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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 13.08.2019
Judgment Pronounced On : 26.09.2019

CRL.A.659/2016

STATE Appellant

versus

HAWAN PRATAP SINGH @ PAPPI & ANR Respondents

Advocates who appeared in this case:

For the Appellant	: Mr. Ashish Dutta, APP
For Respondent No. 1	: Respondent No. 1 in person.
For Respondent No. 2	: Mr. Jaideep Malik, Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal instituted by the state under the provision of section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') assails the judgment dated 01.05.2015, rendered by learned Additional Sessions Judge-Special FTC-2 (Central), Tis Hazari, Delhi, in Session Case No. 37/2013, titled as

'State vs. Hawan Pratap Singh @ Pappi & Anr.', emanating from F.I.R No. 156/2012 registered at Police Station NDRS; whereby the learned Trial Court has acquitted the accused, Hawan Pratap Singh @ Pappi and Pintu Kumar, Respondent No. 1 and Respondent No. 2 herein, respectively, of the charges framed against them under section 376(2)(g)/506/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. The case of the prosecution as elaborated by the learned Trial Court is briefly encapsulated as follow: -

“ 1. ...On 05.09.2012 on receipt of DD No.2A at PS NDRS SI Dalip Singh reached at PP Sanghtarashan. Prosecutrix 'A' (name withheld to protect her identity) was found present at the PP along with her elder sister 'N' (name of her sister also withheld to protect her identity). The statement of the complainant 'A' Ex.PW-1/A was recorded at PP Sanghtarashan by PW-21 SI Dalip Singh.

2. It is the case of the prosecution that vide her complaint Ex.PW1/A, the complainant 'A' revealed that she was living with her elder sister 'N' at a house in Madhi Wali Gali, Vishnu Garden, Delhi and about six month ago, her sister 'N' had sold the aforesaid house. Thereafter, both of them started living in temples and gurudwaras. She further stated that her father left for an unknown place about 7-8 years ago and her mother expired 15 days ago.

3. Complainant 'A' further stated in her complaint that on 04.09.2012, at about 3 AM she along with her sister 'N' had gone to PS NDRS along her belongings. When they reached the main hall of the railway station, one railway police official namely Pintu met them and inquired from them as to where they want to go. They informed him that they want to go to Jammu. Upon hearing this, Pintu got deposited their two bags in the Cloak room at Platform No.1 and also took their mobile

number. As per the complainant, at about 7 AM, she went to kirti nagar along with her sister 'N' for who had to take an injection. Pintu continued to call them and told them that he had booked a room for them and asked them to come here.

4. Complainant 'A' further alleged in her complaint that she and her sister 'N' revealed these facts to one boy namely Pappi, who does 'Seva' in '7 Manjila Mandir' situated in Tilak Nagar, Delhi. Thereafter, he accompanied both of them to New Delhi Railway Station in a TSR which was parked outside the Railway Station. Complainant then took the boy i.e. Pappi and went inside the Railway Station to collect their luggage. Officials of Cloak Room asked her to call Pintu as the luggage was deposited by Pintu in his name. When they called Pintu, he took them to room No.201 on the IInd Floor on the pretext of showing them the room. On reaching there, Pintu and Pappi talked to each other and locked the room from inside. Thereafter, both of them threw her on a bed and raped her forcibly one by one. Complainant 'A', also alleged that both of them also threatened to kill her in case she would raise an alarm or disclose about this incident to anyone. Complainant 'A' after coming out of the room narrated all the facts to her elder sister 'N'. Some one made a call at 100 number and they were brought to PP Sanghtarashan.

5. It is further the case of the Prosecution that after recording the statement of the Prosecutrix 'A', SI Dalip Singh got the Prosecutrix medically examined at LHMC Hospital and got the case registered under Section 376/506/34 IPC.

6. Further investigation of the case was handed over to Insp.Meera Sharma, SHO PS NDRS. The IO, during investigation, got the place of incident i.e. Room no.201, IInd Floor, PG Side, NDRS inspected through the Crime Team and photographed, vide report dated 05.09.2012. IO also prepared the site plan of the place of incident and seized two bed sheets, two pillow covers and one handkerchief from the place of alleged incident. The prosecutrix was again got medically examined and the examining doctor seized her clothes and other exhibits. During investigation accused Pintu was apprehended on 05.09.2012 at 4:15 PM from PS NDRS, RPSF Line, near Platform No.16. He also got recovered one underwear which he was wearing at the time of the alleged incident and the same was also seized by the IO.

7. It is further the case of the Prosecution that thereafter on the same day i.e. 05.09.2015, accused Hawan Pratap Singh @

Pappi was arrested from Sanatan Dharam Mandir, Tilak Nagar, Delhi. Both the accused were got medically examined, the report regarding their potency was obtained and the exhibits taken by the doctors who examined the accused persons, were seized. The accused persons pointed out the place of incident and separate pointing out memos were prepared. Both the accused were remanded to JC on the next day i.e. 06.09.2012 by the concerned area Metropolitan Magistrate.

8. On 06.09.2012, statement of victim 'A' was got recorded under Section 164 Cr.PC and she was thereafter sent to Nari Niketan. The IO also obtained the CCTV footage from the NDRS and got the Prosecutrix counselled. Photocopies of Duty Roster of accused Pintu was also obtained along with CAFs and CDRs of Mobile Nos. of Prosecutrix 'A' and Pinto and were thereafter seized. The exhibits were sent to FSL. The school record regarding age of the Prosecutrix 'A' was also seized during the course of investigation. As per the said school record, the date of birth of the Prosecutrix 'A' was revealed as 23.10.1996 and the age of the prosecutrix was found to be less than 16 years on the date of alleged incident. After completion of investigation, charge sheet was submitted before the court."

3. Upon completion of investigation, charge-sheet was filed against the respondents for the offences punishable under section 376(2)(g)/506/34 IPC and charges were framed against them under the said sections. The respondents pleaded not guilty and claimed trial.

4. To establish the case against the appellant, the prosecution examined 22 witnesses at trial.

5. The statement of the respondents under section 313 Cr.P.C. recorded, wherein they denied the case of the prosecution and stated that they were falsely implicated in the case. The respondents lead defence evidence and examined 4 witnesses in their support.

6. The Trial Court, on consideration of the evidence led as well as a perusal of the documents with respect to the age of the prosecutrix, came to the conclusion that the prosecution had failed to establish that the Prosecutrix 'A' was below 16 years of age at the time of the incident. The observations of the Trial Court, in this regard are reproduced as follow:

“53. I have considered the said submissions in the light of the evidence on record produced by PW-15. Admittedly, the only evidence led by the Prosecution to establish the age of the Prosecutrix/victim is the record produced by PW-15. PW-15 brought the admission record of his school, as per which one Anju was admitted in Class IIA in the said school in 24.07.07 vide entry No.12105 (Ex.PW-15/A). An application was submitted at the time of admission of Km. Anju by her mother namely Smt.'M', copy of the said application is Ex.PW-15/C. PW-15 also deposed that 'S.M', father of Anju also submitted the affidavit at the time of admission of his child. (Ex.PW-15/D).

54. A careful perusal of the aforesaid documents however clearly shows that the said records pertain to one Km. Anju and the Prosecution has failed to lead any evidence to establish that the name of the Prosecutrix was also Anju. Moreover, the supporting affidavit (Ex.PW-15/D) though in the name of Sh.'S.M' is apparently signed by Smt.'M'. Further, as per the charge sheet, the surname of the Prosecutrix as police has stated is 'Ahuja', whereas in the admission record produced by PW-15 there is surname of 'Pahuja'. Thus, the documents produced by PW-15 cannot be relied upon, nor can they be said to establish that they pertained to the Prosecutrix 'A' or that her age was below 16 years at the time of the alleged incident.

55. In view of the above discussion, the documentary proof produced by the Prosecution in order to establish the age of the Prosecutrix must necessarily be discarded. Consequently, it must be held that Prosecution has been unable to establish that Prosecution 'A' was below 16 years of age at the time of the alleged incident.”

7. Further, broadly speaking, the Trial Court acquitted the respondents, *inter alia*, finding that the testimony of the prosecutrix 'A' was not credible and trustworthy and was at complete variance with the case of the prosecution and in contradiction with the testimony of her sister 'N'. The Trial Court also concluded that the limited CCTV footage, that was exhibited during trial, was also at variance with the statement of the prosecutrix 'A'.

8. The relevant observations of the Trial Court, in respect to the testimony of the prosecutrix, are as follows:

“70. From the aforesaid statement of the Prosecutrix 'A' the following facts clearly emerge:

- a) 'A' was not aware of the name of the accused Pintu and Hawan Pratap even on the day when her examination-in-chief was recorded i.e. on 02.02.2013. Till date of recording of her examination-in-chief and even on 11.02.2013 when she was cross-examined, the victim was not aware of the names of accused Pintu and Hawan Pratap. It is noteworthy that even her statement under section 164 Cr. PC (Ex.PW-1/B) does not find mention to the name of any of the accused persons and she has only referred to them as “railways officers” and “Mandir wala Ladka” in her said statement Ex.PW-1/B.
- b) Prosecutrix 'A' (PW-1) time and again deposed before the court that she was under pressure of the IO/Insp.Meera Sharma not only for registration of the FIR of the case but also for giving consent for her medical examination and even at the time of recording of her statement under section 164 Cr.PC. She has also deposed before the court that IO/Insp.Meera Sharma released one of the railway officer who was apprehended from the railway station and pressurize her as she did not want her to disclose anything about the third offender.
- c) The most striking feature which emerges from the testimony of Prosecutrix 'A' is that as per the witness, she was raped firstly

by two railway officials, including accused Pintu and thereafter by accused Hawan Pratap. Thus, as per the testimony of PW-1 three persons including two railway officials committed rape upon her.

71. This claim of the Prosecutrix is entirely different from the case of Prosecution. It may be necessary at this juncture to revisit the contents of the charge sheet, as per which the prosecutrix 'A' was allegedly raped by only two person i.e accused Pintu and Hawan Pratap.

72. What is also striking is that the complaint Ex.PW-1/A, on which the case in hand was registered, clearly bears the name of the accused Pintu and Pappi, although, the Prosecutrix testified before the court that she was unaware of the names of either of the accused persons even till date, when she has been cross-examined by the defence. She rather voluntarily added that she came to know about the name of accused Hawan Pratap in the court on that day during her cross-examination when it was told to her by Learned defence counsel. Admittedly, her statement under section 164 Cr.PC (Ex.PW-1/B) also does not mention the name of either of the accused persons.

73. A reference to her MLCs (Ex.PW-1DA & Ex.PW-1DB) would also show that in both the said MLCs she while disclosing the alleged history to the examining doctors, told that the alleged sexual assault was by "two railway officers". Admittedly, accused Hawan Pratap is not a railway official. It was also testified by the prosecutrix 'A' that one of the railway officials was apprehended at the railway station and was let off by Insp.Meera Sharma and she has been pressurized by her not to reveal anything about the third railway officer.

74. It appears from the above discussion and careful scrutiny of the testimony of the Prosecutrix 'A' that she was allegedly raped by three persons and not by two persons as projected by the prosecution. The testimony of the Prosecutrix 'A' is thus clearly at variance with case of the Prosecution as per the charge-sheet. She has also categorically deposed before the court that she was under pressure of Insp.Meera Sharma and that she did not want to get any case registered as they were already facing lot of problems.

75. In the light of the aforesaid facts and circumstances and from the testimony of the victim 'A' it is apparent that his testimony is at variance from the case as borne out from the charge sheet and cannot be categorized as reliable or credible piece of evidence.

Testimony of PW-14 'N', sister of the Prosecutrix : Variation in statement of Prosecutrix 'A' and her sister 'N'.

76. Contrary to the testimony of PW-1, her sister PW-14 'N' deposed that on 04.09.2012, at about 3AM she along with her sister 'A' reached at NDRS for going to jammu and while they were sitting at railway station, they found that they had lost their train tickets.

77. It may be reiterated that in her examination-in-chief the Prosecutrix 'A' deposed that they had gone to the railway station with all their belongings as they had no place to live. It may also be relevant to revert to the cross-examination of PW-1 at this juncture, wherein she admitted that she had stated before the police at the time of recording of her statement under section 161 Cr.PC as well as learned MM that they had to go to Jammu and that they had cooked up the story to go to Jammu even at the railway station otherwise they could not have stayed at railway station. PW-1 'A' also deposed that they had gone to stay at railway station as they did not have any money to live at any hotel.

78. Now coming back to the testimony of PW-14 'N', wherein she deposed that she saw accused Pintu present at the railway station in uniform. Accused came to them and asked from them about the reason for sitting there. She told the accused that they had lost their train tickets. Accused Pintu took her sister 'A' to Cloak room and got deposited their luggage. At about 7AM, PW-14 'N' along with her sister went to doctor as she was feeling unwell. Accused Pintu made several calls on her mobile and informed that he had booked one room for them. She refused for the same stating that they do not require any room.

79. At this juncture, the testimony of PW-14 'N' may again be read in conjunction with that of Prosecutrix 'A', who had deposed that she had called one of the railway officer requesting him to find a place for them to stay. PW-14 further deposed that accused Hawan Pratap offered help to them and accompanied them to railway station is TSR. She remained in the TSR, while her sister 'A' and accused Hawan Pratap went to accused Pintu to take back their luggage. After 15 minutes she received phone call of her sister 'A' on her mobile phone who was screaming and she told her that she had been raped and also told her to flee away from there as they want to rape you also. Thereafter, she made a call at 100 number.

80. Here again the testimony of PW-14 'N' and PW-1 'A' are at variance with each other. As per PW-1 'A' she was told by one of the railway officer before the commission of the alleged rape to call her sister as they wanted to rape them one by one. PW-1 also deposed that she did not listen to him and told her sister to go away. On the other hand, her sister i.e PW-14 'N' deposed that 'A' called her and warned her that they want to rape her also and told her to flee away from there.

The testimony of PW-14 that she made a call at 100 number is also apparently contrary to the very case of the Prosecution, as it is the case of the Prosecution that the call at 100 number was made by Krishna Anand (PW-5). I may also be relevant to note that not only PW-1 but PW-14 also claimed that *“My sister was given beatings and she was asked to give her statement before learned MM as directed by the police. Insp. Meera Sharma had given beatings and threats to my sister.”*

.....

93. The prosecution relied upon the testimony of PW-13 ASI Sube Singh, Incharge CCTV Control Room at NDRS to prove the CD of CCTV footage of cameras installed at railway station. PW-13 deposed that on the request of the police, he prepared a CD of CCTV footage of Camera No.7 from 09:10PM to 09:14 PM, Camera No.9 from 09:10 PM to 09:12PM and Camera No.19 from 07:58AM to 08:02AM. The said CD is Ex.PW-1/DX.

94. In his cross-examination however, the witness admitted that vide letter dated 07.09.2012 the IO had asked them for CCTV footage for the period from 8:30AM to 9:30PM of 04.09.2012. He voluntarily added that CCTV footage which he had submitted running into 2-4 minutes was specifically prepared at the instance of SHO Meera Sharma and her staff after they watch the entire recording for the aforesaid specific period.

95. From the testimony of PW-13 it clearly emerges that though the IO initially, by way of her communication dated 07.09.2012 (which forms part of the charge sheet) had asked for the CCTV footage on 04.09.2012 from 8:30PM to 9:30PM, however, three clips of 04 minutes, 02 minutes and 04 minutes, respectively from the three different cameras installed at railway station were obtained in a CD. PW-13 clarified that the said CCTV camera footage running into 2-4 minutes was specifically prepared at the instance of Insp.Meera Sharma and her staff after they watched the entire recording. Selective clippings brought before the court at the instance of Insp.Meera Sharma thus must necessarily be read adversely against the prosecution. Apparently, an attempt has been made to conceal some parts of the CCTV recordings and selective recordings of the CCTV have been brought before the court as evidence.

96. The little CCTV recordings that were exhibited during the trial were also shown to the victim i.e PW-1. After watching two recordings in CD containing video recording from camera no.9 and camera no.7 from 9:10PM to 9:12PM and 9:10PM to 9:14PM respectively, both dated 04.09.2012 the witness i.e PW-1 stated that neither she nor accused Hawan Pratap is visible in any of these recordings. In her further cross-

examination recorded on 05.06.2013 the witness was shown recoding from CD (Ex.PW-1/D) recoded from camera no.19 from 7:58AM to 8:02AM on 04.09.2012. She admitted that in the said recording she is seen moving on the platform along with one bag.

97. This testimony of Prosecutrix (PW-1), to my mind, is extremely damaging to the case of the prosecution. It is noteworthy that it is the claim of the prosecutrix that she was having two bags with her which were deposited in the cloak room by accused Pintu before she left from railway station along with her sister 'N' as her sister 'N' had to be taken to a doctor. It is the claim of prosecutrix 'A' as well as PW-14 'N' that they left from the railway station at about 7-7:30AM. The CCTV footage from camera no.19 from 7:58AM to 8:02AM of 04.09.2012 however admittedly shows prosecutrix moving on the platform along with one bag. Thus, her claim that she left along her sister 'N' to go to doctor at 7-7:30AM after having deposited their luggages in the cloak room is falsified by this clipping."

9. After appreciating the evidence on record and the reasons elaborated above, the Trial Court has acquitted the respondents of the charges framed against them, while concluding as follows:

"111. In view of the above discussion, I find that the Prosecution case is nothing but a jumbled compilation of facts bits of evidence which cannot be categorized as 'credible'. The facts brought on record during trial has falsified the very basis of the case of the prosecution in as much as the victim has denied that she even knows the contents of her complaint Ex. PW-1/A, on the cases of which the aforesaid FIR was registered. She has time and again stated before the court that she has been pressurized by the IO/Insp. Meera Sharma at various stages of investigation. Though it has come on record that accused Hawan Pratap and Pintu were identified by her during the course of trial as the person who raped her on 04.09.2012 however, the entire claim of the prosecutrix 'A' becomes doubtful in view of various contradictions which have been pointed out earlier while discussing her testimony. Moreover, her claim in the court is clearly at variance with the case of the prosecution as borne out from the charge sheet, which has also been discussed in the preceding paragraphs of the judgement. The alleged place of incident, the recoveries stated to have been affected from the said place of incident and the place and manner of arrest of the two accused is extremely doubtful and not proved as per the case of the prosecution. Apart from this, the most striking fact which has featured

in the evidence during trial is that apparently one of the assailants was let off by Insp.Meera Sharma, though as per the prosecutrix 'A', he was apprehended. This matter is extremely serious.

112. In these circumstances, the accused persons, to my mind, must be given benefit of doubt in view of the facts as has been brought before the court in the course of trial, particularly as drawn out from the cross-examination of the relevant prosecution witnesses. Accordingly, both the accused persons viz., *Hawan Pratap Singh @ Pappi s/o Sh. Cheddi Singh and Pintu Kumar s/o Sh. Upender Yadav* are hereby acquitted of all the charges on which they were facing trial.”

10. Mr. Ashish Datta, Learned APP appearing on behalf of the State, whilst assailing the judgment of the Trial Court, urged before us that the prosecutrix 'A' was aged below 16 on the date of the incident, and in this regard her relevant school record was brought on record, but the Trial Court erroneously disregarded the said record due to there being minor errors in the documents.

11. It is further urged before us by the Learned APP, that the testimony of prosecutrix 'A', was credit worthy, reliable and supported the case of the prosecution and that the Trial Court has gone on an unnecessarily pedantic examination of her testimony, whilst finding it unreliable. Variations, if any, it is asserted by the Learned APP, in the statement of the prosecutrix, are minor and do not shake her credibility.

12. *Per Contra*, learned counsel appearing on behalf of the respondent whilst supporting the impugned judgment in its entirety,

would urge that the same does not call for any interference; and further contended that there were major contradictions and discrepancies in the case of the prosecution, in particular, testimony of the prosecutrix, which did not support the case of the prosecution, but rather acts as the fatal lynchpin in demolishing the case of the prosecution.

13. We have heard counsel appearing on behalf of the parties and perused the evidence on record.

14. We first proceed to examine the findings, with regard to the determination of age of the prosecutrix.

15. The date of birth of the prosecutrix is claimed to be 23.10.1996. As date of incident is 04.09.2012, the prosecutrix would be less than 16 years of age on the said date of the incident.

16. In this regard, PW-15, who was the Principal of the school where the prosecutrix was stated to have been admitted in class II-A, produced school admission register (Ex PW 15/A), which, as per entry dated 24.7.07, gives date of birth of one 'Anju Pahuja' as 23.10.96, who is claimed to be the prosecutrix 'A'.

17. Neither the first name, nor the second name of the prosecutrix 'A' matches that of 'Anju Pahuja', the name mentioned in Ex PW

15/A. Additionally, even the supporting affidavit (Ex PW 15/D), though in the name of one 'Surender Mohan', is signed by one 'Madhu'.

18. The documents produced cannot be relied upon and must necessarily be disregarded, as they completely fail to establish that they pertain to the prosecutrix, in the present case. Consequently, the prosecution has failed to establish that the prosecutrix was below the age of 16 at the time of commission of the alleged incident.

19. We therefore, do not find any cause to interfere with the finding of the Trial Court, in this regard.

20. We now proceed to examine the finding, with regard to the charges framed against the respondents.

21. The Trial Court returned a finding of acquittal in favour of the respondents, for the charges framed against them under section 376(2)(g)/506/34 IPC, and found the testimony of the prosecutrix untrustworthy, unreliable and self-contradictory with her earlier assertions, read in conjunction with other evidence on record.

22. It is relevant to point out that the prosecutrix, was cross examined, at great length, in court, wherein she was confronted, in particular, with her earlier statements given under section 164 Cr.P.C.

(Ex. PW1/B); her complaint given to the police/rukka (Ex. PW1/A); along with other evidence on the record. The testimony of the prosecutrix assumes significance and warrants careful scrutiny particularly in light of the facts and circumstances of the present case, as also, the findings returned by the Trial Court.

23. The Hon'ble Supreme Court of India in **Rai Sandeep v. State of NCT of Delhi**, reported as, **AIR 2012 SC 3157**, whilst considering the facts, in a case where the accused/appellant was charged for an offence under Section 376 (2)(g) IPC, laid down the golden standard required to be met in order to appreciate the evidence of a prosecutrix, as follows:

"15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test

applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. **To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."**

...

25. In the decision reported as Krishan Kumar Malik v. State of Haryana (supra) in respect of the offence of gang rape Under Section 376 (2) (g), Indian Penal Code, it has been held as under in paras 31 and 32:

31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Code of Criminal Procedure), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the Appellant."

24. With the above observations in mind, we proceed to examine the evidence on record, particularly the testimony of prosecutrix 'A'.

25. The facts lead up in such a way that it is the case of the prosecution that, on 04.09.2012, the prosecutrix along with her sister, came to the New Delhi Railway Station, where they were approached by the accused railway officers who enquired from them their purpose for being at the station. The prosecutrix informed them that they came to the station as they had to go to Jammu, and could not go back to their home as it was late in the night. This position finds reflection in the complaint as well as the statement of the prosecutrix under section 164 Cr.P.C. In her examination in court, however, she admitted that this story was cooked up and false.

26. The prosecutrix rather, also denied her previous residential status, which led up to her coming to the railway station. She had earlier stated that they live in a rented accommodation in Nihal Vihar and Chandan Vihar, and had left those places due to dreadful incidents there. As they were then rendered homeless, they lived in a Gurudwara for some time and then came to the station on the date of the incident. However, in her examination in court, she denied stating in her statement under section 164 Cr.P.C. that she lived in the aforesaid rented accommodation and then stated that she was under pressure from Inspector Meera Sharma (the I.O.) to state the same.

27. It is also the case of the prosecution that, after the prosecutrix had deposited their luggage bags in the cloak room of the railway station, the prosecutrix along with her sister, went to a doctor at Kirti Nagar – as her sister was keeping ill – subsequent upon which they returned to the railway station; and that it is during the said journey that one of the accused came to be known to them and accompanied them to the railway station.

28. Although the prosecutrix stated that the said doctor had been treating her sister over a long period of time, yet, the prosecutrix, did not know either the name of the said doctor, nor his address.

29. This circumstance brings into doubt the entire foundational facts leading up to the present incident, as to the circumstance of the prosecutrix's arrival at the scene of the incident.

30. One of the most peculiar circumstances that stands out, in the present case, is that the case of the prosecution from the very beginning, has been that the prosecutrix was alleged raped by two railway officers, but there seems to be clear confusion as to the number of people who committed the act on the prosecutrix and whether the prosecutrix knew the name of the offenders.

31. The prosecutrix in her complaint, mentions the name of one of

the offenders as 'Pintu' and the other one as 'Pappi'. She categorically states that both of them had committed the offences complained of, against her, and does not at any point mention the name of any third person.

32. The prosecutrix had undergone two Medicolegal Examinations (hereinafter referred to as 'MLC'), exhibited as (Ex PW-1/DA & Ex.PW-1/DB). In both the MLCs, it is categorically stated that she was assaulted by "two railway officers". There is clearly no mention of any third person, nor do the names of the accused respondents find mention in the MLCs. In her statement under section 164 Cr.P.C., she does not mention the name of any of the offenders, and only refers to the accused as "railway officers". It is also here that she specifically mentions of one "Mandir wala Ladka", who is also stated to have committed rape upon her.

33. In her testimony in court, the prosecutrix does not mention the accused by name and only refers to them as officers, and the boy who met them at the Seven Storied Temple at Tilak Nagar. She unequivocally states that she did not know the name of any accused till the time of her statement under section 164 Cr.P.C. She further testified that she did not know any nickname of the accused Hawan

Pratap, then further states that she does not know the name of any accused person. In her cross examination, she states that she did not know if the name of the two accused were mentioned in her complaint. She further states that she did not state the name of the accused to the police as she was not knowing the accused.

34. It appears that, rather mysteriously, the name of the accused persons crept into the complaint of the prosecutrix. It remains unexplained as to how the name of the accused could figure in the complaint of the prosecutrix, if she was not aware of the same and also did not state the same to the police.

35. It is not the case of the prosecution that the accused Hawan Pratap Singh @ Pappi, is a railway officer. It is unclear as to whether the complainant was assaulted by 2 persons or 3 persons and whether the accused Hawan Pratap Singh @ Pappi is supposed to be a part of the two railway officers who are alleged to have assaulted the prosecutrix, or is the third person.

36. The case of the prosecution is against the two respondents herein. The prosecutrix in her complaint only mention of 2 persons, who committed the present offence. During her testimony in court, the prosecutrix stated that two officers had taken her to a room at second

floor of the station and raped her, then subsequently a third person who she met at Tilak Nagar, came to the room and raped her.

37. The prosecutrix further testified that she was under pressure from Inspector Meera Sharma, as the latter did not want the former to disclose anything qua the third offender. She also states that the third person was also apprehended by the police, but later on released.

38. The testimony of the prosecutrix axiomatically appears to belie the very foundation of the case of the prosecution.

39. It is also the testimony of the prosecutrix that when she requested one of the railway officers who had taken her luggage bags, to return the same, instead of returning the same, the officer told the prosecutrix to call her sister as well and that they would proceed to do "*galat kaam*" with her sister and then with the prosecutrix. On hearing this, it is stated by her that she told her sister to go away. If such is the case, it is rather unusual that the sister, never called the police or raised an alarm at the railway station, which was evidently a crowded place.

40. The above testimony is also contradictory to the testimony of Neha Ahuja (PW-14), the sister of the prosecutrix. It is the testimony of PW-14 that she received a called from the prosecutrix, wherein the prosecutrix had stated that she *had* been raped and then told PW-14 to

flee away as the assailants wanted to rape her as well.

41. The statement of PW-14 also contradicts the case of the prosecution as to who called the police, after the alleged incident had taken place. The case of the prosecution has been that one Krishna Anand (PW-5), called the police. The prosecutrix, in her testimony, states that it was the auto driver who called the police. However, PW-14 states in her testimony that she was the one called 100 number.

42. We must also observe that, it appears that the prosecutrix, when in a quandary, time and again, shifts from her complaint and her statement under section 164 Cr.P.C and denies making statements that are recorded in her complaint and her statement under section 164 Cr.P.C. She denies making several statements which are recorded by the magistrate who recorded her statement under section 164 Cr.P.C. and repeatedly states that she was under pressure from Inspector Meera Sharma, the I.O. At one point in fact, she even goes on to state that she was not aware of the contents of her complaint and only her signatures were obtained on the same.

43. The above circumstances highlight and demonstrate a lack of credibility in the case of the prosecution and the statement of the prosecutrix.

44. Another important piece of evidence that must be examined, in conjunction with the testimony of the prosecutrix, is the limited CCTV footage recorded at the New Delhi Railway Station at the relevant time, which was exhibited in the Trial Court. In the Trial Court, a CD containing CCTV footage of Camera No. 7 from 9:10 PM to 9:14 PM, Camera No. 9 from 9:10 PM to 9:12 PM and Camera No. 19 from 07:58 AM to 08:02 AM, was exhibited as Ex. PW-1/DX.

45. The said CCTV footage was proved by ASI Sube Singh, (PW-13), who was incharge of the CCTV control room at the railway station. PW-13 testified that the limited CCTV footage, which was produced in court, was prepared expressly at the instance of Inspector Meera Sharma.

46. The said CCTV footage which was viewed by us, also does not support the case of the prosecution. Rather interestingly, when the CCTV footage of Camera No. 9 and 7 respectively were shown to the prosecutrix in the Trial Court, she admittedly stated that neither she, nor the accused (Hawan Pratap Singh @ Pappi) were visible in either of the two exhibited footages.

47. The prosecutrix further admits to being visible in the relevant footage of Camera No. 19, where she is seen moving along the

platform with one bag. However, the same is in the teeth of the case of the prosecution, which has always been that both the luggage bags had been deposited in the cloak room of the railway station. How the prosecutrix is visible in the subject footage with one of the luggage bags' is also a glaring unexplained contradiction.

48. A fortiori the CCTV footage is one of the best pieces of evidence available and its importance cannot be overlooked. [Ref: **Tomaso Bruno v. State of U.P.** reported as (2015) 7 SCC 178]

49. All the above highlighted circumstances, in our opinion, do not support the case of the prosecution and fall foul of the principles laid down by the Hon'ble Supreme Court in *Rai Sandeep (Supra)*.

50. In light of the facts and observations in the present case, we find that the testimony of the prosecutrix cannot be relied for the conviction of the respondents, as charged.

51. It is settled law that that an order of acquittal cannot be interfered with lightly and must only be done when there are substantial and compelling reasons to do so. Reference in this regard is made to the decision of the Supreme Court in **Ghurey Lal V. State of U.P.**, reported as (2008) 10 SCC 450, wherein it was held:-

"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by

number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;
 - (ii) The trial court's decision was based on an erroneous view of law;
 - (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
 - (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
 - (v) The trial court's judgment was manifestly unjust and unreasonable;
 - (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.
 - (vii) This list is intended to be illustrative, not exhaustive.
2. The appellate court must always give proper weight and consideration to the findings of the trial court.
 3. If two reasonable views can be reached--one that leads to acquittal, the other to conviction--the High Courts/appellate courts must rule in favour of the accused."

52. In view of the foregoing discussion, we find ourselves unable to conclude that the prosecution was able to prove its case beyond reasonable doubt or that the judgment of acquittal returned by the Trial Court, suffers from any perversity, so as to warrant reversal by this

Court, in the present appeal.

53. Resultantly, the present appeal fails and is accordingly dismissed.

54. The bail bonds and surety of the respondents stand discharged. The Trial Court Record be sent back forthwith.

55. Lastly, the Trial Court, while acquitting the respondents has also directed the Commissioner of Police, Delhi to initiate inquiry into the allegations made against Inspector Meera Sharma. As we have found the testimony of the prosecutrix, itself, to be unreliable, we find that the direction to initiate inquiry against Inspector Meera Sharma is unwarranted and the same is accordingly set-aside.

56. Copy of the judgment be sent to the Jail Superintendent, Tihar Jail for information and also be sent for updation of the records.

SIDDHARTH MRIDUL
(JUDGE)

BRIJESH SETHI
(JUDGE)

SEPTEMBER 26th, 2019

dn/ym