

\$~R-5 to R-7

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

% *Judgment Reserved on: July 18, 2017*
Judgment Delivered on: July 25, 2017

+ **CRL.A. 34/2017**

RAKESH CHHABRA @ NITU CHHABRA Appellant
Through: Mr.Vikas Manchanda,
Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr.Kewal Singh Ahuja, APP
for the State.

AND

+ **CRL.A. 1213/2016**

HARBINDER SINGH @ WALIA MAMA Appellant
Through: Mr.Joginder Tuli, Mr.Ashu
Kumar Sharma, Ms.Joshini Tuli
& Ms.Babita Rani, Advocates.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr.Kewal Singh Ahuja, APP
for the State.

AND

+ **CRL.A.1215/2016**

MS SONU SURI Appellant
Through: Mr.Joginder Tuli, Mr.Ashu
Kumar Sharma, Ms.Joshini Tuli
& Ms.Babita Rani, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. Feeling aggrieved by their conviction and sentence awarded vide judgment dated 23rd November, 2016 and order on sentence dated 29th November, 2016 passed in Sessions Case No.124/2013, the appellants Rakesh Chabra @ Nitu, Harbinder Singh @ Walia Mama and Sonu Suri have filed these three appeals, which are being disposed of by this common judgment.

2. Vide impugned judgment dated 23rd November, 2016, the appellant Rakesh Chabra @ Nitu has been convicted for committing the offence punishable under Sections 328/376/506 read with Section 120-B IPC, appellants Sonu Suri and Harbinder Singh @ Walia Mama have been convicted for committing the offence punishable under Section 120-B IPC, under Section 328 read with Section 120-B IPC and under Section 109/376/120-B IPC. Vide impugned order on sentence dated 29th November, 2016, the appellants have been sentenced as under:-

Appellant Rakesh @ Nitu

(1) U/S 328 IPC with fine	:	to undergo RI for five years of Rs.5,000/- and in default of payment of fine to undergo SI for two months.
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- (2) U/S 376 IPC : to undergo RI for eight years
with fine
of Rs.10,000/- and in default of
payment of fine to undergo SI
for three months.
- (3) U/S 506 IPC : to undergo RI for two years.
- (4) U/S 120-B IPC : to undergo RI for eight
yearswith fine
of Rs.10,000/- and in default of
payment of fine to undergo SI
for three months.

Appellants Sonu Suri & Harbinder Singh @ Walia Mama

- (1) U/S 328 IPC : to undergo RI for five years
with fine
of Rs.5,000/- each and in
default of payment of fine to
undergo SI for two months.
- (2) U/S 120-B IPC : to undergo RI for seven years
with
fine of Rs.10,000/- each and in
default of payment of fine to
undergo SI for three months.
- (3) U/S 109/376 IPC : to undergo RI for seven years
with
fine of Rs.10,000/- each and in
default of payment of fine to
undergo SI for three months.

All the sentenced were ordered to run concurrently.

3. Briefly stating, the FIR No.95/2013 under Section 328/376/506/109/120-B/34 IPC was registered at PS Moti Nagar on

the basis of the written complaint Ex.PW15/A submitted on 30th March, 2013 by the complainant 'P' (name withheld to conceal her identity) to the SHO, PS Moti Nagar.

4. In view of the allegations made in the complaint Ex.PW15/A, the complainant was sent for medical examination to Acharyashree Bhikshu Govt. Hospital, Moti Nagar, New Delhi. Her statement under Section 164 CrPC Ex.PW14/A was also got recorded. The accused persons were arrested and after completion of investigation, they were sent to face trial for the offences complained of.

5. After the case was committed to the Court of Sessions, while the appellant Rakesh Chabra @ Nitu was charged for committing the offence punishable under Sections 120-B, 328/376/120-B and 506 IPC, appellants Harbinder Singh @ Walia Mama & Sonu Suri were charged for committing the offence punishable under Sections 120-B, 328/120-B and 109/376/120-B IPC. All the appellants pleaded not guilty to the charges framed and claimed trial.

6. The prosecution examined 20 witnesses to prove its case. The appellants were also examined under Section 313 Cr.P.C. wherein they have stated that they are innocent and this false case has been got registered by the complainant to extort money from them.

7. After conclusion of trial, the learned ASJ returned the finding of guilt against the appellants and convicted and sentenced them in the manner stated above.

8. I have heard learned counsel for the appellants as well as learned APP for the State and carefully gone through the Trial Court Record. I have also heard the appellants in person, who have been

produced from judicial custody pursuant to the production warrants issued.

9. It is often quoted that every trial is voyage of discovery in which truth is quest. In our quest to ascertain the truth, we prefer to be guided by the following observation made by the Supreme Court in *Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421*:

‘To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that

(truth alone triumphs) is an achievable aim there; or

(it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.

10. Since the testimony of the complainant/prosecutrix is crucial for the decision of these three appeals, the complaint Ex.PW15/A made by the complainant to the police, her statement recorded under Section 164 CrPC Ex.PW14/A before the Magistrate and then recorded before the Court has to be referred to appreciate whether it is consistent and trustworthy and satisfies the test of a ‘sterling witness’.

Version of the complainant/prosecutrix ‘P’ in the complaint Ex.PW15/A made to the police

11. As per the complaint Ex.PW15/A, the complainant ‘P’ (name withheld to conceal her identity) is a married woman living with her

husband and a daughter. She knew the appellant Walia Mama and the lady accused/appellant Sonu Suri for a period of about 1½ years prior to the registration of this case but she was not in touch with them for a period of six months because of her family circumstances. On 19th February, 2013, she received a call from appellants Sonu Suri and Walia Mama and after routine talk, she told them that her husband was unemployed and they were passing through financial crisis. She was offered to accompany them to Mata Vaishno Devi Shrine to seek blessings to resolve her problem. When she expressed her inability to even afford the fare, they agreed to bear her travel expenses and she could just spend on her 'Prasad'. When she expressed her unwillingness to go without her daughter, they offered to take her daughter as well. After seeking permission from her husband, she alongwith her daughter accompanied them to Mata Vaishno Devi Shrine. She alongwith Walia Mama, Sonu Suri and other persons (total nine persons number) reached Katra. On way to Shrine, she noted some undesirable activities by the appellant Rakesh Chabra @ Nitu who was having a revolver in a packet. On 5th day she alongwith her daughter safely returned home.

12. The complainant narrated the incident during the second trip with the appellants to Golden Temple Amritsar. The version of the complainant in the FIR is that after they returned from *Mata Vaishno Devi Shrine*, she again received a call after 3-4 days from appellant Nitu @ Chabra who informed that *Mata (Vaishno Devi)* has accepted his prayers, hence he was going Amritsar. He also offered to pay Rs.11,000/- for her visit to Mata Vaishno Devi trip and ₹11,000/- for

Golden Temple. He even asked her to take any of her friend to Amritsar. Her friend Suman agreed to accompany but later refused. On Sunday, her husband left her at New Delhi Railway Station. They reached Amritsar where a room was booked which was having two double beds. After face wash, Nitu, Walia Mama and Sonu started talking in her presence about some delivery. She asked Sonu as to what business Nitu was doing that he is earning so much profit and offering ₹11,000/- to each of them for each trip. Walia Mama and Sonu informed that they were dealing in drugs and create a family atmosphere and fix a religious place for it so that nobody can suspect them.

13. The complainant felt nervous and asked them to buy a ticket for her return to Delhi. Then, the SIM was taken from her mobile and whatever money she was having in her purse was also taken by Sonu and Walia. They told her that they would leave for Delhi after arrival of Nitu.

14. The incident of rape for which the appellant Rakesh Chabra @ Nitu and conspiracy/abetment for which the appellants Harbinder Singh @ Walia Mama and Sonu Suri have been charged, has been narrated by stating that at about 9.00 pm, when Nitu arrived, Sonu and Walia informed him about the conversation and she was threatened that her husband and daughter would be killed by making a telephone call to Delhi and she would also be killed. On hearing this, she became unconscious. When she regained consciousness, she saw them sprinkling drops of water on her face. Sonu assured her of her safety as well as her safe return to her home in Delhi and full payment

to her. She was also made to talk to her husband but she did not share anything with him and talked normally. Thereafter Nitu asked Walia to bring Limca bottle to make her feel better. Walia came with Limca bottle and four disposable glasses. Sonu served Limca and all of them which they consumed. However, she felt that the taste of Limca was different. After taking Limca, she fell unconscious.

In the morning, when she got up she found Sonu and Walia on the one double bed and she alongwith Nitu was lying on another double bed and both of them were without clothes. She felt that '*galat kaam*' has been done with her. When she woke up Sonu to show her (Sonu) her condition, Sonu told her that it was necessary to make her video film as she (complainant) has come to know all their secrets. She also assured that the money will be payable by opening a bank account and for that purpose, Sonu took out the PAN Card from her purse and handed over to Nitu. Since she was feeling heaviness in her head, Sonu brought tea in a kettle with four disposable glasses. She was sent to fetch water and by the time, she returned with water, all of them were having tea. She also started taking tea. At about 12.00 noon, they left the room and reached Railway Station where again Nitu has exchanged some bag. When they were in the train, her husband called her on the phone of Walia but it was disconnected. When her husband called second time, she was made to talk to her husband. After getting down at Subzi Mandi Railway Station, she reached home and when her husband asked, she informed her husband everything except one. Her husband discussed the issue with a family friend but Walia was away due to death of some of his relation. After

4-5 days, Walia and Sonu talked to the family friend but narrated a concocted story but assured to honour the commitment and pay Rs.22,000/- to her.

Thereafter one day when her husband left for duty, Nitu came to her house after about one hour and inquired as to whether she had informed the incident to anyone, she denied. Then Nitu asked for photo and identity proof for opening a bank account in the name of her husband which she handed over and also informed her husband when he returned from duty.

15. The written complaint Ex.PW15/A was personally produced by the complainant to the SHO, PS Moti Nagar wherein she also mentioned her own mobile number as 7503882527 and that of Walia Mama as 9212443758, of Nitu as 09582150212 and of Sonu Suri as 9999514313.

Version of the complainant in her statement recorded under Section 164 CrPc Ex.PW14/A before the Magistrate on 2nd April, 2013

16. In her statement recorded under Section 164 CrPC Ex.PW14/A, the complainant, after narrating the talk with Sonu on 19th February, 2013 and visit to Mata Vaishno Devi Shrine, has stated that at Mata Vaishno Devi Shrine, Nitu handed over a revolver to Sonu and she was frightened to see the revolver. Sonu asked her to go with Nitu. After *Darshan*, they returned on 26th February, 2013.

17. Thereafter 3-4 days of their return from *Vaishno Devi*, Nitu @ Chabra offered to pay Rs.11,000/- for Mata Vaishno Devi Shrine trip and further Rs.11,000/- for visit to Golden Temple, Amritsar. Her

friend Suman was to accompany her to Amritsar but later on she refused.

18. In her statement under Section 164 CrPC recorded on 2nd April, 2013 in respect of the incident for which the appellants have been charged and convicted, she stated that on 3rd March, 2013 at about 6.00 her am her husband left her at the station. She alongwith all the three appellants reached Amritsar where Sonu told her that they were dealing in drugs. During night, appellant Nitu slapped her and made her to drink a glass of Campa. When she woke up, she found that on one bed Nitu and Walia were lying in nude condition. Sonu was also in nude condition. She had lost consciousness after having Campa and she also found herself in nude condition. On being asked, Sonu told her that they had made her video to blackmail her. When she insisted for going to Delhi and talk to her husband on phone, they took out money from her purse and SIM of her mobile. Due to fear, she did not tell anything to her husband. On 5th March, 2013, she was dropped at her house. They had mixed something in the tea and made her to drink. She felt that on 3rd March, 2013 Sonu and Walia Mama had done some '*galat kaam*' with her but she did not tell the incident of rape to her husband. After 3-4 days, Nitu came to her house and took the photo and PAN Card of her husband for opening the account for depositing the money. Her PAN Card had already been taken in Amritsar by Sonu and handed over to Nitu. Due to fear, they left their home. Sh.Karambir Tyagi – friend of her husband talked to Walia Mama but he refused to meet and thereafter she reported the matter to the police.

Version of the complainant 'P' recorded before the Court as PW-15

19. The third version of the complainant 'P' is in her deposition before the learned Trial Court as PW-15. The statement of PW-15 'P' is from Page No.385 to 481 of the Trial Court Record. In her examination-in-chief, PW-15 - the complainant 'P' has stated about the call received from Sonu and Walia Mama on 19th February, 2013 and their planning to go to Mata Vaishno Devi Shrine. She was also offered to accompany them and they offered to bear all expenses so that her financial crisis can be resolved with *Darshan* and blessings of *Maa Vaishno Devi*. She took her daughter aged about six year alongwith her and returned from there on 26th February, 2013. During Mata Vaishno Devi trip, as per complainant, she saw a revolver with Nitu which was given to Sonu.

20. The version of PW-15 - the complainant 'P' in respect of incident of rape and she being served with Limca and tea and the threat extended to her reads as under:-

'On day prior to 03.03.2013 I telephoned Ms.Suman and told her the timings of the train. Ms.Suman told me that she would not be in a position to go to Amritsar. On 03.03.2013 it was Sunday, my husband dropped me at New Delhi Railway Station at about 6.00 am, where all the three accused persons were there. On the same day, we reached Amritsar at about 3.30-4.00 pm. In Amritsar, accused persons got booked one room in a hotel. I do not remember the name of the hotel, however it was some NRI Hotel. There were two double beds in the room which was big in size. I alongwith accused Sonu Suri and Walia Mama went inside the room, where accused Rakesh Chabra had gone

some where telling us that he was going to collect some payments. After some time, I told accused Sonu Suri I was feeling nervous and I wanted to go to Delhi. At about 9.00 pm accused Rakesh Chabra came to that room and thereafter all three accused persons started conversing with one another and I was not able to understand anything. I asked them as to what was the work they were doing for which they had offered ₹11,000/- to me and to others for coming to Amritsar. Accused Sonu Suri and Nitu Chabra informed me that they were involved in the work of drugs (drugs ka dhanda karte hain) and they choose to visit any pilgrimage projecting themselves to be the part a family. After hearing this, I felt giddy and thought that I was trapped (man kahan fuss gai). I lost consciousness and regained it when the accused persons sprinkle water on my face. Thereafter, accused Walia Mama asked to give me Limca. Accused Walia Mama and Nitu Chabra brought Limca with disposable glasses and accused Sonu Suri asked me to bring one jug of water from water dispenser which was outside the room. I came out of the room to get a jug of water and thereafter when I came back to room, accused Sonu Suri offered me a glass having Limca and she asked me to drink the same at one. I drank the same and felt that it tastes was different. I told accused Sonu Suri that I was not able to drink the same on which she said that I should drink it at once in one breath, since I was feeling nervous therefore it was tasting different to me. After I consumed the entire glass of Limca, accused Walia Mama gave me one morsel of naan with butter and sugar and I ate the same. Thereafter I started feeling sleepy and had some blurred vision. I fell unconscious after that. Next morning when I regained my consciousness, I found myself on a bed in a naked condition and accused Rakesh Chabra was beside me on the same bed in a naked condition. On the other bed, accused Walia Mam and Sonu Suri were lying together and both of them were also without clothes.

Even at that time also I was not fully conscious and was still feeling but giddy. I woke up accused Rakesh Chabra and asked him as to what had been done with me. I started weeping. I also woke up accused Sonu Suri, who told me that since I had come to know each and everything about them (main sara raaz jaan gait hi) and therefore it was necessary for them to prepare my video in this condition. Thereafter, accused Rakesh Chabra threatened me that I should not disclose about this incident to any one otherwise he would get kill my daughter and my husband. He further stated that nobody else except my husband was knowing about my visit to Amritsar and even I should not narrate the incident to my husband. As soon as I picked up my mobile phone to contact my husband, accused Rakesh Chabra snatched the same from me and took out the SIM Card from it. Even accused Rakesh Chabra has taken out cash of ₹300-400/- from my purse. When I had seen myself and accused Rakesh Chabra without any clothes on the same bed, I could understand that something wrong like rape has happened with me.

Thereafter, accused Rakesh Chabra tied a duppata around my neck and accused Walia Mama asked me to talk to my husband from his mobile. I was instructed by them that I should tell my husband that I was well here and would come back to Delhi on that day as I was to board the train from Amritsar. Thereafter, accused Rakesh Chabra assured me that he would give me ₹11,000/- for visiting Vaishno Devi and ₹11,000/- for visiting Amritsar and I should not worry about that. Accordingly, I talked to my husband from the mobile phone of accused Walia Mama as per their instructions. At about 12.00 noon on 04.03.2013 we left the hotel and went to Railway Station from where we came back to Delhi. In Delhi we got down the train at Subzi Mandi Railway Station and from there I was dropped at a short distance from my house in an auto by the accused

persons. I had reached my house at about 11.00 pm. I had dinner and slept.

Next morning I told my husband everything what had happened with me at Amritsar including about all the accused persons dealing with drugs, my being made to take a laced Limca etc. except for the rape. Thereafter my husband called our family friend Mr.Karamvir Tyagi to our house and told him everything which I narrated to my husband. Thereafter, Mr.Karamvir Tyagi telephoned accused Walia Mama who was known to him and accused Walia Mama said that he was somewhere in Punjab on the occasion of death of someone and after 3-4 days he would come back to Delhi and talk to him (Karamvir Tyagi).

21. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it

difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Ref.: *Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Anr.* MANU/SC/0015/2003 : AIR 2003 SC 818; and *Vishnu v. State of Maharashtra* MANU/SC/2156/2005 : AIR 2006 SC 508).

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

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

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

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

24. In *Tameezuddin @ Tammu v. State (NCT of Delhi)* (2009) 15 SCC 566, it was held as under:

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

25. When the statement of the prosecutrix/complainant 'P' is examined in the light of above settled legal principles, her testimony is found to be highly improbable and untrustworthy. The evidence collected during investigation in the form of CDR and the record produced by PW-13 Sh.Iqbaljit Singh, Manager of NRI Yatri Niwas, Amritsar is sufficient to hold her version unreliable and impeachable evidence i.e. CDRs and record of NRI Yatra Niwas, Amritsar.

26. As noted in the preceding paras, different versions have been given by the complainant 'P' in the complaint Ex.PW15/A, in her statement recorded under Section 164 CrPC Ex.PW14/A and during her deposition before the Court as PW-15 as to how she became unconscious and in what circumstances, she was given Limca and tea.

27. As per complainant, during Mata Vaishno Devi trip she saw a revolver with appellant Rakesh Chabra @ Nitu which was given to the appellant Sonu Suri.

28. Since neither 'P' nor her daughter was harmed during this trip and they reached home safely, at the most relevance of this trip could be that she acquired the knowledge that the accused persons were dealing in illegal arms. Despite having knowledge of the illegal

activities of the appellants/accused persons, she agreed to accompany them to Golden Temple, Amritsar.

29. The complainant is a married woman having daughter aged about six years. She preferred not to take her husband and daughter to Amritsar despite her version that she was offered ₹11,000/- for the trip and was asked to take anyone with her. The reason explained by her for going alone with the appellants is that she asked her friend Suman to accompany who backed out later. In this case, there is absolutely no evidence about the reservation of ticket being in the name of Suman and cancellation of her ticket on her refusal. There is no investigation about their visit to Amritsar by train. No reservation chart was collected/seized to prove that the complainant and appellants had gone to Golden Temple, Amritsar by train and stayed there in NRI Yatri Niwas from 3rd March, 2013 to 5th March, 2013, as claimed by her.

30. It is not the case of PW-15 – the complainant ‘P’ that she was in any way coerced, pressurized or threatened to accompany them to Golden Temple, Amritsar. It is improbable that she fell unconscious just on hearing from Sonu that the appellants were dealing in drugs. So far as serving of Limca is concerned, she has stated that big Limca bottle was brought by Walia Mama with empty four disposable glasses and all of them had Limca from the same bottle so where was the question of she being administered any intoxicant in Limca. The taste of Limca or its contents were the same for all of them. It is necessary to note here that as per the complaint Ex.PW15/A, she stated about the incident of Limca as under:

- (i) Nitu asked Walia Mama to bring Limca bottle so that she (PW-15) feels better.
- (ii) Walia Mama brought big bottle of Limca with four disposable glasses.
- (iii) Sonu got up and served Limca to each of them in the disposable glasses.

31. Thus, in the complaint there is no mention that she was sent to bring a jug of water before administering Limca to her. It may also be mentioned that in her statement under Section 164 CrPC, she stated that Walia Mama served her with Campa and there is no reference of big bottle of Limca being brought and served by her to each of them.

32. She could not have lost consciousness on consumption of Limca when the bottle was opened in her presence and served by Sonu to each of them at the same time out of the same bottle. So there was no question of her becoming unconscious during night time or having blurred vision. Next day morning when she woke up, she only had a feeling that she had been raped. 'P' being a married lady was sleeping in a room having two double beds with three persons and one of them i.e. Sonu was a lady, she could not have remained unconscious or sleepy, had she been raped. There is absolutely no evidence that something was mixed in her drink (Limca) and she fell unconscious.

33. There are three different versions as to when she woke up what she saw. In the complaint Ex.PW15/A, the complainant has stated that in the morning, when she woke up she found Sonu and Walia on the one double bed and she alongwith Nitu was lying on another double bed and both of them were without clothes. In her statement

recorded under Section 164 CrPC Ex.PW14/A, she stated that when she woke up, she found that on one bed Nitu and Walia were lying in nude condition. Sonu was also in nude condition. She lost consciousness after having Campa and she also found herself in nude condition. The complainant when examined as PW-15 has stated before the Court that next morning when she regained consciousness, she found herself on a bed in naked condition and appellant Rakesh Chabra was beside her on the same bed in naked condition. She found appellant Walia Mama and appellant Sonu Suri lying together on the other bed and both of them were without clothes.

34. Regarding allegation of rape, the complainant in her complaint Ex.PW15/A dated 30th March, 2013 has stated that appellant Rakesh Chabra @ Nitu has done '*galat kaam*' with her whereas in her statement recorded under Section 164 CrPC Ex.PW14/A recorded on 2nd April, 2013, the complainant has stated that after mixing something in the tea given to her, Sonu (lady accused) and Walia Mama had done '*galat kaam*' with her.

35. It is complainant's own case that she was not having necessary finance even to pay for her visit to *Mata Vaishno Devi Shrine* or to Golden Temple, Amritsar. It is also not her case that she became aware about the alleged illegal activities by secretly overhearing their conversation i.e. they were dealing in drug/illegal arms. If everything was done openly in her presence by the appellants and she or her husband had no money to pay for the trip, there was no reason for the appellants to prepare her video film to 'blackmail' her. Rather as per the version of Pw-15 – the complainant 'P' they were paying for her

for trips to religious places so that her financial misery could be over with the blessings of *Maa Vaishno Devi* and visit to Golden Temple, Amritsar.

36. Another aspect which needs consideration is statement of PW-13 Sh.Iqbaljit Singh. He has stated that a lady police official from Delhi came to Guru Gobind Singh NRI Yatri Niwas for inquiry. He has further stated that as per the record, Room no.408 was not booked w.e.f. 03rd March, 2013 to 5th March, 2013 in the name of any of the accused persons, though it was booked in the name of Mr.Harpreet Singh on 3rd March, 2013, in the name of Parkoor Singh S/o Sh. Bhag Singh, Raikot, Ludhiana and NRI from Canada on 4th March, 2013 and in the name of Mr.Gurcharan Singh, s/o Sh.Lala Singh, Durby, U.K. on 5th March, 2013. He has proved the relevant record as Ex.PW13/A.

37. The complainant has stated that she was taken by the Investigating Officer to Amritsar where she pointed out the Hotel where she stayed alongwith the appellants. Even this statement was not corroborated either by the Management of the Hotel or by the entries in the register regarding taking of the room. The appellants could not have manipulated the entries in the register as it being a religious place visited by thousands of devotees and it being NRI Yatri Niwas the appellants and the complainant could not have stayed without booking and making entry in the register during the period 3rd March, 2013 to 5th March, 2013.

38. PW-7 Mr.Rajeev Ranjan, Nodal Officer, Tata Teleservices Ltd., has been examined to prove the CDR as well as location chart of

mobile No.9212443758 (in the name of appellant Harbinder Singh) and 9211221713 (in the name of Mr.Tapan Jana. PW-8 Mr.Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd. has been examined to prove the CDR as well as location chart of mobile No.9999514313 (in the name of appellant Sonu Suri) and 9582150212 (in the name of Mr.Avinash Singh). As per the CDRs, the location of mobile, which was being used by the appellant Harbinder Singh @ Walia Mama at that time, was in Delhi on 3rd March, 2013 and in Nasik on 4th and 5th March, 2013. The location of mobile, which was being used by the appellant Sonu Suri at the relevant time, was in Madhya Pradesh on 4th March, 2013 and in Nasik on 5th March, 2013. The CDRs of mobile being used by the prosecutrix, shows its location in Delhi from 3rd March, 2013 to 5th March, 2013.

39. The learned ASJ has rejected this vital piece of evidence observing that location of mobiles does not prove the location of the appellants despite the fact that the prosecutrix herself has given the mobile numbers of the appellants in her complaint and claimed that she was made to talk with her husband on 3rd March, 2013 from the mobile of Walia Mama and that while they were returning to Delhi by train, her husband called twice on the mobile of Walia Mama and though the first call was disconnected, she talked to her husband when he called second time.

40. The reasoning given by learned ASJ for rejecting the documentary evidence, which is of unimpeachable character, is on the verge of perversity. The learned ASJ has failed to take note of the fact that parties were talking on mobile phone on regular basis not only

prior to visit to *Mata Vaishno Devi Shrine* but even thereafter. The complainant has specifically stated in her deposition before the Court as well in her complaint Ex.PW15/A that while in the room in Amritsar she talked to her husband on his mobile from the mobile of Walia Mama and she talked normally. Even in the train, while returning to Delhi, her husband called twice on the mobile of appellant Walia Mama and though first call was disconnected, second time she talked to her husband. These mobile numbers are the same which she had given in the complaint Ex.PW15/A. In that circumstance, the Call Detail Record and location of the appellants as well that of the complainant could not have been discarded by the learned ASJ so lightly.

41. Another aspect that needs attention is the self contradictory statement of the complainant about unemployment of her husband. While in the complaint Ex.PW15/A, she stated that her husband is unemployed and they were passing through financial crises and had no money to pay for fare for going to *Mata Vaishno Devi Shrine*, in the same complaint she stated that after they returned from Amritsar, when her husband was away to his duty, appellant Nitu came to her house after about one hour of leaving the house by her husband and collected the identity proof and photo of her husband for purpose of opening the account. This in itself is self contradictory as in the complaint, she nowhere mentioned that after she returned from *Mata Vaishno Devi Shrine*, her husband got some employment and was employed when she left for Golden Temple, Amritsar.

42. The MLC of the prosecutrix was prepared after about 27 days from the date of incident and she being a married lady living with her husband, no incident of rape was confirmed on her medical examination.

43. Similarly, ingredients of Section 328 IPC could not have been proved. As per version of PW-15 'P', the Limca was served to her on the night of 3rd May, 2013 and tea was served in the morning on the day they returned to Delhi. After taking tea, she had gone to the Railway Station, remained in train. Had she been administered some intoxicant in tea, its effect would have been visible during her journey requiring medical attention either during journey or immediately after she reached home. The mere fact that after taking tea, no incident of sexual assault has taken place, no medical attention was required by her before undertaking journey to Delhi or after reaching home, the appellants could not have been convicted for committing the offence punishable under Section 328 IPC.

44. The appellants have also been convicted for committing the offence punishable under Section 506 IPC but her version before the Court rather shows that she was properly taken care of by the three appellants during her trip to *Mata Vaishno Devi Shrine* and Amritsar and whatever illegal activities they were allegedly carrying out, it was neither kept a secret by them nor they had any occasion to apprehend any threat of being exposed by the complainant so as to necessitate any criminal intimidation. So they could not have been convicted even under Section 506 IPC.

45. The appellant Sonu Suri is a woman. She and her maternal uncle i.e. appellant Walia Mama have been charged for entering into conspiracy and abetting the offence of rape. However, in view of the above discussion, there is absolutely no material to infer that any of them have abetted appellant Rakesh Chabra @ Nitu to commit rape on the complainant.

46. Now the question comes whether appellant Rakesh Chabra @ Nitu committed rape on her. Except stating that she found herself without clothes sleeping on the same bed with appellant Rakesh Chabra @ Nitu, it is nowhere stated by her that she was raped. It has also been noted that on hearing the talks in the room about the alleged delivery by the appellants and about the nature of business carried out by the three appellants i.e. drugs supply, she could not have fallen unconscious. The Limca which was served by opening the bottle in her presence and pouring in four disposable glasses would also not even make her lose her consciousness and she would not have been raped by the appellant Rakesh Chabra @ Nitu. Otherwise also, PW-15 'P' only talked about her impression that '*galat kaam*' was done with her.

47. From the documentary evidence, which is in the form of CDRs of the mobiles used by the appellants and the complainant/prosecutrix and the record produced by PW-13 Sh. Iqbaljit Singh, from NRI Yatri Niwas, Golden Temple, Amritsar, it is proved that neither the complainant/prosecutrix nor the appellants were present in Amritsar during the period 3rd March, 2013 to 5th March, 2013.

48. In view of the deliberate improvements made by the Prosecutrix on material points and finding her testimony to be suffering from

serious infirmities, I am of the considered opinion that her testimony is highly improbable and does not inspire confidence. Thus, on the basis of her testimony, the appellants could not have been convicted.

49. Resultantly, the impugned judgment dated 23rd November, 2016 and order on sentence dated 29th November, 2016 are set aside.

50. All the three appeals are allowed. The appellants are acquitted of the charges framed.

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

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

PRATIBHA RANI
(JUDGE)

JULY 25, 2017

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न्यायमेव जयते