

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

Date of Decision : January 30th, 2018

+ CRL.A. 93/2015

USMAN ALIAS KALE AND ORS. Appellants

Through: Mr. Amit Srivastav, Advocate
for appellant No.1 and 5.

Ms. Amita Gupta, Mr. Rugha
Ram, Ms. Priti Yadav,
Advocates for appellant No.2
and 4.

Mr. Ajay Verma, Mr. Upender
Yogesh, Ms. Katyayini,
Advocates for appellant – Iqbal.

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, Additional
Public Prosecutor for the State
with Inspector Ms.Kamini
Gupta, Police Station South
Campus, Delhi.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S. TEJI, J.

1. The present appeal has been filed by the convicts/ appellants (hereinafter referred to as “the appellants”), namely, Usman @ Kale, Shamshad @ Khutkan, Iqbal @ Billi, Shahid @ Billi and Kamruddin @ Kamru under Section 374(2) of the Cr.P.C. against the judgment dated 14.10.2014 whereby the appellants have been convicted under Section 365/34, 376(2)(g), 506/34 IPC, and against the order on sentence dated 20.10.2014, whereby the appellants have been sentenced to life imprisonment along with fine of Rs.25,000/- each and in default of payment of fine to further undergo six months imprisonment under Section 376(2)(g) IPC; to undergo rigorous imprisonment for seven years with fine of Rs.25,000/- and in default of payment of fine to further undergo six months imprisonment under Section 365/34 IPC; and to undergo five years rigorous imprisonment under Section 506/34 IPC.

2. Factual matrix, emerging from the record, is that the prosecutrix and her friend, both BPO employees, on the night intervening 23.11.2010 and 24.11.2010 were dropped by their office cab near M/s Sharma Automobiles, Moti Bagh, New Delhi. The prosecutrix was abducted by the appellants at about 1.10-1.15 a.m. in Mahindra Pick Up vehicle, while she and her friend (PW2) were walking to their home. At about 1.30 a.m., friend of the prosecutrix PW2 made a complaint to the police

with regard to abduction of the prosecutrix in a matador tempo vehicle by armed persons and disclosed that they had taken the Ring Road. The said information was recorded in Police Station Dhaula Kuan vide DD No.3A. Police team reached the place of abduction of the prosecutrix and met the eye witness/friend of the prosecutrix PW2. In the meantime, the witness (PW2) informed the police that she received a call from the prosecutrix that she was in Mangolpuri. At about 2.25 a.m., the prosecutrix made a call to the police control room that she was dropped by some boys near T-2/190, Phase-1, Mangolpuri Industrial Area after being kidnapped and raped. The said information was recorded in Police Station Mangolpuri vide DD No.15A.

3. The police team reached Mangolpuri and recovered the prosecutrix from where she was brought to Police Station Dhaula Kuan. Her statement was recorded in which she stated that at about 1.10 a.m., she and her friend were dropped by office cab near Sharma Automobiles, Moti Bagh. When they started walking towards their residence, one white colour pick up vehicle came there from behind and stopped near them. Three boys were sitting in front and two boys were at the back of the vehicle. Three boys who were sitting on the front came out of their vehicle, one of them showed a pistol and abused them and then they grabbed the prosecutrix. They also tried to grab the friend of the prosecutrix PW2 and they both started

screaming, upon which they took the prosecutrix inside the vehicle and took the vehicle towards Dhaula Kuan on Ring Road. Her friend (PW2) ran away from the spot. She further stated that in the vehicle, one of the boys tore off her underwear, removed her jeans and raped her in the moving vehicle. Meanwhile, her mobile phone rang, which was taken by one of the boys and it was switched off. She had two mobiles. On the other one, call came from employer, PW3- Niloy Pramanik. She accepted the call. PW3 could hear and make out what was going on. The accused did not come to know of the other mobile phone. The vehicle was driven very fast and stopped at a lonely place at Mangolpuri. All the three boys sitting in the front portion of the vehicle took the prosecutrix to the rear open portion. There was a mattress on the floor of the rear portion where all the five boys raped her one by one. Thereafter, the prosecutrix was dumped near Mangolpuri Industrial Area. The prosecutrix made a call to her superior Niloy Pramanik (PW3) and apprised him about the incident and then called her friend (PW2).

4. On the basis of statement of the prosecutrix, FIR No.248/2010 was registered in Police Station Dhaula Kuan. Statements of witnesses, and supplementary statement of the prosecutrix were recorded. Prosecutrix was sent to hospital for medical examination. After her medical examination, exhibits were seized. The Investigating Officer visited the spot and

prepared a site plan. Exhibits were sent to FSL for DNA fingerprinting. On 02.12.2010, on receipt of secret information, appellants Usman and Shamshad @ Khutkan were arrested. They disclosed the commission of offence along with Iqbal @ Billi, Shahid @ Billi and Kamru. They disclosed that co-accused Shahid had surrendered in Faridabad Court on 26.11.2010 in connection with an old case. They both led the police party and got recovered Mahindra Pick Up vehicle bearing registration No.HR-27J-0964 which was involved in the crime. The said vehicle was seized by the police. Both these accused also identified the place from where they kidnapped the prosecutrix and the spot at Mangolpuri Industrial Area where she was raped. The said vehicle was got inspected and photographed. Both accused Usman and Shamshad were identified by the prosecutrix during their Test Identification Parade (TIP).

5. Production warrants for production of accused Shahid @ Billi were issued and he was arrested in the present case. On 04.12.2010, accused Iqbal @ Billi was arrested by the police of Police Station Fatehpur Beri and information of his arrest was sent to the Investigating Officer. He was arrested in the present case. They refused to participate in TIP. Accused Kamruddin @ Kamru @ Mobile was arrested on 06.12.2010 by the police of Police Station Saket and Investigating Officer of the present case was informed about his arrest. He was also

arrested in the present case. He also refused to participate in the TIP. Accused Usman got recovered one country made revolver from his house which was seized after preparing its sketch. He also got recovered one shirt and one pant from his house which was allegedly worn by him at the time of incident. The said clothes were seized. Accused Shahid @ Billi, Iqbal @ Billi and Shamshad @ Khutkan got recovered their clothes from their house which they were wearing at the time of incident and the same were seized. The prosecutrix identified all the accused persons and the vehicle used in the crime. The exhibits were sent to FSL for examination. The hair strand of the prosecutrix was obtained. The country made revolver and other samples were sent to laboratory. The seized vehicle was found to be registered in the name of Mohd. Sabir who sold it to Mohd. Shaukat Ali and Raees, who further sold it to one Islam. Statement of Islam was recorded who stated that the said vehicle was being driven by his brother Usman @ Kale.

6. The Investigating Officer obtained the call detail records of mobile phones of accused persons and prosecutrix. PCR form and log book were seized from the Police Control Room. After completion of investigation, charge sheet was filed in the Court.

7. Charges under Section 365/34, 376(2)(g) and 506/34 IPC were framed against all the appellants. Charge under Section 25/27/54/59 Arms Act was framed against

appellant Usman @ Kale. Appellants pleaded not guilty and claimed trial.

8. To prove its case, the prosecution examined 57 witnesses. After conclusion of prosecution evidence, statements of the appellants under Section 313 Cr.P.C. were recorded in which they denied all the allegations. In their defence, the appellants examined 10 defence witnesses.

9. We have heard the arguments advanced by the learned counsel for the appellants as well as learned Additional Public Prosecutor for the State. We have meticulously gone through the submissions made by the parties and the evidence and material available on record.

10. Ld. counsels for the appellants have argued that the appellants have been falsely implicated in the present case. There is a gap in the story of the prosecution with regard to identification of the accused persons, and linking them up with the crime. It is submitted that though two accused were identified by the prosecutrix during their TIP and other accused refused, but their identity is in dispute due to the reason that they were already shown to the prosecutrix before conducting their TIP or their identification in the Court. It is submitted that the prosecution has failed to establish the identity of the accused persons beyond reasonable doubt. It is further submitted that as per the FSL report, clothes of accused Usman had a blood stain

and the blood belonged to the prosecutrix, but as per the testimony of the prosecutrix and the doctor who examined her, there was no injury on the person of the prosecutrix, which creates doubt about the blood found on the clothes of accused Usman. It is further submitted that the arrest of the accused persons has also not been proved convincingly by the prosecution which creates doubt about the manner in which they were arrested.

11. The prosecution case is based mainly on the statement of the prosecutrix. The prosecutrix (PW1) in her deposition before the Court has deposed that on 24.11.2010, she was residing at 11/78, First Floor, Village Moti Bagh, New Delhi on rent. At that time she was employed with Convergys India Pvt. Ltd., Gurgaon. Her office timings were different on different days. On 23.11.2010, her office timings were from 3 p.m. to 12 midnight i.e. on the intervening night of 23/24.11.2010. She used to go to her office and come back by office cab. She left her office on that day at 12.40 a.m. In the office cab, besides the driver and the guard, there were seven persons from the same office. The prosecutrix was sitting at the rear seat and her friend 'S' (PW2) was also in the same cab and was sitting on the front seat on the rear portion of the cab. At about 1-1.15 a.m., she and her friend were dropped by the cab near Sharma Automobiles. At that time, her friend was residing in her neighbourhood. After being dropped by the cab, they

started walking towards their house. They had just covered the distance of about 2-3 meters when a white pick up van came from behind onto their right side. Three persons got down from the front of the van and grabbed the prosecutrix. One of the three persons showed a pistol like object, whereafter she and her friend started shouting for help but nobody came. The three persons then pulled her inside the front portion of the van, reversed the vehicle and drove towards Dhaula Kuan. Her friend was struggling to free herself since those persons had tried to pull her also inside the van, but since the prosecutrix was nearer, she was pulled inside the van and her friend was able to free herself. In the front portion of the van, the person sitting on her right side tried to cover her mouth and her face with his hand. The person sitting on her left side was pointing a pistol at her. At that time, the prosecutrix was carrying two mobile phones, one of which was in her right side pocket and the other in her left side jeans pocket. One of the phones rang, upon which the person sitting on her right side and left side searched her pockets. The person on her right side found one of her phones and handed over the same to the person sitting on the left who kept the same on the dash board of the van after switching it off. The other mobile phone which was in her left side pocket was ringing continuously but she kept on pressing the reject button. Thereafter she managed to take out her phone and keep it in her jacket, thinking that if she answered the call then her friend and police may be able to trace her call and thus

she pressed the answer button. During this period, the vehicle was being driven and the person sitting on her left side tore her underwear, removed her jeans and started raping her. After sometime, the vehicle stopped at a place where several trucks were parked and three persons who were in front of the vehicle were talking with each other. She could not understand what they were talking amongst themselves as she was not aware of Hindi language much. After stopping the vehicle for about 2-3 minutes, the said persons drove away and the prosecutrix saw a board that read Mangolpuri. The vehicle was driven round and round and then stopped at a place which was a kind of dump area. The said persons asked her to get down from the van and took her to the back portion of the van. There was a mattress lying on the back portion on which the five persons-including the three who were sitting with her at the front portion, raped her one after the other. On asking them to stop, one of them slapped her saying "*chup chup*". Thereafter, the said persons again drove the vehicle towards the main road while she was sitting at the back with two persons. At one point, the vehicle was again stopped and she was told by one of them to get down. After she got down, they drove away the vehicle. When she looked at the back portion of the vehicle to note down its registration number, she saw that there was no number plate. She saw that some decoration was made at the rear portion of the vehicle. When she took out her phone from the pocket of her jacket, she realised that it was on answer mode and her boss

Niloy Pramanik (PW3) was on line and she talked to him who had already heard as to whatever happened with her as her phone was on answer mode/call was still connected. She told her boss that she would talk to her friend and she ended the call, after which she called her friend. She could not tell her friend exactly as to where she was at that time. Her friend suggested that she should call the police on number 100 after which she called the police and asked if they could speak in English. The call was initially attended by a lady police official and thereafter by a male police official, both of whom spoke in English. They advised her to go around and point some identification of the area while the phone was still on. She moved from that place and saw some house with address written on it, and the same was the industrial area Mangolpuri. She informed the police about the said address who told her that police van would reach there. After sometime, the police van came to the spot and took her to the police station which she believed to be PS Mangolpuri. From there, she was taken by the police to Police Station Dhaula Kuan where several of her friends, office staff and Mizo welfare leaders were present. Thereafter, she was taken to Safdarjung Hospital for her medical examination by the police. Thereafter, she was taken back to the Police Station Dhaula Kuan where her statement Ex.PW1/A was recorded.

12. She also deposed that on 10.12.2010, she was taken by the police to AIIMS where some of her hair were cut

and some of them were pulled and kept in an envelope. The doctor had prepared some document and she had signed the same. She had identified her signature on her MLC. She was also taken by the police to Tihar Jail in 2010, where she identified two boys involved in the incident. She further stated that vide her statements Ex.PW1/B and Ex.PW1/C respectively she had identified two accused persons in the TIP proceedings. She further deposed that on the day of incident, she was wearing black jean, shirt, bra, underwear and jacket, and except jacket, all her clothes were taken by the doctor. She identified her jean as Ex.P1, T-shirt as Ex.P2, panty as Ex.P3 and bra as Ex.P4 in the Court. She had identified all the accused persons who committed rape upon her on the day of incident and specifically attributed the role played by them. She had also identified the vehicle in question as Ex.P5 and pistol as Ex.P6. She also stated that vide seizure memo Ex.PW1/E, her hair were seized in AIIMS Hospital.

13. The prosecutrix (PW1) was cross-examined at length by the defence. During her cross-examination, she stated that she and her friend left the office at around 12.40 a.m. They had returned from their office in the office cab. Her friend was residing in the same building where she was residing but in a different room. She stated that the distance between Sharma Automobiles-where the cab had dropped them, and the building where she was residing must be around 100 meters. There was

no traffic on the road at that time. Sharma Automobiles was just near the place where they were dropped by the cab. She further stated that there were several street lights near the place where they were dropped by the cab. Within 1-2 minutes of their being dropped, the vehicle in which she was kidnapped reached there. Accused Kamruddin caught hold of her first. She further stated that they all were around her, lifted her and put her in the pick-up. The person who had kept pistol on her forehead was having pistol in his right hand and he had put his left hand round her neck. Their faces were not muffled. Except one person who had 'bandana' on his forehead, the head of other persons was not covered. She further stated that when 'S' (PW2) tried to free her from the said accused, one of them had pointed the pistol towards her and thereafter she started running. She further stated that it took 2-3 minutes-when the vehicle in question stopped near them, and she was then removed inside the vehicle. She denied that she had not shouted 'help-help'. In the front portion of the vehicle, there were four persons; one was the driver; one was sitting on her right and one person was sitting on her left. She further stated that her underwear was torn first by the person sitting on her left and thereafter her jeans was removed. She was sitting on the front portion of the vehicle where she was raped. She could not attempt to save herself at that time since a pistol was being pointed to her. She was slapped by both the persons several times. At the time of incident, she was wearing jacket, T shirt, bra, jeans and panty.

She had taken out her mobile phone from the pocket of jeans and kept the same in her jacket before she was raped in the cabin. Till that time she did not know how many persons were sitting in the rear portion of the vehicle. After sometime of her being raped in the front portion of the vehicle, the vehicle was stopped at a place where several trucks were standing. The vehicle had stopped there for about 2 to 3 minutes. She had seen the board on which 'Mangolpuri' was written. The vehicle was driven on a round about, before it finally stopped near the dump area. The dump place was situated in the Mangolpuri Industrial area. She further stated that accused Shahid had slapped her. The accused persons had not removed their clothing before doing the act but had only pulled down their respective pants. She further stated that after the incident, she had seen two of the accused persons for the first time in Tihar Jail during TIP proceedings. She also stated that some of the accused persons were brutal towards her while committing the rape, however she did not sustain any injury on any part of her body and she did not see any bleeding on any part of her body. She denied that since it was a media hyped case and police was under pressure and, as such, police forced her to identify accused Usman and Shamshad in TIP proceedings.

14. Testimony of prosecutrix of her being kidnapped and raped by the appellants has been duly corroborated by her friend 'S' (PW2). PW2 in her deposition deposed that since the

year 2007, she along with prosecutrix was working with Convergys, Gurgaon. She left the job in the month of May 2011, whereas the prosecutrix left the job after the incident. On 24.11.2010, she and the prosecutrix were residing at Moti Bag in the same building in separate rooms as tenants. Their shift was from 2.30 p.m. to 12 midnight during those days. On that day, they both had gone to the office via office cab. It was intervening night of 23/24.11.2010. Around 1.05/1.10 a.m., their cab dropped them on the highway, and their house was situated at 10 minutes walking distance. While they were walking towards their house, one vehicle came from behind which was a pick-up and it stopped just ahead of them. There were three boys in front of the vehicle and two boys were in the rear portion. All the five persons got down from the vehicle and the prosecutrix who was standing near the vehicle, was grabbed by the boys who had got down from the front of the vehicle. They started screaming but not too loudly, since they were scared as one of those boys was armed with a gun. When PW2 attempted to save the prosecutrix who was grabbed by those persons, the boy who was holding pistol pointed out the same towards the head of PW2, she started screaming, holding her head to save it and started moving away from him. When she started screaming, the boys did not follow her and she ran away from there. She further deposed that she just watched her friend being taken away in the front portion of the vehicle. PW2 further stated that she had informed the police on 100 number.

Thereafter, the police came at the spot which was near Sharma Automobiles. After about 45 minutes, PW2 received a call from the prosecutrix. PW2 was informed by the prosecutrix that she was raped by all the five accused who had taken her away and that she had been dropped near some industrial area, but she was unable to confirm the location, so PW2 advised her to call the police on 100 number. Thereafter, she met the prosecutrix in the morning of 24.11.2010 at P.S. Dhaula Kuan. The prosecutrix was taken by the police for medical check up. PW2 accompanied the prosecutrix to the hospital. PW2 further stated that the vehicle in which the prosecutrix was taken away was Mahindra pick-up of white colour and top of the back was open. The number of the vehicle was HR 27J 0964 which PW2 had seen when she had identified the vehicle at PS Dhaula Kuan on 09.12.2010. She identified the vehicle as Ex.P5. PW2 had identified all the accused persons in the Court as the one who were present at the spot from where the prosecutrix was kidnapped. She further stated that on 25.11.2010, she along with the prosecutrix had accompanied the police to the spot where she had been raped. On 10.12.2010, she along with the prosecutrix had gone to PS Vasant Vihar where she and the prosecutrix had identified all the five accused persons.

15. During cross-examination by the learned Addl. PP for the State, PW2 has admitted having stated in her statement Ex.PW2/PA that three boys which were sitting in front came out

from the vehicle and they grabbed the prosecutrix. She also admitted that the said boys tried to grab her also. She also stated that accused Shahid @ Billi, Kamruddin @ Kamru @ Mobile and Shamshad @ Khutkan were sitting in the front portion of their vehicle, and those three boys came out of the vehicle and accused Kamruddin had shown pistol like thing, abused them and that accused Iqbal @ Billi and Usman @ Kale were sitting in the back portion of the vehicle. She also admitted having stated that on 10.12.2010, the doctor had removed and preserved the hair of the prosecutrix and the same were seized vide memo Ex.PW1/E.

16. PW2 was cross-examined at length by the defence. During cross-examination by the defence counsel, PW2 stated that she had been using spectacles since December, 2010. She denied that at the time of incident she was unable to witness the incident as she was not using spectacles. She had informed the police on 100 number about the incident at about 1.15 a.m. After about 20 minutes, the police reached the spot of incident. She stated that she might have informed the police that the offending vehicle was Metador tempo as she was in shock. The prosecutrix had called her after 2 a.m. PW2 had advised the prosecutrix to call police on 100 number. When prosecutrix was being lifted from the spot, they had raised alarm but no one was around to reach there. There were three persons who came from the vehicle to grab them. She was standing in front of the

boy who was holding pistol at a distance of about 1 foot. There was light at the spot. She had given the description of the vehicle and it was of white colour. They had hardly walked for 10 steps when the offence vehicle reached there. At that time they were near Sharma Automobiles.

17. Testimony of prosecutrix (PW1) has further been corroborated by PW3-Sh.Niloy Pramanik. PW3 deposed that on the intervening night of 23/24.11.2010, he was working as team leader with BPO Convergys India Services Pvt. Ltd., Gurgaon. The prosecutrix was working in his team as Senior Customer Care Officer since last about two years. On that day, the prosecutrix was working from 3 p.m. to 12 midnight shift. He received a call from his Operation Manager at about 1 a.m. that the prosecutrix was lifted by some guys from the place where she was dropped by the cab. Thereafter, he had tried to contact the prosecutrix from his mobile phone. The mobile phone of the prosecutrix was ringing when he had called her but she was not picking it. He continued calling her from his mobile phone. Finally, his call got connected with the mobile phone of the prosecutrix, but nobody gave response although the line was on. He could hear some male noises and a female noise. He could also hear the sound of air in a moving vehicle. He was continuously saying 'Hello-Hello'. He also heard the cries of a female voice and she was saying please let her go. That voice of female was of the prosecutrix. He had heard the

male voices also saying '*Tu Ro kyon rahi hai, humara kaam nipat jayega to tujhe chhod denge*'. That continued for about 20-25 minutes. After sometime, the line was disconnected. Then he received a call from the prosecutrix who told him that she had been raped by five persons. PW3 asked her as to where she was and she told him that she was somewhere in Mangolpuri. She also told that she was dropped at Mangolpuri by the vehicle. She told him that she would call him later as she had some PCR Van there. Thereafter, he immediately left for Dhaula Kuan police station. When he reached PS Dhaula Kuan, the prosecutrix was already present there along with 'S' (PW2). The prosecutrix was taken to hospital for medical examination.

18. During cross-examination, PW3 has stated that when he made a call to the prosecutrix, he was at home. He only moved from his home when the prosecutrix had called him stating that she had been dropped at Mangolpuri. The prosecutrix did not call him after being raped and before she was dropped at Mangolpuri. He reached PS Dhaula Kuan at about 2.30 or 3/3.15 a.m. He started making calls to the prosecutrix at about 1.15 a.m. He made continuous calls 3-4 times but she had not picked her phone. Then he had made a call to his Manager who directed him to make calls to the prosecutrix. After gap of 5-10 minutes, he again started calling the prosecutrix. When the first time his call was connected with the prosecutrix, she could not talk but remained connected for

about 20-25 minutes and thereafter the line was disconnected. The second time when the call was materialized, he had conversation with the prosecutrix who disclosed that she had been raped by five persons and she was crying. On asking, she told that she was in the area of Mangolpuri.

19. The Supreme Court in the case of ***State of Punjab v. Gurmit Singh and others AIR 1996 SC 1393***, while relying upon the testimony of the prosecutrix has observed that the testimony of a prosecutrix alone is sufficient to base the conviction of an accused, which needs no corroboration. It was held that :

“9. The grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was student of Xth Class. It was wholly irrelevant and immaterial whether she was ignorant of the difference between a Fiat, an Ambassador or a Master car. Again, the statement of the prosecutrix at the trial that she did not remember the colour of the car, though she had given the colour of the car in the FIR was of no material effect on the reliability of her testimony. No fault could also be found with the prosecution version on the

ground that the prosecutrix had not raised an alarm while being abducted. The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car she was threatened by the accused to keep quiet and not to raise any alarm otherwise she would be killed. Under these circumstances to discredit the prosecutrix for not raising an alarm while the car was passing through the Bus Adda is travesty of justice. The court over-looked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm...Her statement about the manner in which she was abducted and again left near the school in the early hours of next morning has a ring of truth. It appears that the trial court searched for contradictions and variations in the statement of the prosecutrix microscopically, so as to disbelieve her version....In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid

talking about it to any one, lest the family name and honour is brought into controversy. Therefore her informing to her mother only on return to the parental house and no one else at the examination center prior thereto is an accord with the natural human conduct of a female. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. **The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused**

where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative

component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In *State of Maharashtra v. Chandraprakash Kewalchand Jain* MANU/SC/0122/1990 : 1990 CriLJ 889 Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words :

“A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness Under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. **If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration.** If for some reason the court is hesitant to place implicit reliance on the testimony

of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. **But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality and the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”** (emphasis supplied)

20. Further, in the case of *Vijay @ Chinee v. State of Madhya Pradesh (2010) 8 SCC 191*, the Supreme Court has dealt with the issue and held :

“14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no

corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.”

21. In the case of ***Krishan Kumar Malik Vs. State of Haryana: (2011) 7 SCC 130***, the Supreme Court has held :

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.”

22. In the case of ***State of Rajasthan Vs. Babu Meena: (2013) 2 SCALE 479***, it has been held :

“8. 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.” (emphasis supplied)

23. From the testimony of the prosecutrix (PW1), the incident of commission of rape upon her has duly been established. Even the appellants/accused do not raise any doubt about the fact that the prosecutrix was, indeed, raped on the fateful night. The prosecutrix has categorically stated that on the fateful night, after being dropped by the office cab, when she was going towards her house along with her friend (PW2), a van came there and kidnapped her on the point of pistol. She has also stated that her friend was also tried to be pulled inside the said van, but she somehow managed to flee from the clutches of the appellants and ran away from the spot of her kidnapping. The prosecutrix has narrated the entire incident. She has stated that after being pulled inside the vehicle, three appellants started misbehaving with her and then one appellant tore her underwear/panty; removed her jeans and then committed rape upon her. Thereafter, she was taken in the said vehicle to the area of Mangolpuri where she was taken to the rear portion of the vehicle where all the appellants committed rape upon her. She also stated that she was dumped in Mangolpuri Industrial Area from where she made a call to her friend (PW2) and also spoke to her boss/superior (PW3). She also stated that on the advice of her friend (PW2), she made a call to the police control room at number 100 upon which the

police team reached the spot and then she was taken to the Police Station Dhaula Kuan. In the Police Station Dhaula Kuan, her statement was recorded and thereafter she was sent to the hospital for medical examination. She has correctly identified all the appellants in the Court by stating that out of those persons, three persons kidnapped her, one appellant committed rape upon her at the front portion of the vehicle, and then she was raped by all the appellants in the rear portion of the vehicle. She has also testified with regard to handing over of her clothes to the police, her medical examination and taking of her hair sample by the doctor.

24. Testimony of the prosecutrix (PW1) has duly been corroborated by her friend (PW2) who was an eye witness to the incident of kidnapping of the prosecutrix by the appellants. PW2 has specifically stated that on that fateful night, she along with prosecutrix were dropped near Sharma Automobiles by their office cab and they were in the process of walking towards their house. In the meanwhile, one white colour pick up vehicle came from behind and stopped in front of them. Three appellants got down from the vehicle. Out of those, one showed pistol like object to them and took the prosecutrix inside the vehicle. They also tried to take her (PW2) inside the vehicle, but she somehow managed to free herself and ran away from there. She saw all the five appellants taking away the prosecutrix in the said vehicle and then the police was informed

about the kidnapping of the prosecutrix. PW2 also corroborated that after about 45 minutes she received a phone call from the prosecutrix to the effect that she was left by five boys at Mangolpuri Industrial Area after being kidnapped and raped. She advised the prosecutrix to inform the police at number 100 first, and on her advice the prosecutrix informed the police about the incident. She further corroborated that thereafter the prosecutrix was brought to Police Station Dhaula Kuan where her statement was recorded and then she was taken to the hospital for medical examination.

25. PW3 Niloy Pramanik also corroborated the testimony of prosecutrix (PW2). PW3 stated that the prosecutrix was working with him as Senior Customer Care Officer for the last about two years. On the fateful night, he received a telephonic call from his office that the prosecutrix had been kidnapped upon which he tried to contact the prosecutrix by making calls on her mobile phone. Initially, the phone of the prosecutrix kept on ringing but she did not pick up the phone, but after sometime the call made by him was connected, but there was no response from the other side. He categorically stated that while the call was still on, he heard the voices of the prosecutrix and male voices. He stated that the prosecutrix was crying and asking for letting her go. He also heard the male voices saying why the prosecutrix was weeping and that she would be left once they are done. The said call

lasted for about 20-25 minutes and after sometime, the said call was disconnected. Thereafter, he received a call from the prosecutrix who informed PW3 that she was raped by five persons. She also informed that she was left at Mangolpuri.

26. So far as the contention of the appellants that they were shown to the prosecutrix before conducting their TIP, therefore, no negative inference can be drawn against them and for refusing to participate in the TIP is concerned, the same is completely unfounded. It is matter of record that appellants, namely, Usman and Shamshad were identified by the prosecutrix during their TIP proceedings as the culprits who committed rape upon her on the day of incident. So far as the other appellants are concerned, apart from their *ipse dixit* that they had been shown to the prosecutrix, there is no basis disclosed by the accused to lay such a claim. No justification has been probabalised by the said accused to refuse TIP. The prosecutrix during her examination before the trial court has duly identified all the accused persons and narrated the role of each and every accused who had kidnapped her and committed gang rape upon her. There is nothing in the testimony of the prosecutrix which runs contrary to her accusations against the appellants. Even, PW2-friend of the prosecutrix also identified the accused persons as the culprits who on the fateful night, had kidnapped the prosecutrix and took away her along with them who was later on raped by the accused persons. Thus, the

identity of the appellants has been duly established on record from the TIP proceedings of accused Usman and Shamshad; testimony of prosecutrix (PW1), and; her friend (PW2).

27. While dealing the relevancy of test identification parade of an accused, and refusal of the accused to participate in the same, the Supreme Court in the case of ***Munna vs. State (NCT of Delhi) (2003) 10 SCC 599*** held that in a case where a accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eye-witnesses made for the first time in Court-wherein they specifically point towards him as a person who had taken part in the commission of crime, should not be relied upon. This plea is available, provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in Court during the course of the trial of the case.

28. In the case of ***Nazim Khan @ Guddu v. State 2014 SCC OnLine Del 2938***, it was held thus:

“17. It, therefore, is clear that the test identification parade report although is not a substantive evidence but can be used only for the purpose of

corroboration. There can be two results of test identification parade. **Firstly, the refusal to participate in the test identification parade by the appellant is without any justification. Such a refusal is a piece of evidence and the courts can take an adverse inference against the accused that if he would have participated in the test identification parade, he would have been identified by the witness and the refusal can be used to corroborate the dock identification by witness** Secondly, the accused has a justifiable reason to refuse to participate in the test identification parade. Where accused has justifiable reason, no adverse inference can be taken against him.” (emphasis supplied)

In the case of *Ashok Debbarma v. State of Tripura* (2014) 4 SCC 747, it was observed that :

“21. The abovementioned decisions would indicate that while the evidence of identification of an accused at a trial is admissible as substantive piece of evidence, it would depend on the facts of a given case as to whether or not such a piece of evidence can be relied upon as the sole basis of conviction of an accused. In *Malkhansingh v. State of M.P.*, this Court clarified that the test identification parade is not a substantive

piece of evidence and to hold the test identification parade is not even the rule of law but a rule of prudence so that the identification of accused inside the courtroom at the trial can be safely relied upon. We are of the view that if the witnesses are trustworthy and reliable, the mere fact that no test identification parade was conducted, itself, would not be a reason for discarding the evidence of those witnesses.....”

29. Therefore, in view of present set of circumstances and the law laid down as discussed above, an adverse inference is warranted against the appellants, namely, Shahid @ Billi, Iqbal @ Billi and Kamruddin @ Kamru @ Mobile as they refused to participate in the TIP proceedings, whereas appellants-Usman and Shamshad were duly identified by the prosecutrix during their TIP proceedings.

30. Argument advanced by the learned counsel for the appellant was that as per the prosecution, the samples from the vehicle were collected after about 10 days of the alleged incident of rape which creates doubt about the prosecution story and the possibility of plantation of same cannot be ruled out.

31. So far this contention of the appellant is concerned, it is evident that the vehicle bearing registration no.HR 27J 0964 in which the rape was allegedly committed upon the prosecutrix, was seized vide seizure memo dated 02.12.2010,

Ex.PW48/H. It is further apparent from the record that the accused Shamshad @ Khuktan was arrested on 02.12.2010 vide arrest memo Ex.PW48/D and thereafter his disclosure statement Ex.PW48/F was recorded on the same day. As per the testimony of FSL expert Sh.A.K. Srivasatava (PW7), the said vehicle was examined by the team of FSL experts on 02.12.2010 itself, and samples were drawn from the same and seized. Therefore, there is no force in the contention of the appellant that there is delay of 10 days in collecting samples from the vehicle for the reasons that the vehicle in question was seized only on 02.12.2010, and that too after the arrest of accused Shamshad @ Khutkan and upon his disclosure, the same was seized and then examined by the FSL experts which led to the seizure of samples from the said vehicle.

32. Next contention raised by the learned counsel for the appellants was that though several samples were sent to the FSL, but number of exhibits were returned unexamined by the FSL without giving any explanation. Thus, there is flaw in the investigation and its benefit is bound to be given to the appellants.

33. From the testimony of PW7-Sh.A.K. Srivastava, Assistant Director (Biology), DNA Finger Printing Unit, FSL, Rohini, Delhi, it is apparent that he had stated that *‘Exhibits 1A, 1B, 1C, 1D, 1E, 1F, 1H, 1I, 1L, 5, 6, 7, 8,9, 10, 11, 12,14, 16, 18, 19, 20, 22, 23, 24, 26 and 27 were returned unexamined as*

exhibits 1G-1, 1G-2, 1G-3, 1J-1, 1J-2, 1K-1, 1K-2, 2B, 3B, 13A, 13B, 17, 21, 25 and 34B were sufficient to conclude the results of the case.” The explanation given by the witness (PW7) for returning some exhibits unexamined was that the other exhibits were sufficient to prove the case and there was no necessity to examine all the exhibits. Similarly, during his cross-examination, PW7 stated that out of 56 samples, 27 forensic samples were examined by him. On a specific question as to why did he return the 1A, 1B, 1C, 1D, 1E, 1F, 1H, 1I and 1L, PW7 stated that he did not examine the same because those were not required for examination. So, PW7 has properly explained the reasons for returning some samples without examination, and the appellants cannot get any benefit of the same.

34. The next contention of the learned counsel for the appellants relates to their arrest, and the recoveries made thereafter. It was contended on behalf of the appellants that the appellants were picked up from different places and then falsely booked in the present case by showing their arrest from their native places. It was further contended that the recoveries, as alleged, are planted ones by the police, just to make out a case against them, as the police as well as prosecution was under pressure to solve the case.

35. As per the testimony of SI Sushil Sawaria (PW48), accused Usman and Shamshad were arrested on 02.12.2010.

PW48 had deposed that on that day he along with SI Sandeep Sharma (PW52) and Insp. Raj Kumari (PW56) with police staff, on the basis of a secret information, took their position at the spot. He further deposed that at about 2.00 a.m., they saw a motorcycle coming towards them from the side of village Dhauj. They overpowered those persons who disclosed their names as accused Usman @ Kale and Shamshad @ Khutkan. They were arrested vide arrested memos Ex.PW48/A and Ex.PW48/D. Their personal searches were conducted vide memos Ex.PW48/B and Ex.PW48/E respectively. Their disclosure statements Ex.PW48/C and Ex.PW48/F were recorded. The said motorcycle was seized vide memo Ex.PW48/G.

36. So far as accused Shahid @ Billi is concerned, it is apparent from the record that he was lodged in Neemka Jail, Ballabhgarh, Haryana and the said fact was disclosed by accused Usman and Shamshad. Production warrants for the production of accused Shahid was got issued and he was produced before the concerned Magistrate on 04.12.2010 when he was arrested in the instant case vide arrest memo Ex.PW36/A.

37. PW39 HC Shivilal had deposed that on 04.12.2010, he received information that accused Iqbal @ Billi would come to meet somebody on Sohna Gurgaon Road. Thereafter, he along with SI Upender (PW49) and HC Ranjeet reached T-

point, Sector-56, Sohna, Gurgaon where secret informer met them. After sometime, the secret informer identified a person coming from Sohna Road to be accused Iqbal @ Billi. Accused Iqbal was apprehended and was arrested vide arrest memo Ex.PW39/A.

38. Deposition regarding arrest of accused Kamruddin had been made by PW38 HC Umesh Kumar and PW40 HC Asgar Ali. They have deposed that on 06.12.2010, they along with SI Virender Prakash and other police staff reached near village Lakwas on Sohna Ballabhgarh Road where a secret informer met them and informed that accused Kamruddin was present in the village. At about 7.00 p.m., the secret informer pointed towards a boy coming from the side of village as that of accused Kamruddin. When police party went to apprehend the accused, he ran towards the fields. He was chased and then apprehended. He was arrested vide arrest memo Ex.PW38/A.

39. It has come in the evidence that after his arrest, accused Usman @ Kale led the police party to Village Mirpur, District Palwal, Haryana and got recovered one black colour shirt and light blue coloured pant from a nail on the wall of a room stated to be worn by him at the time of incident. Those articles were seized vide seizure memo Ex.PW48/V. Thereafter, accused Usman got recovered a desi katta from the Taand (slab) of the room while disclosing that accused Kamruddin had used it to terrorize the prosecutrix and PW-2 on

the day of incident. The said katta was seized vide seizure memo Ex.PW48/X. Similarly, accused Shahid @ Billi led the police party to his house and got recovered a yellow colour striped shirt and blue coloured lower having white stripes from an iron almirah disclosing that he was wearing the same at the time of incident. The said clothes were seized vide seizure memo Ex.PW48/Y. Similarly, accused Iqbal @ Billi led the police party to his house and got recovered a light pink coloured shirt and light blue and white striped pant from a suitcase disclosing that he was wearing the said clothes at the time of incident. The said clothes were seized vide seizure memo Ex.PW48/Z. Accused Shamshad led the police team to his house in the same village and got recovered a cream and white coloured stripe shirt and a blue and black coloured stripe pant and a round neck sweater from the steel box disclosing that he was wearing the same clothes at the time of incident. The said clothes were seized vide seizure memo Ex.PW48/Z1. In the cross-examination of these prosecution witnesses, there is no contradiction of gap noticed. Pertinently, no alibi was set up by the accused, or established on the record by the accused.

40. The offending vehicle within which the rape was allegedly committed upon the proescutrix was recovered at the instance of accused Shamshad @ Khutkan from Vakkal ke gher, village Tai, Tehsil Nuh, District Mewat, Haryana and it was seized vide seizure memo Ex.PW48/H. PW1-prosecutrix had

duly identified the said vehicle during her testimony before the Court as Ex.P5. Similarly, PW2-friend of the prosecutrix who is also an eye witness to the incident of kidnapping of the prosecutrix had also identified the said vehicle as Ex.P5 during her testimony before the trial court.

41. In the instant case, the recoveries were made at the instance of the accused persons while they were in custody, and the same have been duly established with certainty. The police officials who were part of the investigation when such recoveries were affected, have remained absolutely unperturbed and, in fact, nothing has been elicited from them to disprove their truthfulness.

42. On a studied scrutiny of the arrest memos, disclosure statements recorded under Section 27 of the Indian Evidence Act, 1872 and the disclosure made in pursuance thereof, we find that the recoveries of articles viz. the desi katta and the vehicle from the custody of the accused persons cannot be discarded. The articles that have been seized, and the places from where they have been seized were within the special knowledge of the accused persons. It is argued before us that the said recoveries have really not been made from the accused persons but have been planted by the investigating agency. On a careful analysis of the evidence of the police officials who were part of the investigating team, we do not notice anything doubtful or suspicious in this regard. The contentions advanced

by the counsel for the appellants in this regard, do not impress us in the least. The Supreme Court in the case of ***Dhananjoy Chatterjee alias Dhana Versus State of West Bengal***(1994) 2 SCC 220 while dealing with the applicability of Section 27 of the Evidence Act, observed as under :

“....Though, the entire statement made by the appellant before the police is inadmissible in evidence being hit by Sections 25 and 26 of the Evidence Act but that part of his statement which led to the discovery of the shirt and the pant is clearly admissible under Section 27 of the Evidence Act. We disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the appellant as it is only so much of the statement made by a person accused of an offence while in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered which is capable of being proved and admitted into evidence. The discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

Similar views have been further expressed in *Nisar Khan @ Guddu and Ors. v. State of Uttaranchal (2006) 9 SCC 386*

43. PW-8 Dr.Sudipta Ranjan Singh had deposed that on 08.12.2010, he had examined accused Kamru @ Mobile, Iqbal @ Billi and Shahid @ Billi and opined that there was nothing to suggest that they were incapable of performing sexual intercourse under ordinary circumstances. He also deposed that he had preserved the blood in gauze, blood in FTA card and penile swab of the above accused persons and handed them over to the IO. Similarly, PW9 Dr.Ashish Jain had deposed that on 02.12.2010, he had examined accused Usman @ Kale and after his examination, preserved underwear blood in EDTA Vial, FTA card, pubic hair, penile swab, control swab. PW10 Dr.Hari Prasad had deposed that on 02.12.2010, he had examined accused Shamshad @ Khutkan and after his examination, preserved underwear, pubic hair, penile swab, control swab, blood in EDTA vial and FTA card.

44. DNA/FSL report of the vehicle in question and the exhibits collected from the vehicle also corroborated the testimony of the prosecutrix (PW1). PW7-Sh.A.K. Srivastava, Assistant Director (Biology), DNA Fingerprinting Unit, FSL, Rohini, Delhi had stated that on 02.12.2010, one Mahindra Max pick-up vehicle no.HR 27J 0964 was produced in FSL, Rohini as the same was involved in a crime committed on the intervening night of 23/24.11.2010. A team including him was

organized for inspection. The said vehicle was examined on 02.12.2010 and 03.12.2010. A cutting having some suspected stains and 11 strands of hair recovered from the front seat of the vehicle were handed over to the IO. He had proved the original crime report vide Ex.PW7/A. PW7 also deposed that on 26.11.2010, three sealed parcels were received; on 03.12.2010, ten sealed parcels were received; on 09.12.2010, 14 sealed parcels were received and on 13.12.2010, five sealed parcels were received in the office having exhibits. All the exhibits were biologically examined in the laboratory. On examination, blood was detected on exhibits 1K-1, 1K-2, 13 A, 13 B, 17, 21, 25 and 34 B. Human semen was detected on exhibits 1G-1, 1G-2, 1G-3, 1J-1, 1J-2, 2B, 3B, 33B and 34 B. The DNA was isolated from exhibits 1G-1, 1G-2, 1G-3, 1J-1, 1J-2, 1K-1, 1K-2, 2B, 3B, 13 A, 13 B, 17, 21, 25 and 34 B. After examination of the exhibits, the witness (PW7) gave the opinion that DNA profile of source exhibit i.e. FTA card/blood samples of all the appellants were responsible for the biological stains i.e. semen on the DNA profile of exhibit 1G-1, 1G-2 (micro slides), 1G-3 (cotton wool swab), 1J-1 (micro slide), 1J-2 (cotton wool swab), 2B (jeans pant of the victim) and 3 B (underwear of victim). It was also opined that the DNA profile of exhibits 1K-1, 1K-2 (blood of the victim) was matched with the DNA of blood on exhibit 34 B (pant of accused Usman @ Kale). PW7 proved his detailed report of analysis as Ex.PW7/C dated 18.01.2011.

45. As per the opinion and report Ex.PW7/C of the DNA expert, the incident of commission of rape upon the prosecutrix by the appellants has also been duly proved. As per the DNA report, the FTA cards/blood samples of the appellants matched with the semen on the DNA profile of jeans pant and underwear of prosecutrix. It clearly proves the case of the prosecution that on the day of incident, appellants forcibly kidnapped the prosecutrix and rape was committed upon her by the appellants.

46. Next argument advanced by the counsel for the appellant Usman is that there was tampering in the samples sent to the FSL inasmuch, as, 10 samples of the prosecutrix were drawn by the doctor, but in the seizure memo Ex.PW16/A, the articles shown to be seized were 12 and the same number of articles were examined in the FSL vide report Ex.PW7/A to Ex.PW7/C.

47. There is no basis for this submission made by the learned counsel for the appellant Usman, for the reasons that as per the MLC Ex.PW12/A, after medical examination of the prosecutrix, 11 articles were sealed and handed over to the constable present, which were later on handed over to the Investigating Officer (PW56) who seized the same vide seizure memo Ex.PW16/A. Perusal of seizure memo Ex.PW16/A further shows that total 12 articles belonging to the prosecutrix, including the 12th article being blood sample of the prosecutrix,

were seized by the IO and the same were sent to FSL through HC Dheer Singh (PW31). As per FSL report Ex.PW7/A to Ex.PW7/C also, 12 articles belonging to the prosecutrix were examined in the laboratory. Though, there is slight change in the number of articles seized by the doctor, and their seizure by the IO, but it does not in any way affect the case of the prosecution.

48. Argument advanced by the counsel for the appellant Usman is that no blood of the prsoecutrix was taken from the vehicle. This submission is of no relevance, and it does not weaken the case of the prosecution. There is nothing to sugest that the prosecutrix suffered such heavy bleeding that the blood would have fallen in, and left a stain in the vehicle. The aspect of sending of blood sample of the prosecutrix to the FSL has already been dealt with by us above. Next limb of argument advanced is that there was no blood on the pant of accused Usman, and that there were dirty stains on it, which cannot lead to the inference that the blood on the pant matched with the blood of the prosecutrix.

49. So far as the above contention on behalf of the accused Usman is concerned, this part of DNA report is an additional circumstance, apart from the other evidence available on record against him. Even if the said argument is accepted, it is of no consequence and cannot affect the case of prosecution in view of the fact that the prosecutrix has duly identified

accused Usman too, apart from other accused persons, as the culprit who had kidnapped her and committed gang rape upon her on the fateful night. Argument that the pant of the accused was not having blood, is just on the basis of inference drawn that the pant was having dirty stains and not blood. Pertinently, the question of the pant of Usman having blood was not put to the FSL expert.

50. Medical examination of the prosecutrix was conducted by PW12-Dr.Kavita Soni. PW12 had deposed that on 24.11.2010, she was working as Senior Resident in Safdarjung Hospital. On that day, the prosecutrix was brought to the hospital along with her sister and police officials. There was alleged history of sexual assault at about 2.00 a.m. on 24.11.2010, near Dhaula Kuan. PW12 had examined the patient. The patient was unmarried female with no history of previous sexual contact. On her examination, PW12 found that the hymen of the prosecutrix was freshly ruptured and there was slight bruising over posterior vaginal wall. PW12 had proved the MLC of the prosecutrix as Ex.PW12/A and OPD card as Ex.PW12/B.

51. Testimony of doctor (PW12) who had medically examined the prosecutrix, MLC Ex.PW12/A and OPD card Ex.PW12/B of the prosecutrix further corroborates the testimony of the prosecutrix that she was sexually assaulted on the day of incident. In the report of the doctor, it is clearly

mentioned that the prosecutrix was brought to the hospital with the history of sexual assault and as per report, her hymen was freshly ruptured having bruise over her posterior vaginal wall.

52. In our considered view, the testimony of the prosecutrix is natural, reliable, credible and trustworthy, free from any kind of glitches. She in simple language narrated the incident at the time of her deposition before the trial court and her testimony has duly been corroborated by PW2 and PW3. The testimony of the prosecutrix itself is sufficient to base the conviction of the appellants, but in the instant case, her testimony has duly been corroborated by PW2 and PW3. The trial Court found her evidence credible and trustworthy and we find no reason to take a different view. From the above mentioned testimony of the prosecutrix (PW1), her friend (PW2) and PW3, it has been established beyond reasonable doubt that all the appellants kidnapped the prosecutrix on the fateful night of 23/24.11.2010, and then committed rape upon her in the vehicle. All these witnesses were cross-examined at length by the defence, but the defence has failed to put any dent to their testimony. All the appellants were duly identified by the prosecutrix (PW1) and her friend (PW2) as the persons who had, firstly, kidnapped the prosecutrix in the vehicle in question and then committed rape upon her in the said vehicle itself.

53. From the testimony of the prosecutrix, the prosecution has successfully established that on the fateful night

of 23/24.11.2010, all the appellants firstly kidnapped the prosecutrix from near Sharma Automobiles, Moti Bagh, New Delhi, took her in a pick-up van, rape was committed in the moving vehicle and then all the appellants committed rape upon the prosecutrix in the area of Mangolpuri. The prosecution has been able to establish all the charges against the appellants. The appellants have failed to make out any ground in support of the present appeal and the same deserves dismissal.

54. As discussed above, the judgment and conviction of the appellants is hereby upheld. Consequently, the present appeal is dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

JANUARY 30, 2018
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