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

+ **CRL. L.P. 364/2017**

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Date of Judgment: 6th July, 2017

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through : Mr.Rajat Katyal, Advocate

versus

JITENDER KUMAR & ANR.

..... Respondents

Through : None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE A.K. CHAWLA

G.S.SISTANI, J. (ORAL)

CRL. M. A. 10404/2017

1. This is an application seeking condonation of 123 days' delay in filing the present leave to appeal.
2. We find the reasons so mentioned in this application be stereotyped and although, there are no cogent reason which would convince us to condone the delay, but since we have heard the matter on merits, the delay is condoned.

CRL.L.P. 364/2017

3. The present leave to appeal has been filed by the State under Section 378 of the Code of the Criminal Procedure, 1973 ('Cr.P.C.') against the impugned judgment dated 30.09.2016 in Session Case 113/2014 arising out of the FIR No. 86/2014 registered at Police Station Lajpat Nagar under Section 342/376D/506 IPC.

4. The case of the prosecution as noticed by the Trial Court is that on 16.02.2014, the prosecutrix came to the police station Lajpat Nagar, New Delhi and gave a complaint alleging therein that she worked as Administrative Assistant (Field) with Micro Nutrient Research at Vinoba Puri, Lajpat Nagar-II, New Delhi from 06.12.1999 to 20.05.2002. She then worked as Community Health Worker w.e.f. 21.05.2002. Her services were terminated on 21.03.2013. She alleged that the respondent no.1/Dr.Jitender Kumar, Administrator of the Centre had an evil eye on her since long. He in order to succeed in his illegal design, contacted her somewhere in the first week of January, 2014. He lured her under the pretext that he would arrange to reinstate her in the organization on the post of Project Officer. He assured her of a meeting with the respondent no.2/Dr.Sunil Sajawal, Director of the organization. He advised her to reach the office at 214-A Basement, Vinoba Puri, Lajpat Nagar-II, New Delhi at 6:45 PM on 22.01.2014 for the meeting. Thereafter, the prosecutrix, without smelling any bad intention of the accused persons, reached the office at 6:45 PM where both the respondents were present. Initially, they talked about her job and then, all of a sudden, respondent no.2 started pressing her breast. When she objected, they threatened her that in case she would make any noise, she would be eliminated. Respondent no.1 locked the door from inside and both of them committed rape upon her. She was also threatened not to lodge any complaint lest they would get her minor daughter kidnapped and killed. Due to fear and terror, she could not make any complaint. She alleged that the accused persons have raped and intimidated her.

5. On her complaint, the case was registered under section 376(2)(g)/342/506 IPC vide FIR No.86/2014. The prosecutrix was taken to AIIMS, where also she narrated the history of the incident to the doctor. The doctor did not observe any trauma, bite marks and abrasions on her person. Her hymen was found torn. The statement of the prosecutrix under Section 164 Cr.P.C. was got recorded wherein she stated that she was called at about 6:00 PM. on 22.01.2014 in the office for a meeting. Both the accused persons called her in the cabin and asked her to do the work as they wanted. The respondent Sunil caught her from behind and asked to please both of them. When she refused, they caught her forcibly. When she raised an alarm, they told her that no one would hear her noise. First of all, respondent no.2 raped her and then respondent no.1 raped her. When she came out, they threatened her to kidnap her daughter and get both of them killed if she would tell it to anyone. She took her daughter to Ballabgarh without telling anyone. After some days, she came to her house at Sangam Vihar, called her relative and told him the incident. He took her to the advocate whom she told everything and then her case was registered at the police station.
6. By order dated 27.01.2015, the Trial Court framed charges under Section 342/376D/506 IPC against the accused/respondent. The prosecution in order to prove its case examined 14 witnesses. The respondents herein led defence evidence and examined five witnesses. Statements of the respondents were recorded under Section 313 Cr.P.C. where they pleaded not guilty.

7. The Trial Court after examining the evidence reached a conclusion that the testimony of the prosecutrix (PW-3) is unreliable and acquitted both the accused/respondents, which has led to the filing to present leave to appeal.
8. Learned counsel for the State submits that the learned trial court has failed to examine the testimonies of material witnesses in its right perspective. It is contended that the order of the acquittal is illegal, arbitrary and has led to miscarriage of justice.
9. It is further contended that the prosecution had proved its case beyond reasonable doubt. The prosecutrix has categorically stated that the accused respondents without her consent raped her and threatened her that in case she would disclose about the incident, her minor daughter would be kidnapped and killed. It is also contended that the Trial Court has incorrectly placed reliance on the testimonies of defence witnesses while the court has disbelieved the testimony of the prosecutrix. It is contended that the prosecutrix had identified the respondents and there is no major contradiction in her testimony, her testimony has been consistent and minor contradiction cannot be a ground for acquittal.
10. Mr.Katyal, learned counsel for the State, contends that the Trial Court has failed to take into consideration the settled position of law including the observations of the Supreme Court in the case of ***Mohd. Iqbal v. State of Jharkhand*, (2013) 14 SCC 481**, wherein it has been held that there is no prohibition in law to convict an accused of rape on the sole basis of the testimony of the prosecutrix and law does not require her statement to be corroborated by the statement of other

witnesses. Accordingly, the learned counsel has urged that the impugned judgment is bad in law and liable to be set aside.

11. Learned counsel also contends that the Trial Court has wrongly given undue weightage to the fact that there was delay in lodging the complaint as the prosecutrix had given a plausible explanation that she was being continuously threatened by the respondents. The Trial Court also failed to consider the element of trauma and fear of the incident. The prosecutrix had in order to secure the safety of her minor daughter, travelled to Ballabgarh and only on return and counselling that the FIR was registered.
12. It is also contended that the testimony of the prosecutrix is duly corroborated by the testimony of her brother-in-law (PW-6), i.e. husband of the elder sister of the prosecutrix. Reliance has also been placed on Section 114-A of the Indian Evidence Act, 1872 to contend that in the case of a gang rape, the onus shifts on the accused and the accused/respondents herein have failed to discharged the onus so shifted on them.
13. We have heard Mr.Katyal, learned counsel for the State, examined the copies of the testimonies of witnesses which were produced by the counsel in Court as well as the judgment of the Trial Court.
14. Before dealing with the submissions made by Mr.Katyal, we deem it appropriate to analyse the testimonies of some of the material witness including the prosecutrix (PW-3).
15. The prosecutrix was examined as PW-3, wherein she deposed that in the month of 1999, she had joined at Micro Nutrient Research as an Anthro Assistant. Respondent no.2 was the director of the Institution;

while the respondent no.1 was the administrator. Respondent no.2 used to run his field office from the house K-1, Gali No.18, Sangam Vihar, which belonged to the relative of the prosecutrix, i.e. Ram Pravesh. The main office of the company was at H.No.214-A, Basement, Vinoba Puri, Lajpat Nagar-II. She was attached with the field office. PW-3 further stated that respondent no.1 used to look after both the offices. In 2007-2008, the office at Sangam Vihar was shifted at S-17/398, Sangam Vihar, New Delhi. The prosecutrix continued to work in the institution until 20.03.2013, when she was working as a Admn. Assistant. She deposed that on 21.03.2013, the services of all the staff working in the institution were terminated and later reinstated by the respondents.

16. PW-3 testified that her house is situated adjoining to the premises of the institution. On 22.01.2017 at about 11 AM, the respondent no.1 came to her house and asked her to come at the office at Lajpat Nagar to meet the respondent no.2 to discuss her reinstatement in the institution. The prosecutrix reached the office at about 6:15 PM on the same day. When she reached there, both the respondents were present in the meeting room of the office in the basement. The prosecutrix went to the meeting room and only the respondents were present. The respondent talked to each other in English, which PW-3 could not comprehend. While the prosecutrix was sitting in the meeting room in front of the accused persons, respondent no.2 came to her from behind, caught hold of her and told her that she will have to work in the institute and "*jo ham kahenge vo hi karna padega*" (you will have to do, whatever we say). Respondent no.1 also came from behind and

bolted the door of the meeting room from inside and threatened by saying that “*jo boss keh rahe hai, vese hi karte jao nahi toh boss tumhe jaan se marwa denge*” (do whatever the boss tells you, otherwise he’ll get you killed). PW-3 stated that she objected and raised alarm, but the respondents did not desist. Prosecutrix also begged the respondents to leave her, but to no avail. The respondents then committed rape on her one by one. Respondent no.2 committed rape on her first and thereafter, the respondent no.1 did the same with her. When the prosecutrix was leaving the room, the respondents threatened her that incase she made a complaint, they would kidnap her daughter and kill her. Thereafter, the prosecutrix took her 2 years’ old daughter to the office of her sister in Ballabhgarh. According to her, she was scared and frightened and thus, did not narrate the incident to her sister. It has also come in her testimony that her husband used to work at his native place. The prosecutrix returned to her home at Sangam Vihar on 13.02.2014 and then narrated the incident to Ram Parvesh (PW-6); who took her to a lawyer and got the complaint prepared. The complaint (Ex.PW-3/F) was then filed at the Police Station Lajpat Nagar on 16.02.2014.

17. The prosecutrix (PW-3) was thoroughly cross-examined by the counse for the respondents. In her cross-examination, she denied the suggestion that she had any quarrel with any staff of the institution or she was harassed during her previous employment. She stated that she could read English, but could not write the same. On the day of the incident, respondent no.1 had come to the office at Sangam Vihar when he asked her to come to Lajpat Nagar office. She stated that she

was standing at the gate of the office at Sangam Vihar, when the respondent no.1 told her that he would arrange a meeting with the respondent no.2. She stated that she is very close to her younger sister and had not disclosed the incident to her as she was ill, nor did she disclose it to her husband; she disclosed the same to Ram Pravesh (PW-6). She is close to PW-6 and he used to take care of her whenever she was in any trouble. The prosecutrix had called Ram Pravesh to her house and narrated the incident to him. She did not tell the incident to anyone during between 22.01.2014 and 13.02.2014 nor was she threatened during the period. She stated that she did not disclose the incident to her husband due to fear, even though she met him many times and had good relations with him. She further stated that she had gone to the lawyer on her own and not at the instance of PW-6. It has also come in the cross-examination that her brother in-law Ram Pravesh used to provide Qualis vehicle to the institute on rent.

18. It is also relevant to examine the testimony of Ram Pravesh (PW-6), the brother in-law of the prosecutrix. PW-6 had deposed before the Trial Court that on 13.02.2014 at about 4 PM, the prosecutrix had informed him that she had been raped on 22.01.2014 at Lajpat Nagar and was mentally perturbed and feeling ashamed about the incident. He took the prosecutrix to a lawyer for taking advice and later on 16.02.2014 took her to Lajpat Nagar Police Station to lodge the complaint. The prosecutrix had also informed PW-6 that she had been raped by the respondents. He stated that he knew the respondents as he had rent out his car to them for staff duty. In his cross-

examination, he stated that his driver used to drive the car and was hired by the respondents for about two years. He further stated that his payments were never stopped and had been increased upon his request. He also used to visit the office of the respondents occasionally.

19. Dr. Richa Vatsa (PW-1) had medically examined the prosecutrix on 16.02.2014 and proved the MLC (Ex.PW-1/A). She deposed that she did not notice any external injury, trauma, bite marks, abrasions on the person of the prosecutrix and that her hymen was torn.
20. Baidnath Shah (PW-12) has deposed that he has been working as a Care Taker in the office of the respondent no.2 for about 15-16 years and opens and closes the office. During cross-examination, he stated that on 22.01.2014, he remained present for the full day and sat near the entrance of the office. The office hours are from 9 AM to 7 PM, but he used to sit in the office till 8-9 PM. On 22.01.2014, he had opened the office at 9 AM and closed it around 8-8:15 PM. On the day, the respondent no.2 came to the office at about 12:30-1 PM and left the office around 5:30-5:45 PM; while the respondent no.1 came at about 9-9:30 AM and left at about 6:45-7 PM. He also stated that on 22.01.2014, the respondent no.2 had come to office in his car, which he used to drive himself. He further deposed that he had last seen the prosecutrix 2-3 years before 22.01.2014 and that she did not come to their office on 22.01.2014.
21. It is also relevant to mention that in the testimony of Amit Shandilya (PW-9), Dy. Plaza Manager, Noida Toll Bridge Company Ltd., it has come that as per the record (Ex.PW-9/B) the card issued to the

respondent no.2 was used on 22.01.2014 at 18:42 hrs to travel from Delhi to Noida crossing the DND Flyover. At the same time, PW-9 admitted in his cross-examination that any person can use the card and not necessarily the person on whose name the card is issued. Vikram Kumar (PW-10) deposed that he was the manager of Himalaya Retails Store, Honey Money Top and though the police had asked for the CCTV Footage of 6:30-7 PM of 22.01.2014, the same was not available as they did not retain CCTV Footage for more than 7 days. He also proved the photocopy of the receipt (Mark X).

22. It has also come in evidence tendered by Diniesh Singh (PW-11), Nodal Officer, Vodafone Mobile Services Ltd. that as per the records, the mobile number 9811479205 was registered in the name of respondent no.1 and as per the CDR (Ex.PW-11/A), no activity was related to the number on 22.01.2014. It also came in evidence that as per the CDR (Ex.PW-11/D) for the mobile no.9899310632 registered in the name of respondent no.2 that the number received a SMS on 22.01.2014 at 19:21:35 Hrs when the mobile was in the vicinity of the tower at E-37, Site IV Kasana Road, Greater Noida.
23. Both the respondents had denied the incriminating material against them in their statements under Section 313 Cr.P.C. and stated that they had been falsely implicated as the services of the prosecutrix had been terminated as well as the taxi services of PW-6 were discontinued. Respondent no.1 stated that he had last seen the prosecutrix over two years before the date of the incident; she never came to the office on the date of the incident neither any call was made. He had left at 6:45 PM. Respondent no.2 stated that on the date of the incident, he had

left office between 5:30-6 PM and was travelling towards Greater Noida. He had crossed DND Toll Bridge between 6-6:45 PM and had reached Himalaya Money Top Store. He had received a call at about 7:20 PM and paid for the groceries at 7:30 PM. Both stated that the PW-6 used to threaten them and their staff.

24. The respondents had examined five witnesses in their defence. Haobijan Prabhabati Devi (DW-1) deposed that she was working as a study coordinator in the Center for Public Health Kinetics (earlier known as Center for Micro Nutrients) and was responsible for all field staffs. She was the supervisor of the prosecutrix for about an year. The prosecutrix had left after one year as the project at the time was over and the services of all temporary employees were terminated. She deposed that during the year the prosecutrix worked, she was rude and abusive and used to fight with all her co-workers. On many occasions, the employees used to complain to the respondents to terminate her services. On 22.01.2014, she was in the field. During cross-examination by the Addl. PP before the Trial Court, she deposed that the Lajpat Nagar office of the center was situated in a basement and had 6 cabins, all of which were transparent. Two of the cabins were used as conference room.
25. The next defence witness, i.e. Arup Datta (DW-2), deposed that he has been a consultant with the Center for over 15 years and on 22.01.2014, he entered the office at 11:30 AM and left it at 7:30-7:45 PM. He claimed to be the last person to have left the office. He deposed that he had last seen the prosecutrix in the year 2012. On 22.01.2014, DW-2, the respondents and the financial controller of the organization

were in a meeting from 1-5 O'clock, thereafter, the respondent no.2 left between 5:30-6 PM. The others continued the meeting and respondent no.1 left the office at 7 O'clock. The witness withstood the test of cross-examination and only added that the meeting on 22.01.2014 took place in the office at Lajpat Nagar.

26. Ms.Vishi Saxena (DW-3) deposed that she has been with the Center for over 14 years and was presently working as the Manager of Human Resources. On 22.01.2014, she had entered the office at 10 AM and left at 6 PM. She saw respondent no.2 leaving the office. The prosecutrix used to work for the Center and there were complaints against her made to DW-3 being the head of HR. She had suggested to the respondents to prematurely terminate her services. She also deposed that the relative of the prosecutrix Ram Pravesh used to lend his car for transportation and had threatened the members of the organization earlier and created a disturbance on 26.04.2014 when he came to the organization and started threatening all the members. DW-3 further testified that she along with other members filed a complaint (Mark DW3/A) against Ram Pravesh with SHO PS Lajpat Nagar wherein DD No.84B was registered on 28.04.2014. The prosecutrix never entered the office on 22.01.2014 and respondent no.2 left the premises between 5:30-5:45 PM. Nothing has come in the cross-examination except that there were complaints about the abusive behavior of the prosecutrix and it was one of the reasons among others to terminate her services.
27. Similar is the testimony of Dr.Pratibha Verma (DW-4), who had deposed that she had left the center at 6 PM and the respondent no.2

had left the office prior to her at about 5:30-5:45 PM. She also deposed that the prosecutrix never came to the office on 22.01.2014 and that complaints had been received about the conduct of the prosecutrix. Sakat Deb (DW-5) also deposed that he left the office after 6:30 PM; the respondent no.2 had left the office between 5:30-5:45 PM; and no lady entered the office of respondent no.2 on 22.01.2014. We may also notice that their testimonies stood corroborated by the Attendance Register (Ex.PW-7/B) seized by the police. The Trial Court had noticed the contents therein as under:

“19. ...The attendance register maintained in the office Ex. PW 7/B was produced on which the staff posted used to mark their attendance. On its perusal, I find that while marking the attendance by the staff, time of coming and going used to be mentioned. On 22.01.2014, ten persons had marked the attendance. Dr Jitender mentioned that time as 8.30 a.m and 7.00 p.m. Ms. Vishi Saxena (DW3) as 10.10 a.m and 6.10 p.m, Dr. Pratibha Dhingra (DW4) as 9.47 a.m and 6.05 p.m, Mr Veenu Bhardwaj as 9.59 a.m and 6.05 p.m, Baidnath(PW12) as 8.50 a.m and 8.30 p.m, Dr Prabhavati Devi (DW1) as 9.18 a.m and 6.15 p.m, Dr. Saikat Deb (DW5) as 10.20 a.m and 6.45 p.m, Shankar Haider as 9.00 a.m and 7.30 p.m, Sandeep Kumar as 9.42 a.m and 6.50 p.m and Raju Yadav as 9.00 a.m and 6.30 p.m. ...”

28. Having examined the evidence on record, we find no infirmity in the judgment of the Trial Court. Though there is no quarrel with the proposition sought to be urged by Mr.Katyal that there is no bar in law to convict the respondents on the basis of the sole testimony of the prosecutrix, however, the same is only permissible if the testimony is of sterling quality inspiring confidence. We may notice a judgment of a coordinate bench of this Court, of which one of us (G.S.Sistani, J.)

was a member, in *State v. Wasim & Anr*, 2017 SCC OnLine Del 8502 had while finding the testimony of the prosecutrix therein could not be relied upon, observed as under:

“19. ...Even though there is no quarrel with the proposition that conviction can be based on the sole testimony of the prosecutrix but at the same time, it must be unimpeachable and beyond reproach precluding any shadow of doubt over her veracity. We may only refer to few pronouncements of the Apex Court in this regard. In *Ramdas v. State of Maharashtra*, (2007) 2 SCC 170, it was held as under:

“23. 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.

...
25. In the instant case there are two eyewitnesses who have been examined to prove the case of the prosecution. We have rejected outright the evidence of PW 5. We have also critically scrutinised the evidence of the prosecutrix, PW 2. She does not appear to us to be a witness of sterling quality on whose sole testimony a conviction can be sustained. She has tried to conceal facts from the court which were relevant by not deposing about the earlier first information report lodged by her, which is proved to have been recorded at the police station. She has deviated from the case narrated in the first information report solely with a view to avoid the burden of explaining for the earlier report made by her relating to a non-cognizable offence. Her evidence on the question of delay in lodging the report is unsatisfactory and if her deposition is taken as it is, the inordinate delay in

lodging the report remains unexplained. Considered in the light of an earlier report made by her in relation to a non-cognizable offence, the second report lodged by her after a few days raises suspicion as to its truthfulness.”

(Emphasis Supplied)

20. The Supreme Court in *State of Rajasthan v. Babu Meena*, (2013) 4 SCC 206, has observed as under:

“9. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

21. We may also note the following observations in *Mohd. Ali v. State of U.P.*, (2015) 7 SCC 272:

“29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one

place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and the High Court has fallen into error, without reappreciating the material on record, by giving the stamp of approval to the same.”

(Emphasis Supplied)”

[See also **Krishan Kumar Malik v. State of Haryana**, (2011) 7 SCC 130 (paragraphs 24 and 31)]

29. We may also notice the decision in **Sudhansu Sekhar Sahoo v. State of Orissa**, (2002) 10 SCC 743, wherein the Supreme Court finding the story of the prosecution to be improbable and the behavior of the prosecutrix unusual as she had *inter alia* travelled in a jeep for a long distance in the night and had not questioned her calling in the night, refused to rely upon her testimony to uphold the conviction of the appellant and in the absence of any corroboration extended the benefit of doubt to the appellant. The relevant paragraph reads as under:

“18. It is well settled that in rape cases the conviction can be solely based on the evidence of the victim, provided such evidence inspires confidence in the mind of the court. The victim is not treated as an accomplice, but could only be characterised as injured witness. It is also reasonable to assume that no woman would falsely implicate a person in a sexual offence as the honour and prestige of that woman also would be at stake. However, the evidence of the prosecution shall be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material.”

30. Further, the Apex Court in **Rai Sandeep v. State (NCT of Delhi)**, (2012) 8 SCC 21 reversed the conviction of the Trial Court and its confirmation by the High Court finding contradictions in the testimony of the prosecutrix and that the same was inconsistent with the remaining evidence of the prosecution. While doing so, the Supreme Court examined as to when the prosecutrix can be called to be a ‘sterling witness’ as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the

core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

(Emphasis Supplied)

31. Coming to the case at hand, the testimony of the prosecutrix by far fails the test of a sterling witness. In her complaint (Ex.PW-3/F) and her statement under Section 164 Cr.P.C. (Ex.PW-3/H), the prosecutrix had stated that in the first week of January, 2014, respondent no.1 had told her that he would arrange a meeting with respondent no.2; while in her testimony before the Trial Court, PW-3 deposed that on 22.01.2014 at about 11 AM, the respondent no.1 came to her house and asked her to come at Lajpat Nagar office to attend a meeting with respondent no.2 to discuss about her reinstatement. Further, the time of reaching the office is different in every statement: in Ex.PW-3/F it is 6:45 PM; in her statement under Section 164 Cr.P.C. (Ex.PW-3/H), it is 6 PM; and in her testimony, it is 6:15 PM. The testimony of the prosecutrix is also inconsistent with the other prosecution evidence. The caretaker (PW-12) of the office deposed that he was in the office till 8-8:15 PM; the prosecutrix never came to the office and the respondent no.1 left at 6:45-7 PM, while respondent no.2 left at 5:30-5:45 PM. In this background, solely relying upon the testimony of the prosecutrix is a dangerous proposition correctly repelled by the Trial Court.
32. According to us, the story of the prosecution is also on the whole unbelievable. In *Tameezuddin v. State (NCT of Delhi)*, (2009) 15 SCC 566, the Supreme Court found it improbable that the husband of the victim of rape, after coming to know of the incident, would have gracefully told the accused/appellant therein that everything was

forgiven and forgotten but had nevertheless lured him to the police station and thus, wanting supporting evidence. The relevant portion of the judgment reads as under:

“9. 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. We are of the opinion that the story is indeed improbable.

10. We note from the evidence that PW 1 had narrated the sordid story to PW 2 on his return from the market and he had very gracefully told the appellant that everything was forgiven and forgotten but had nevertheless lured him to the police station. If such statement had indeed been made by PW 2 there would have been no occasion to even go to the police station. Assuming, however, that the appellant was naive and unaware that he was being led deceitfully to the police station, once having reached there he could not have failed to realise his predicament as the trappings of a police station are familiar and distinctive. Even otherwise, the evidence shows that the appellant had been running a kirana shop in this area, and would, thus, have been aware of the location of the police station. In this view of the matter, some supporting evidence was essential for the prosecution's case.”

(Emphasis Supplied)

[Also see *State (Govt. of NCT of Delhi) v. Mohd. Rihan*, 2017 SCC OnLine 8549 (paragraphs 27 - 29)]

33. It is highly improbable that the rape was committed inside a running office which comprises of 6 cabins having transparent walls. To commit forcible sexual intercourse with a person in a running office when other persons are present, especially when the cabins have transparent walls is a work of fiction. Additionally, the behavior of the prosecutrix is highly doubtful. After the incident, she went to the

office of her sister in Ballabhgarh. She claims to have not disclosed the incident to anyone including her husband and sisters until 13.02.2014, when she returned home and narrated the incident to her brother in-law Ram Pravesh (PW-6), who also had a grievance against the center. The only reason forthcoming is that her sister was ill and that she did not disclose it to her husband out of fear, even though she was close to her sister and had good relations with her husband. Nothing has come to prove the medical condition of her sister, as she was never examined. The prosecutrix stated that the reason for telling PW-6 is that he used to take care of her whenever she was in any trouble. After overcoming her fear, there is no probable reason for her to not disclose the incident to her sister or to her husband, but chose to confide in PW-6, who also had a tussle with the organization is hard to believe. Not only this, she travelled to Ballabhgarh to the office of her sister and then travelled back to her home and called PW-6 to narrate the incident to him after a gap of 22 days. To summarize, the disgruntled ex-employee of the center found none other than her brother in-law, whose services were also terminated, to confide in; even when she was close to her sister and had good relations with her husband. This is extremely hard to believe unless any special circumstance was shown as to why the prosecutrix would confide in her brother-in-law. Not even a whisper has come to the effect that the prosecutrix had any strange relations with her husband or her sister.

34. In such a case, unless the testimony of the prosecutrix (PW-3) is supported by any evidence, direct or circumstantial, an order of conviction cannot be sustained. Here, there is none. On the contrary,

the respondent no.2 in his statement under Section 313 Cr.P.C. had stated that he had left the office between 5:30-6 PM, i.e. before the prosecutrix even alleged to have come to the office. This is duly corroborated by the evidence of PW-9, PW-10 and PW-11. As per PW-9, the card registered to the name of respondent no.2 was used to travel from Delhi to NOIDA through toll at 6:42 PM; as per CDR (Ex.PW-11/A) of the mobile number registered in the name of the respondent no.2, his location was within the range of the tower at E-37, Site IV Kasana Road, Greater Noida at 7:21 PM. Hence, from the prosecution evidence, it can be easily inferred that the respondent no.2 had left the office around 5:30-6 PM, well before the prosecutrix even alleged to have come to the office.

35. Further, there are numerous defence witnesses who have deposed that the prosecutrix never came to the office on 22.01.2014. All the defence witnesses are well educated and well placed persons and it cannot be said that they are deposing at the instance of the respondents. It is a settled proposition of law that equal weightage and treatment should be attached to the evidence of defence witnesses. We may notice the following observations of the Apex Court in ***Dudh Nath Pandey v. State of U.P.***, (1981) 2 SCC 166, wherein it was observed as under:

“19. ...Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses. ...”

36. We need not burden our opinion by referring to multiple judicial pronouncements, suffice it to mention ***State of Haryana v. Ram***

***Singh*, (2002) 2 SCC 426** (paragraph 19); ***Jumni v. State of Haryana*, (2014) 11 SCC 355** (paragraph 20); and ***Saroj Mittal v. The State*, 2016 SCC OnLine Del 3323** (paragraphs 66 and 67).

37. In the present case, PW-12, DW-2, DW-3, DW-4 and DW-5 have categorically deposed that till the time they were in office, the prosecutrix did not come there. The defence evidence also shows that the prosecutrix during her stint under the Center was rude and abusive which led to the termination of her services and the taxi services of her brother in-law (PW-6) were discontinued and he used to threaten the employees of the office and a complaint and a complaint on which DD 84B was registered on 28.04.2015 at the Lajpat Nagar Police Station.
38. To conclude, the testimony of the prosecutrix is contradictory on vital aspects and itself belied by the other prosecution evidence. It is also improbable. No corroborating evidence is forthcoming. The prosecution evidence establishes that the respondent no.2 was not even in the office at the time of the incident and had left for Greater Noida. There is ample of evidence to show that the prosecutrix never came to the office on 22.01.2014. The medical evidence also shows no trauma, bite marks and abrasions on her person. It has also been shown that the prosecutrix was a disgruntled employee of the office and the rental services of her brother in law had been terminated and hence, both had a motive to level false allegations. It seems the whole criminal machinery was put in force just to extract revenge from the respondents.
39. Having observed so, the delay in registration of FIR is of great importance. The complaint was made after a delay of 22 days and it

was admitted by the prosecutrix (PW-3) that no threats were extended during the period. Even thereafter, she chose to approach a lawyer first and not the police and then waited another 3 days as the lawyer was busy. The first person to confide in was not her husband or either of her sisters, but the husband of her sister. All of these factors, make the delay in registration of FIR of great importance and hence raise further doubt on the whole case of the prosecution.

40. Further, no benefit can be drawn from the presumption under Section 114-A of the Indian Evidence Act until the factum of sexual intercourse by the accused/respondents is proved by the prosecution. In the present case, the prosecution has miserably failed to establish sexual intercourse between the respondents and the prosecutrix/victim and hence, the question of consent does not arise.
41. Accordingly, we find no reason whatsoever to disturb the findings of the Trial Court. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].

42. We may add that though ordinarily no woman would falsely implicate someone in a rape case owing to social stigma attached to the offence, at the same time, this Court has come across cases where false charges of rape were levelled when someone tutored a gullible daughter or a disgruntled employee levelled false allegations to seek vengeance. We may notice the following observations of the Supreme Court in **Sudhansu Sekhar Sahoo (Supra)**:

“9. It is true that the evidence of the prosecutrix in a rape case is to be given due weight. Sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of a woman. The courts also should be strict and vigilant to protect the society from such evils. It is in the interest of the society that serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides. In a criminal case, the court has to consider the triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family and the public. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property.”

(Emphasis Supplied)

43. The Apex Court in **Radhu v. State of M.P., (2007) 12 SCC 57**, observed as under:

“6. ...The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

44. We may also notice the following observations in **Raju v. State of M.P., (2008) 15 SCC 133**:

“11. 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, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but 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.”

(Emphasis Supplied)

45. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in ***Rohit Bansal and Ors. v. State, 2015 VI AD (Delhi) 566*** observed that “[t]here is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused.”
46. From the foregoing, it is clear that the Courts must not be blind to the rights of the accused. A false accusation of rape may be as damning to an accused as to a victim of rape. The accused may be shunned in the society and by his own family, spouse and children for no fault of his own only because one woman has levelled false allegations of rape in pursuance of her evil design. Present case seems to be no different when the sole purpose of the prosecutrix and PW-6 seems to extract revenge against the respondents.
47. We are *prima facie* satisfied that there was a conscious and deliberate effort to misuse the process of law to initiate false proceedings against

the respondents. To achieve their nefarious plan, the complainant (PW-3) and Ram Pravesh (PW-6) connived and have given patently false evidence in Court. The same should not be taken lightly and accordingly, in the interest of justice, we are of the opinion that the Trial Court failed to initiate proceedings against the prosecutrix (PW-3) and Ram Pravesh (PW-6). It has been held in *Mishrilal v. State of M.P.*, (2005) 10 SCC 701 (paragraph 6) that “[w]henver the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses.”

48. Accordingly, we find no illegality or infirmity in the judgment of the Trial Court warranting interference. The present leave petition is dismissed.
49. The bail bonds and sureties under Section 437-A Cr.P.C. are discharged.
50. The Trial Court is to proceed against the prosecutrix (PW-3) and Ram Pravesh (PW-6) for giving false evidence in court under Section 340 Cr.P.C.
51. Copy of this judgment be sent to the Trial Court to comply with the foregoing direction.

G.S.SISTANI, J.

A.K. CHAWLA, J.

JULY 06, 2017 // b