we stayed in that room for the night. We slept in the room and Kishan slept outside.

In the morning of the next day we returned to Monika. She had spent the night outside the house along with her goods. The landlord again started quarrelling with Monika and he called police. Police came and took all of us including Monika to the police station.

I do not know when and why Kishan, Monika, Pooja and Balram were arrested by the police. Neither Kishan nor Balram had done anything illegal act with me during the period I stayed in Delhi. xxxxxx”

The prosecutrix (PW-7) was declared hostile by the learned APP for the State. During cross examination she denied that Kishan and Balram had committed sexual assault with her. She further stated that she had given false statement to the Magistrate at the instance of police officials which is exhibited as Ex.PW3/C. During her cross examination she admitted that she along with ‘S’ and ‘G’ had slept in one room at the house of Monika Bhabhi which was bolted from inside whereas Kishan slept outside the room. Thereafter, next morning the room was opened.

12. **PW-14/'G'** under Section 164 Cr.P.C. stated that on 03.05.2012, Monika took her along with 'SR' and 'S' to Shani Bazaar as her house was locked by the landlord. She left them at the market where they kept sitting till 12:00 a.m. After sometime, Kishan reached the place (market) and called Balram who thereafter took them to some other place. On reaching that place, Kishan committed sexual assault with her and 'SR' and Balram took 'S' to another room. Next morning, he took them to Pooja's house via metro.

During her Examination-in-Chief PW-14 deposed as under:-

“In the summer season of last year, I had come to Delhi along with my maternal aunt (Mausi). While I was staying with my Mausi, one girl named Suman had also come there and requested my Mausi to arrange for her the job of a maid. I also requested my Mausi to get me a job of maid. My Mausi told me that she knows a lady by the name Monika, who will get me a job. She took me to the house of Monika to arrange a job for me. She asked her to keep me with him for one or two days so that he can try for a job. Thereafter my Mausi returned home and I remained in the house of Monika. Two other girls namely Suman and Sonu were also residing there along with Monika. Meanwhile, the landlord of Monika fought with her and threw away her goods from the house and locked her room.

When we were outside the house, I told Monika that I am feeling hungry. She gave myself, Suman and Sonu Rs. 100/- each and said to go to the market and eat something. We went to Shani Bazar. We consumed some food there and recharged our mobile phones. We talked to our parents. We also brought food for Monika and her daughter. Monika's husband Kishan was also present there at that time. Monika asked Kishan to take

us to the house of her Bhabhi, living nearby, so that we can stay there for the night. Kishan took us to that house. The door was opened by a lady. Kishan told her that we are the guest of Monika and requested her to arrange us to spend the night in one room. She agreed and we entered the house. I, Sonu and Suman slept in a room and I bolted the door of the room from inside, Kishan slept outside the room near an old man. We woke up at 7:00 AM in the morning, took our bath and took breakfast prepared by the Bhabhi of Monika. Thereafter Kishan brought us back to the spot where Monika was present along with her household goods. At that time, Monika was again quarrelling with her landlord. The landlord made a call to telephone no. 100 and called police. Police officials came there, abused all of us and took us to the police station. In the police station, we were kept in a room and beaten by police officials.

Police officials did not make any inquiry from me. They also did not record my statement.

The statement u/s 161 CrPC dated 07.05.2012 attributed to me has been read over to me. I did not make such statement to the police. Accused Kishan had not committed rape upon me and Sonu. I do not know any person by the name Balram. No such person had stayed with us during the night in the house of Monika's Bhabhi."

PW-14 was declared hostile by the learned APP for the State. Her statement under Section 164 Cr.P.C was shown to her but she denied the same on account of being illiterate. She also stated that she could not say whether thumb impression present on the statement under Section 164 Cr.P.C. was given by her and deposed that due to the threat extended by the police officials, she had made such statements before the Magistrate. She further identified the

accused Monika and Kishan in the Court and was not cross examined on behalf of appellant at all.

13. *Now the first issue that arises for adjudication before this Court is, whether the testimony of the prosecutrix/PW-6, deserves acceptance and whether a conviction, recorded solely on her testimonies in the absence of any independent public witness, can be upheld? It is also to be determined whether contradictions, if any, present in the testimony of prosecutrix are of material nature or are normal discrepancies which can be overlooked.*
14. From an analysis of the statements of the prosecutrix 'S' recorded at different stages, it is quite apparent that the prosecutrix remained consistent, unfettered and even on the aspect of sexual assault being committed upon her by the appellant. Perusal of the testimony/statements of prosecutrix 'S' also reveals that she has not been cross examined on her clear and unequivocal statements to the fact that the appellant had committed sexual assault upon her. There appears to be no lacunae in the entire process of recording of evidence of the prosecutrix which would specifically point out to any material discrepancies or contradictions in her deposition. Taking into account other prosecution evidence, it is seen that a clear and categorical corroboration of deposition of prosecutrix 'S' with that of other prosecution witnesses is established.
15. It is emphatically stated by PW-7 and PW-14 in their statements under Section 164 Cr.P.C. that they came to Delhi to look for a job. They went to Monika's house where they met the prosecutrix. Monika had a quarrel with her landlord due to which the landlord

threw out the goods of Monika from her house. They went to Shani Bazaar with 'S' and thereafter they went to appellant's house with Kishan where they were raped by Kishan and the prosecutrix was taken to another room by the appellant.

16. As per record, PW7 and PW-14 have turned hostile during their Examination-in-Chief and further during cross-examination with regard to the fact that they were never been sexually assaulted by Kishan and that they were not aware of who Balram/ appellant is. However, even in their deposition and cross examination(s), they have nowhere denied that prosecutrix 'S' was sexually assaulted by the appellant. It is also to be noted and taken into account that their statements before the police officials/personnel, statement under Section 164 Cr.P.C. before the Court and the statement before the doctor (PW-5) during their medical examination, find corroboration with that of the prosecutrix. Even the prosecutrix 'S' turned hostile during her cross examination on behalf of accused Kishan, yet her stand in respect of the appellant remained consistent throughout. .
17. It is a settled legal proposition that statement of a hostile witness can also be examined to the extent that it supports the case of the prosecution. To prevent the witnesses from turning hostile, it is to be ensured that the witnesses are examined in such a manner that their statement are recorded at the earliest, and they should be assured full protection. In the present case there is nothing on record, not even a suggestion by the appellant to the effect that the victim had any motive or previous enmity with him, to involve them in this case.

18. In *Ramesh Harijan vs. State of U.P. [(21.05.2012 - SC) Crl. Appeal No. 1340 of 2007]*, it was held as under: -

“18. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof

19. In State of U.P. v. Ramesh Prasad Misra and Anr. AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”

19. To further adjudge the credibility of the version of the prosecutrix it is also necessary to peruse the testimonies of other prosecution witnesses so as to establish a complete chain of events beginning from the lodging of complaint and continuing upto the conviction of the appellant and so also to corroborate the same with the deposition made by the prosecutrix on the facts of alleged time of occurrence, place of incidence, reporting of the incident to the police officials and subsequent investigation process.

20. **PW-2/WHC** Usha Rani during her Examination-In-Chief, deposed as under: -

“On 07.05.2012 I was posted as DO in PS Dwarka North and my duty hours were from 8:00AM to 4:00PM. On that day I received a call from PCR Control Room, G-50 S/W regarding quarrel at house No. A-489, Near Mother Dairy, Sector-15, Dwarka.

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On 08.05.2012, I was associated in the investigation of this case along with SI Nirmal Sharma. I along with WSI Nirmal Sharma and prosecutrix Suman reached E-202, Bharat Vihar. Accused Monika was present in the house at that time. Prosecutrix Suman identified her. Accused Monika was arrested by WSI Nirmal Sharma vide arrest memo Ex. PW2/B bearing my signatures at point A.”

21. **PW-3/Sh.** Ajay Singh Shekhawat/MM, Dwarka Court proved the statements of ‘S’, ‘G’ and ‘SR’ recorded under Section 164 Cr.P.C. and their respective thumb impression on the said statements made in his presence were correctly identified by him.
22. **PW-4/Lady** Constable Sumitra during Examination-In-Chief, deposed as under: -

“On 07.05.2012 I was posted as Constable in P.S. Dwarka North. On that day, I alongwith SI Umesh had reached E-202, JJ Colony, Bharat Vihar, Sector-15, Dwarka. We recovered three girls namely Suman, Sonu and Gudia from that house. Thereafter, SI Nirmal also reached the spot. We brought these girls to the police station. From the police station, I along with Const. Raju, lady Const. Sangeeta took these girls to DDU Hospital for medical examination. From the hospital, we returned to the police station. The girls had also taken us to E-193, JJ Colony, Bharat Vihar, where they had been raped.”

23. **PW-8/Sh. Arun Kumar Tiwari** (Independent witness) during Examination-in-Chief deposed as under: -

“On 07.05.2012, at about 2:30PM, I saw a girl was sitting at a distance from my shop in the side gali and was weeping. About ten to twenty persons were present at the spot. The girl told us that she was kept confined by one Monika in her room near Shani Bazar and intended to force her into the prostitution. She requested us to send her to her native village in Madhya Pradesh as she did not want to go to Monika’s place. She had disclosed her name to be Suman. I made a telephone no. 100. Police reached the spot and took that girl along with them.”

24. **PW-13/HC Bijender** during his Examination-in-Chief deposed as under: -

“On 13.05.2012 I was posted as Head Constable in PS Dwarka North. On that day, I along with IO WSI Nirmal Sharma and Const. Zafar reached Bharat Vihar, Metro station, Dwarka, in search of accused Balram in this case. Meanwhile ASI Renu brought the three girls Suman, Gudia and Sonu to Metro Sattion, Dwarka, from Nari Niketan. The three girls led us to a house near Ram mandir in a gali in Mohan Garden. A Maruti Alto car bearing registration no. DL-9CS-3199 was parked in fromt of the house. The girl identified the car to be the same in which accused Balram and Kiran @ Kishan had brought them. Thereafter, accused Balram was found present in his room in the house. He was interrogated by the IO and arrested vide arrest memo already Ex.PW6/B bearing my signature at point B.”

25. **PW-19/WSI Nirmal Sharma** during Examination-in-Chief deposed as under: -

“On 07.05.2012 I was posted as SI in PS Dwarka North. On that day at about 3.30PM, SI Umesh, PSI

Mahesh & lady Const, Sumitra brought the prosecutrix Gudia, Sonu Rawat and Suman to the police station. They produced these three ladies before the SHO in my presence and the SHO directed me to take over the case and make inquiries from these ladies. I made inquiries from the three ladies. Suman told me that she had made the call. I recorded the statement of Suman, which is already Ex. PW6/A bearing my signatures at point B. On the basis of her statement, I prepared rukka which is ExPW19/A bearing my signatures at point X and got the FIR registered.

I made inquiries from the other two girls Sonu Rawat and Gudia and recorded their statements. After obtaining the copy of FIR, I along with the three girls and lady Const. Sumitra and PSI Mahesh reached the place where the three girls had been confined. It was a room on the first floor in house no. E-202, Bharat Vihar, Dwarka, New Delhi. I prepared the site plan of the spot at the instance of girl Suman which is already Ex. PW19/A1 bearing my signatures at point A. From there, I sent the three girls along with lady Const. Sumita to DDU Hospital for medical examination. I met Arun Tiwari, who had made call at the instance of Suman, and inquiries from him and recorded his statement. I also made inquiries from various persons in the neighbourhood. Therefore, I returned to the police station.....

xxxx

Gudia and Sonu Rawat had refused to undergo gynaecological examination. Suman had given consent for gynaecological examination. However, since she had stated to the doctor that the person who sexually assaulted her had used condom, no samples were collected by the doctor.....

xxxx

At about 9:30 AM on 08.05.2012 I along with lady Head Const. Usha and the three victim girls reached the house no. E-202, Bharat Vihar, again in search of the accused. Accused Monika was found present there.

xxxx

On the same day i.e. 08.05.2012 I along with lady Const. Mukesh brought the three victim girls to court. Meanwhile, lady Const. Usha also reached the court along with accused Monika after her medical examination. I produced accused Monika before the concerned Magistrate and she was sent to JC. Thereafter, I produced the three victim girls before the concerned Ld. Magistrate and their statement u/s 164 CrPC was recorded.....

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On 13.05.2012 I got the information that the accused Balram is residing near Dwarka Metro Station. Accordingly I brought the three victim girls from Nari Niketan and reached Dwarka Metro Station. HC Vijender, ASI Renu and one more lady Const. were with me. I asked the victim girls to show us the way from Dwarka Metro Station through which they were taken by the accused. They led us to house no. C-2/10, Bhagwati Garden, Uttam Nagar, and pointed out the said house saying that they had been brought to that house. We climbed upto the first floor and found a person present in the drawing room, who was identified by the victim girl as accused Balram. He was interrogated and arrested by me vide memo already Ex. PW6/B bearing my signature at point C. His personal search was taken vide memo already Ex. PW6/C bearing my signature at point C. Thereafter, I prepared the site plan of that spot at the instance of the victim girls, which is already Ex. PW6/D bearing my signature at point B.

xxxx

A Maruti Alto car bearing registration no. DL-9CS-31989 was parked in front of the house. The victim girls pointed out to the said car saying that they had been brought there in the car. I seized the said car vide memo already Ex. PW13/A bearing my signatures at point B.

26. **PW-22/Constable Ved Prakash** during his Examination-in-Chief deposed as under: -

“..... SI Monika, after obtaining permission from the Ld. Magistrate, formally arrested accused Kiran @ Kishan in this case vide arrest memo Ex. PW22/A bearing my signatures at point A. He was again produced before the Ld. Magistrate and was remanded to one day PC. From there he was taken to DDU Hospital for medical examination. From there he was taken to C-2/10, Bhagwati Garden, Uttam Nagar. There he pointed out a room on the first floor where he had committed rape upon prosecutrix. The pointing out memo is Ex.PW22/B bearing my signature at point A.”

27. **PW-23/SI Monika** during her Examination in Chief deposed as under:-

“On 27.12.2012, I was posted as SI in PS Dwarka North. On that day information was received from PS Dwarka South that accused Kiran @ Kishan wanted in the present case and who had been declared PO had been arrested.....

xxxx

Accordingly, I along with SI Nanag Ram and Const. Ved prakash reached Dwarka Court.....

xxxx

He was again produced before the duty MM and was remanded to one day's PC. From the court, the accused led us to the spot of incidence i.e. C-2/110, Bhagwati garden, Uttam nagar and pointed out the same vide memo already Ex. PW22/B bearing my signature at point A.....”

28. It is settled proposition of law that the circumstances forming a chain of events should be proved and they should cumulatively point towards guilt of accused. On an analysis of the facts of the present case it is observed that a complete chain of events

regarding the commission of offence by the accused/appellant Balram stands established.

29. It is evident from a scrutiny of the testimony of prosecutrix 'S' and testimonies of other prosecution witnesses, that the story of the prosecutrix 'S' corroborates with that of other prosecution witnesses. It is also true that there are minor discrepancies in the statements of the prosecutrix and the other witnesses but it is also to be considered that there is a settled proposition of law that minor contradictions, inconsistencies, embellishments or improvement on trivial matters without affecting the case of the prosecution, should not be made a ground to reject the evidence in its entirety. The contradictions pointed out by learned counsel for the appellant in the present case, are not of such magnitude that they may materially affect the final outcome of trial. Therefore the testimony of the prosecutrix has turned out to be wholly reliable and trustworthy.
30. In *State Of Rajasthan vs Smt. Kalki & Anr* reported in *1981 SCC (2) 752*, it was held as under: -

“In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”

31. In *Narayan Chetanram Chaudhary & Anr vs State Of Maharashtra (Crl.A 25-26/2000)* the Apex Court held as under:

“Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW. 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

xxxx

There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.”

32. Contradicting the view taken by the Trial Court, learned counsel for the appellant has also urged that no independent public witness, present at the time when the incident took place, was examined by

the prosecution.

33. To answer the above, reference is made to the judgment of the Supreme Court in *State of Himachal Pradesh vs. Gian Chand* reported in *AIR 2001 SC 2075* , wherein it was *inter alia* observed as under:-

"14. Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be.....If the court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined."

34. It must be added here that, the Investigating Officer had no opportunity in that eventuality to associate any independent witness. But, it is a well settled principle of law that mere non-association of the independent witness itself is no ground to throw out the entire case of the prosecution. Hence keeping in view the well settled principles of law as aforesaid, and in light of the facts and circumstances of the present case, this Court finds no reason to view the testimony of the prosecutrix/PW-6 with doubt, disbelief or suspicion.
35. Therefore it is evident from the observations so far made that the testimony put forward by the prosecutrix can be totally relied upon as she remained categorically clear that rape was committed upon her by the appellant.

36. *The next issue which necessitates determination by this Court is with respect to the credibility of medical and scientific evidences adduced in support of the case of the prosecution as the same has been challenged by the learned counsel for the appellant for not being in support of the prosecution narrative.*
37. For the said purpose, testimonies of the medical officers and the MLC Reports needs to be examined.
38. The appellant was medically examined by Dr. Uday Kumar Singh/**PW-11** who prepared the MLC (Ex.PW11/A). In the said report, PW-11 has affirmed the absence of any indication of incapability of the appellant in engaging in sexual intercourse.
39. The prosecutrix was medically examined by Dr. Soma Mitra/**PW-5**, Gynaecologist SR, who deposed as under: -

“On 08.05.2012, I was posted as Senior Resident in Gynaecology Department, DDU Hospital, New Delhi. On that day, one girl namely Suman was brought to the hospital at about 1:00AM in the night by W/Ct. Sumitra for medical examination. She was initially examined by Dr. Rajesh Kohli, the CMO and then was referred to me for detail internal examination. I examined her and did not find any external injury on her body. She had changed her clothes after the occurrence and also stated that the person had used condom. Her pubic hairs had been shaved. For this reason, I did not preserve the public hairs and the clothes of the girl. The endorsement from point X to X on the MLC is in my handwriting and the same is Ex.PW5/A bearing my signature at point A.”

40. PW-5 has stated that *“I examined her and did not find any external injury on her body. She had changed her clothes after the occurrence and also stated that the person had used condom.”*

However, absence of any injury on the body of the prosecutrix 'S' would not be of much consequence if the other evidence on record supports the case of the prosecution. The absence of any injury on the body may not by itself discredit the statement of the prosecutrix. The prosecutrix cannot be disbelieved merely because she was a helpless victim who by force was prevented from offering serious physical resistance. Judgements quoted below show that the absence of injury, violence or stiff resistance, as in the present case, well suggests helpless surrender to the inevitable due to sheer timidity.

41. In this regard, observations made by the Apex Court in ***State of U.P. v. Babul Nath*** reported in (1994) 6 SCC 29 are reproduced as under:-

"To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto requires that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault

without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her."

42. This issue has been further dealt with by the Supreme Court in ***State of Tamil Nadu v Ravi @ Nehru*** reported in **(2006)10 SCC 534** wherein the Apex Court has quoted the opinion expressed by **Modi** in **Medical Jurisprudence and Toxicology** which reads as follows:-

"It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."

43. In light of the above settled principles of law, this Court is of the view that the defence taken by the appellant does not inspire any confidence and is thus devoid of merit. Mere absence of vaginal injury would not absolve the appellant from his liability for offence under Section 376 IPC. On the other hand, testimony of the prosecution witnesses cannot be brushed aside on the flimsy plea raised by the appellant.

44. *Another issue pressed before this Court is regarding the time gap between the lodging of the complaint on 07.05.2012 and the arrest of the appellant by the police officials on 13.05.2012.*
45. It has to be understood here that, as per records, on 07.05.2012 when the three girls i.e. PW-6, PW-7 and PW-14 were recovered from House No. E-202, Sector-15, Dwarka, the appellant/Balram was not present there with them. It was only on 13.05.2012, that the information regarding the appellant was received by PW-13/HC Bijender and PW-19/WSI Nirmal Sharma. As per the testimony of PW-19, it is clear that it was only on 13.05.2012 that the information regarding appellant was received by her that he was residing near Dwarka Metro Station. Thereafter, PW-19, PW-13, ASI Vijender, ASI Renu and one more lady constable went to the Dwarka Metro Station in search of the appellant along from where the girls led them to House No. C-2/10, Bhagwati garden, Uttam Nagar and pointed out to the house of appellant and also identified the car parked at the house which was previously used by appellant at the night of commission of crime. Thereafter, they went to the first floor of the building and found the appellant in the drawing room. The site plan of the spot was prepared at the instance of the victim girls. Hence it is clear that it was only on 13.05.2012 the appellant was arrested at their instance. Therefore, the contention of the counsel for the appellant/accused in this regard cannot be upheld, as before 13.05.2012 accused/appellant was not traceable by the police officials and it was only on 13.05.2012 that the information regarding him was received. It has been stated by PW-19 that the site plan of the spot was prepared at

the instance of the girls. Therefore the ground raised by the counsel for the appellant/accused that the site plan prepared by the police official/personnel was false and fabricated, also fails as it cannot be considered as a leading factor to rule out the entire case of the prosecution when the other material factors regarding the commission of the crime otherwise corroborate with each other to establish guilt of the appellant.

46. The fact that the DD No.15A was recorded for a quarrel which had taken place in House No. House no.489, near Mother Dairy, Sector-15, Dwarka and not for the alleged rape, has also been challenged by the learned counsel for the appellant.
47. At this stage, it is relevant to see the statement of PW-8 (Arun Tiwari), an independent witness, who deposed that he saw the girl weeping at a distance from his shop (Mother Dairy shop, Vikas Vihar) and on her request to him, he called at telephone no.100, on account of which police officials recorded his statement under DD No.15A and then reached the spot and recovered the girls. This statement is further corroborated by PW-2 and PW-15. PW-2 who had stated that on that day a call was received in the police control room regarding the quarrel at House no.489, near Mother Dairy, Sector-15, Dwarka and the same was recorded as DD No.15A. Further, it is manifest from the testimony of PW-15 that he along with PSI Mahesh reached the spot after the receipt of DD No.15A, but did not find either the complainant or assailant. Thereafter, they met PW-8, who told them that the girl on whose behalf he had made the call was present in House No. E-202, Bharat Vihar, New Delhi. They reached the address given in the DD No. 15A and

recovered the three girls (PW-6, PW-7, PW-14). Hence the facts are duly established and so the ground raised by the counsel for the appellant is immaterial and for this reason cannot make the case of the prosecution doubtful.

CONCLUSION

48. For the foregoing reasons, this Court finds no merit in the submissions made on behalf of the appellant, to the findings on facts returned by the Trial Court in the impugned judgment. As per the facts and circumstances of the present case, there is a direct link of the appellant/accused with the commission of the crime. Such conclusion can well be established by the statement of the witnesses and other evidence placed on record. Therefore, conviction based upon fair appreciation of entire evidence deserves no intervention. From the material placed on record, it stands established by the prosecution that the appellant is guilty of having committed the offence charged for. Overturning of a well considered and well analyzed judgment of the Trial Court, when the case against the appellant otherwise stood established beyond reasonable doubt, is not called for.
49. Therefore, on no count does the impugned judgment call for any interference. The Trial Court has fully appreciated the evidence placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse. Since the punishment is in accord with the punishment prescribed for the offence under Section 376 IPC this Court does not see any reason to interfere with the order on sentence passed by the Trial Court. Therefore, the appellant

deserves to undergo the remaining part of the sentence as awarded by the Additional Sessions Judge.

50. Under the circumstances, the appeal being bereft of merit is dismissed.
51. Records of the Court below be sent back forthwith along with the copy of the order.
52. Copy of this order be sent to the concerned Jail Superintendent for information.

OCTOBER 27, 2017
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SANGITA DHINGRA SEHGAL, J.