

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.08.2020

+ **CRL.A. 265/2017& CRL.M.(BAIL) 7455/2020**

SAMEEM @ SAMEER

..... Appellant

Versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant :Ms Aishwarya Rao, Advocate.

For the Respondent : Mr Amit Gupta, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 07.01.2017 whereby the appellant was convicted of the offences punishable under Sections 452, 376 and 506(II) of the Indian Penal Code, 1860 (IPC). The appellant also impugns the order on sentence dated 16.01.2017 whereby he was sentenced to (i) serve rigorous imprisonment for a period of seven years with a fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a further period of thirty days, for the offence punishable under Section 376 of the IPC; (ii) serve rigorous imprisonment for a period of six months with a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a

further period of fifteen days, for committing the offence punishable under Section 452 of the IPC; and (ii) serve rigorous imprisonment for a period of six months for an offence punishable under Section 506(II) of the IPC. The Trial Court further directed that all sentences would run concurrently.

2. The appellant was prosecuted pursuant to the registration of the FIR bearing no. 402/12 with PS New Ashok Nagar. The said FIR was registered at the instance of a young woman aged about twenty-five years (hereafter referred to as the prosecutrix). She had alleged that on 28.11.2012, the accused (the appellant herein) had entered her house when she was alone and had raped her.

3. It is the prosecution's case that on 16.12.2012 at about 13:25 hours, telephonic information was received that at House No. A-475, NaaleWala Road, near Masjid Wali Pulia, New Ashok Road, one girl has been raped. The said information was entered as DD No. 20/A (Ex.PW4/A). The said DD No. 20/A was handed over to SI Rizwan who proceeded to the spot and upon reaching the house, came to know that prosecutrix along with her mother had already left for the PS. He came back to the police station where he met the prosecutrix and recorded her statement in the presence of her mother and a woman constable (WCt. Moni). After the statement of the prosecutrix was recorded, a *rukka* (Ex.PW15/A) was prepared. The same was produced before the concerned Duty Officer and the FIR in question was registered. The prosecutrix was taken to Lal Bahadur Shastri Hospital

and was medically examined. On the next day, that is on 17.12.2012, the investigation of the case was marked to W/ASI Shobhagyawati (who deposed as PW13). She reached the house of the prosecutrix and met the prosecutrix as well as her mother and her brother. It is stated that she prepared a site plan at the instance of the prosecutrix and recorded the statements of the mother, brother and the sister of the prosecutrix. Thereafter, they proceeded to Shop No. D-57, New Ashok Nagar, where they found the accused (appellant) and he was arrested at the instance of the prosecutrix.

4. The Trial Court evaluated the evidence and had found that the testimony of the prosecutrix was reliable. The Trial Court proceeded on the basis that there was no plausible reason why the prosecutrix – an unmarried young woman – would make such allegation, if it was not true. It relied on her testimony and convicted the appellant.

5. Ms Aishwarya Rao, the learned counsel appearing for the appellant contended that the testimony of the prosecutrix was not reliable and her testimony was not consistent with her statements recorded earlier. She submitted that there was no other evidence apart from the deposition made by the prosecutrix, which supported the prosecution's case. Since she was not a sterling witness, the appellant could not be convicted solely on the basis of her testimony. She further submitted that in addition, there was a significant delay in registration of the FIR and there was no plausible explanation for the such delay.

Reasons and Conclusion

6. It is apparent from the plain reading of the impugned judgment that the appellant has been convicted solely on the basis of the testimony of the prosecutrix and there is no other evidence which corroborates her allegation. In the given circumstances, it is essential to carefully examine her statements and her testimony.

7. The information relating to the offence was telephonically communicated to the police officials at about 13:25 hours on 16.12.2012. The same was recorded as DD No. 20/A (Ex.PW4/A). The said information did not mention that the alleged offence was committed on 28.11.2012. The prosecutrix had stated that their neighbor had made the said call. The IO, SI Shobhagyawati, who testified as PW3, was cross examined on this aspect and she conceded that she had not met with the person who had called the police on 16.12.2012 but had come to know his name during the course of the investigation.

8. It is important to note that there was a considerable delay in reporting the incident and registration of the FIR. Although it is alleged that the offence was committed on 28.11.2012 at about 09.00 p.m, no information regarding the said offence was communicated to the police officials at the material time. In fact, it is the case of the prosecution that the prosecutrix had not disclosed this information to any person including her family members at the material time. She did

so on 16.12.2012. The prosecutrix had sought to explain this delay by testifying that she did not inform this incident to any person “due to fear”. Plainly, this explanation is a weak one considering that she did go to the police station after eighteen days and made a complaint (statement – Ex PW3/A). The delay in filing the FIR is material but not dispositive of the matter.

9. The statement of the prosecutrix was recorded at PSNew Ashok Nagar on 16.12.2012 (Ex.PW3/A). In her initial statement, she stated that on 28.11.2012 at about 09:00 pm, she was alone at home. Her mother and her younger sister had gone to the market for purchasing vegetables and both her brothers had gone to ply the TSRs. At that time, a boy named Sameem, who worked at the barber shop in front of her house, entered the house and bolted the door. She claimed that she shouted and asked him why he had closed the door and he responded by saying that he would tell her in a moment (“*wo bola abhibatatahunkyu band karrahahun*”). She stated that he came and hugged her (“*gale lagya*”) and thereafter, gagged her mouth from his hand. Thereafter, he pushed her on the bed. He untied her salwar and committed a wrong act with her (“*galatkaamkia*”). She stated that after he had done so, he warned her that if she informed anyone about the incident, he would throw acid on her and her family members. She stated that she got scared and that is the reason why she did not inform anybody about the incident. She somehow gathered courage on that day (16.12.2012) and informed her mother and her sister about the said incident.

10. It is the prosecution's case that after the statement of the prosecutrix was recorded, she was taken to Lal Bahadur Shastri Hospital, Khichdipur, Delhi for her medical examination. She was examined at 9.30 p.m. on the same day, that is, on 16.12.2012. A plain reading of the MLC (Ex PW3/B) indicates that the prosecutrix had informed the concerned doctor about a sexual assault by an "*unknown assailant*" on 28.11.2012. The MLC reveals that her cervix and vagina were healthy. Her vaginal examination also indicated that the hymen was intact. Her medical examination also did not indicate any injury on her body.

11. On 22.12.2012, the statement of the prosecutrix was recorded under Section 164 of the Cr.PC. In her statement, she stated that she has two brothers and a sister and they along with their mother live at the given address. She stated that there is a barber shop in front of their house where Sameem (the appellant herein) works with his elder brother. She stated that she does not know Sameem personally but can identify him as he has been working at the barber shop in front of her house. She stated that prior to the incident, she had no contact with him. She stated that on 28.11.2012, at about 08:30 pm, she was alone at her home. Her mother along with her younger sister had gone to the market to buy vegetables. Both her brothers were also plying their auto rickshaws. She stated that she was preparing dinner in the veranda and the main door was closed but it was not locked and at that time. Sameem came inside the house from the main door and locked the door from inside. She immediately asked him as to why he had

come inside and he responded by stating that he would soon tell her why he had come inside. She stated that she started rising towards the main door to unlock it but in the meanwhile, Sameem came towards her and put his hand on her mouth and gagged her. She alleged that he forcibly took her inside one of the bedrooms, which was near the main gate, and threw her on the “*takhat/bed*”. The rear side of her head struck against the *takhat/bed*. She stated that the Sameem came near her and untied the *nada* of her salwar. She was not wearing any panty at that time. She stated that the accused also lowered his trousers a bit and came over her and raped her. She was in pain but he continued for about ten minutes. She stated that because she had hit her head against the bed, she could not offer resistance as she was feeling dizzy but was conscious. She stated that the accused then stood up and started zipping his trousers. At that time, she was feeling very weak and therefore, was not able to rise from the bed and fight him or offer any resistance. She further stated that he warned her not to say anything to anybody otherwise he would throw acid on her and her family members. She claimed that she was terrified and therefore, did not tell anything to anybody. She stated that after the accused had left the house, she got up from the bed, washed her face, urinated and washed her private parts with water. She stated that since it was time for her mother and sister to return, she did not lock the door from inside. In order to conceal what had happened with her, she tried to look normal and started preparing the meal for the night. She stated that she did not feel like talking to her family members for days to come. However, after that date, she started locking the door from inside, but the

accused Sameem never came inside the house again. She stated that she was feeling very guilty and used to think about the incident all the time. It became unbearable and she informed her mother about the incident in the morning of 16.12.2012. She stated that her mother scolded her as to why she had not informed her about the incident earlier. She responded by telling her mother that the accused had threatened her with dire consequences and that he would throw acid on her and her family members and therefore, out of fear, she did not say anything. She stated that thereafter, she also told her sister about the incident. Her mother called her brothers home that afternoon. She affirmed that thereafter, her brothers caught hold of the accused and straight away took him to the police station. She stated that thereafter family members of the accused Sameem offered to compromise the matter but she wanted Sameem to be given the maximum punishment.

12. It is at once clear that the statement of the prosecutrix recorded under Section 164 of the Cr.PC – which was recorded six days after her initial complaint – is not entirely consistent with her initial statement. The prosecutrix had made significant improvements to her initial complaint. In her complaint, the prosecutrix had not stated that at the time of the incident, she was preparing dinner in the veranda but she stated so in her statement under Section 164 of the Cr.P.C. Whereas in her complaint, she stated that the accused had come inside the house and after locking the door from inside had come and hugged her (*gale lagaya*), no such statement was made by her in her Statement under Section 164 of the Cr.PC. She now stated that she rose to go

towards the main door to unlock it but in the meanwhile, the accused came and put his hand on her mouth and gagged her. As observed above, this narration is not consistent with her initial statement/FIR. Further in her statement under Section 164 of the Cr.PC, she stated that the accused took her inside the bedroom, which was near the main gate and threw her on the *takhat*/bed in the manner that the rear side of her head struck against the *takhat* /bed. She had made no such statement in the initial complaint recorded on 16.12.2012. She also affirmed that because of her head hitting the bed, she felt dizzy and could not offer resistance to the accused. She provided no such explanation in her initial statement/complaint (statement recorded on 16.12.2012).

13. Importantly, in her statement recorded under Section 164 of the Cr.PC, she stated that the accused had lowered his trousers a bit and had come over her and had raped her. She was in pain but he continued for about ten minutes. No such allegation was made by her in her complaint. This is also significant since it is not corroborated by any medical evidence. She had stated that she continued to lie in the bed as she was feeling weak and got up after some time after the accused had left the house. Again, there is no such statement made by her in her complaint (Ex PW3/A). The complaint is also silent as to what the prosecutrix did thereafter. However, in her statement under Section 164 of the Cr.PC, she stated that she got up, washed her face, urinated and washed her private parts. It is also material to note that

she stated that she did not lock the door from inside after the accused had left.

14. In the statement recorded under Section 164 of the Cr.P.C on 22.02.2012, the prosecutrix affirmed that after she had narrated the incident to her mother in the morning of 16.12.2012, her mother had scolded the prosecutrix for not informing her about the incident earlier. No such statement has been made in the complaint. She further stated that thereafter, her mother called both her brothers home in the afternoon. She stated that both her brothers caught hold of the accused and took him to the police station. The prosecution's case is silent as to whether the accused was brought to the police station on 16.12.2012. According to the prosecution, the statement of the prosecutrix was recorded in presence of her mother.

15. The prosecutrix was examined as PW3. Her examination-in-chief was very brief. She testified that a boy who was running a barber shop in front of her house and whose name she did not know at that time, had entered into her house and closed the main gate by bolting the door. She had enquired from him as to why he had closed the door and he replied that he would just tell. She alleged that he closed her mouth by putting his hand on her mouth. He pushed her on the bed, untied her salwar and committed a *galatkaam* (rape) after opening his trousers. She alleged that he threatened her that if she disclosed the incident to anyone, he would throw acid on her family members. She stated that she did not inform anyone of the incident due to fear, but

on 16.12.2012, she told her mother and sister about the incident. She stated that her mother took her to PS New Ashok Nagar and thereafter, the police took her to LBS Hospital. She identified her signatures on the MLC. She deposed that her statement was recorded under Section 164 of the Cr.PC.

16. As is apparent from the above, her testimony is also not entirely consistent with her complaint recorded on 16.12.2012. There is no allegation that the accused had come and hugged her and thereafter, gagged her from his hand. Her complaint also did not mention that the accused had locked the main gate; she alleged that the accused had entered inside the house and closed the door. However, her examination-in-chief is consistent with her initial statement to the extent that in her initial complaint (recorded on 16.12.2012) she had stated that the appellant had gagged her mouth and pushed her on the bed (*"mujhe bed par dhakeldia"*). But this is in material variance to her statement recorded under Section 164 of the Cr.P.C on 22.12.2012. In her statement, she had stated that the accused had come inside her house from the main door and had locked the main door from inside. She had asked him why he had come inside and he had told her that he would soon tell her why he had come inside. She stated that she starting rising in order to go towards the main door to unlock it, but in the meanwhile, he came towards her and put his hand on her mouth and gagged her and then he forcibly took her inside one of the bedrooms, which was near the main gate and he threw her on the *takhat*/bed.

17. First of all, her statement that she starting “rising” does indicate that either she was sitting or lying down. But her complaint recorded on 16.12.2012 and her testimony, do not indicate that she was sitting down or lying down and had risen from her position on seeing the appellant. Secondly, neither in her initial statement nor in her examination-in-chief, there is any mention of the accused taking her inside a bedroom near the main gate. A plain reading of her statement recorded on 16.12.2012, suggests that she was in the room where the bed was located as she had merely stated the accused had come inside the house, bolted the door and pushed her on the bed. There was no allegation that he had dragged her from any of the outer rooms or veranda to another room. The prosecutrix had not mentioned that she was preparing dinner in the veranda at the material time either in her initial statement recorded on 16.12.2012 or in her examination-in-chief. The statement that she was preparing dinner in the veranda was made by her in her statement recorded under Section 164 of the Cr.P.C on 22.12.2012. In her cross-examination, she stated that she was preparing food in the veranda of her house on the date of the incident “due to heat”. She also stated that the distance between the veranda and the main gate of her house was about 10-12 feet.

18. The weather at 9.00 PM at night in the end of November is not hot. Thus, the reason given by her for preparing food in the veranda, if at all, is difficult to accept.

19. She further stated in her cross-examination that she raised an alarm when the accused entered her house. She stated that she ran towards the main gate but the accused bolted the main gate door. He gagged her mouth with his hand. She stated that she tried to push him to save herself but the accused took her by force into a room facing the road. Her narration of the events on 28.11.2012 are clearly not consistent. In her statement recorded under Section 164 of the Cr.PC, she stated that she started to rise and the accused gagged her mouth. In her initial statement she stated that the accused had come inside the house and bolted the door and then hugged her. In her cross-examination she stated that she ran towards the main gate but the accused bolted the main gate door and gagged her mouth. As noticed above, there is also material variance between her initial statement recorded on 16.12.2012 and her statement recorded under Section 164 of the Cr.PC.

20. According to the IO (SI Shobhgyawati), who was examined as PW13, she had prepared the site plan (Ex.PW3/DA) at the instance of the prosecutrix. The prosecutrix also deposed in her cross-examination that the site plan (Ex.PW3/DA) was prepared at her instance in the presence of her mother and identified her signature. However, the prosecutrix could not remember the name of the police official who had prepared the site plan. She also could not state whether a male police official or a female police official had prepared the site plan. She stated that she was having pain in her abdomen at the time of making of the site plan and was resting in another room.

21. The site plan (Ex.PW3/DA) indicates that the house is built on almost a square shaped plot. The front of the house is shown as facing a footpath which is beside a feature described as deep drain where excavation work is being carried on (“*gehranalakhudaikakaamchalrahahai*”). The said feature described as a deep drain is, in fact, a road which was being excavated. The barber saloon where the accused works is opposite the prosecutrix’s house – the other side of the road, which was being excavated. On the front left hand side of the plot, a portion is shaded and mentioned as stairs. On the right side of the site plan, three rooms are shown in a row and marked as Room No.1, Room No.2 and a kitchen. The entire rear of the house is shown as Room No.3. There is space shown between the row of Room Nos. 1 and 2 and the kitchen and the stairs. There is no space, which is described either as an *angan* or a veranda. On the site plan, a point is marked as ‘A’, which is described as a place where the victim was cooking food. The spot where she was allegedly raped is shown in Room No.1 beside a window facing the footpath and the main road (where excavation was being carried out). However, in her cross-examination, the prosecutrix denied that she was at Point ‘A’ at the time when the accused had entered the house. She claimed that she was at another spot, which is nearer to Room No.2 (that is, the room between kitchen and the room where she was allegedly raped). The site plan is of little assistance, inasmuch as, it does not show where the veranda was located. It also does not show that the space leading from Room no.1, 2 and kitchen and Room No.3 is an open space. The stairs are in the front left end corner of the site

plan and the rooms shown are on the rear and on the right hand side of the house. Considering that there are stairs going up to the roof on the other side of the house (opposite the row of rooms described as room no.1, room no.2 and kitchen) it is obvious that at least part of the said space between the rooms and the space would necessarily be covered. The site plan does not indicate the portion that is covered.

22. Although PW13 (SI Shobhagyawati) and the prosecutrix had testified that the site plan was prepared at her instance, the same does not appear to be the case because the prosecutrix had denied that she was cooking food at the spot marked as 'A' at the time when the accused had entered the house. The note on the site plan indicates otherwise.

23. Further, the prosecutrix had testified that there was no digging going on outside her house. And, on 16.12.2012, she had gone to the police station in a TSR that was parked in front of her house. PW13 (SI Shobhagyawati) was entrusted with the investigation on 17.12.2012 and had testified that at the material time, excavation was being carried out in front of the house and it was not possible for a vehicle to reach that spot. SI Mohd. Rizwan (PW15) had testified that he had gone to the house of the prosecutrix on 16.12.2012 and thereafter, on 17.12.2012, accompanied SI Shobhagyawati to the said house. He also stated in his cross-examination that at the time of their visit to the spot, digging work was in progress in front of the house of the prosecutrix and no vehicle could come and go on the road at that

time. He stated that there was only a small space for persons to move on foot.

24. In her cross-examination, the prosecutrix had stated that she tried to push and resist the accused at the time with her hands and legs. However, the accused did not sustain any injuries. She stated that she also tried to push the accused with her hands and legs when he was rapping her but he continued to do so. No such statement was made by the prosecutrix in her initial statement recorded on 16.12.2012. This is also contrary to her statement recorded under Section 164 of the Cr.PC. In that statement, she had stated that the rear side of her head had struck against the *takhat*/bed when the accused had thrown her on it. As a result, she was feeling dizzy and “could not resist” (offer any resistance).

25. In her statement under Section 164 of the Cr.P.C., the prosecutrix had stated that the accused had lowered his pants a little bit and had come over her and raped her. She stated that she was in pain and he continued for about ten minutes and thereafter, he stood up and started zipping his trousers. She stated that at that time she was feeling “*very weak and therefore, was not even able to rise from the bed or fight him or resist him*”. This was not how she had described the incident in her initial complaint (statement) recorded on 16.12.2012. The prosecutrix also did not testify to the aforesaid effect before the Court.

26. Admittedly, there is no material or evidence that corroborates the allegations made by the prosecutrix. On the contrary, the evidence on record suggests to the contrary. The MLC indicates that there were no injuries on the body of the prosecutrix. The MLC records, “cervix and vagina healthy” and “hymen intact”. The fact that the hymen of the prosecutrix was intact does not conclusively establish that she was not subjected to any sexual assault. But the fact that no injuries were found on the body of the prosecutrix is inconsistent with her description that she had been gagged, dragged into the room thrown on the bed resulting in her head hitting the *takhat* rendering her dizzy but conscious. According to her statement recorded under Section 164 Cr.PC, the accused had come over her and raped her. She stated that she was in pain, but the accused had continued to rape her for ten minutes. Her description is that of a full penetrative sexual assault and a violent one; yet, there were no injuries on her body of any kind.

27. The prosecutrix stated in her cross-examination that she had told her mother about the incident while standing at the gate of her house. This aspect does raise some doubts because on one hand the prosecutrix was afraid and had concealed the occurrence of the incident from her family members on account of fearing that the accused would throw acid on her and her family members. On the other hand, when she did find the courage to narrate the incident, she did so while her mother was standing at the gate of her house and not in privacy inside her home.

28. The accused had forcibly entered the house and had forcibly raped her in a violent manner for ten minutes. This was done in the brief period when the mother and the sister of the prosecutrix were away buying vegetables. The prosecutrix was dragged inside the room, she was thrown on the bed and had hurt her head in the process. According to her statement recorded under Section 164 of the Cr.PC, she was feeling weak and could not get up from the bed and had done so after the accused had left the house. However, even in that state, she did not immediately tell her family members about the incident. On the contrary, in her statement under Section 164 of the Cr.PC, she stated that she took efforts to conceal the incident from her family members, she washed herself (her face as well as her private parts) and went about preparing the meal as if nothing had happened. Yet, eighteen days later she disclosed the incident to her mother when she was standing at the gate of the house. According to the prosecution, the incident was immediately made public by the prosecutrix and her family members by creating noise.

29. The police officials had not conducted any investigation as to the call received on 16.12.2012, at 13.25 hours, reporting the said incident. However, one Mr Dinesh Rastogi (PW6), who resides at A-478, New Ashok Nagar, heard the noise from the neighboring house. The house number of the prosecutrix's house is A-475 and therefore it appears that Dinesh Rastogi was residing two houses away from the house of the prosecutrix. He testified that he went to the house of the prosecutrix on hearing a noise and met the prosecutrix, her mother and

her sister and they were making the noise. He asked them what was the matter and they told him that Sameer who works in the barber shop had raped the prosecutrix. He stated that he made a call to the police at 100. The police officials have not examined any of the other neighbours or brought in any evidence with reference to the manner in which noise, if any, had been made by the prosecutrix, her mother and her sister. If PW6's testimony is accepted, then it is obvious that the petitioner, the prosecutrix and her mother would have made a ruckus loud enough for all the neighbours to hear. According to the testimony of PW6, he had only met the prosecutrix, her mother and her sister and they were the ones who were making the noise. He does not mention about meeting the two brothers of the prosecutrix. He, however, stated that he made the call at 100 and his statement was recorded on 16.12.2012. That statement is not brought in evidence. The prosecutrix had stated in her cross-examination that PW6 (Dinesh Rastogi referred to as "the Neighbour") was not present when the accused was apprehended. However, in her cross-examination conducted on 09.09.2015, she states that her brothers had apprehended the accused on 16.12.2012 and taken him to the police station. She stated that at that time her mother, her sister, her brothers and the neighbor who had made the call (assuming it was PW6) had also accompanied her on that day. These two statements are inconsistent because according to the prosecutrix (statement recorded under Section 164 of the Cr.PC), her mother had called her brothersto come home in the afternoon and had informed them about the accused committing the offence. Her

brothers had then apprehended the accused and taken him to the police station.

30. There is also a controversy regarding the arrest of the appellant. The prosecutrix had testified that her brothers had taken the accused to the Police Station on 16.12.2012. However PW13 had testified that the accused was apprehended at the instance of the prosecutrix at his shop on 17.12.12 and no other person (customers, servants or the brother of the accused) was present at the shop. SI Rizwan had testified that there were other customers and servants present at the shop at the time of the arrest. The Arrest Memo shows the place of arrest as PS, New Ashok Nagar.

31. The prosecutrix had mentioned the name of the accused in her initial statement recorded on 16.12.12 (Ex PW3/A) but the MLC records that she had reported being sexually assaulted by an “unknown assailant”

32. It is settled law that the solitary testimony of the prosecutrix is sufficient to return a verdict of conviction. However, that testimony is required to be unimpeachable and trustworthy. There should be no doubt as to the accuracy of the narration of events and the description of incidents, as testified.

33. In ***Rai Sandeep @ Deepu v. State: (2012) 8 SCC 21***, the Supreme Court had set out the attributes of a sterling witness. The Court had, *inter alia*, observed as under:

“22To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it...”

34. In ***Krishan Kumar Malik v. State: (2011) 7 SCC 130***, the Supreme Court had observed as under:

“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...”

35. In ***State of Rajasthan v. Babu Meen: (2013) 2 SCALE 479***, the Supreme Court had explained that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable and

(iii) neither wholly reliable nor wholly unreliable. An accused can be convicted on the basis of wholly reliable testimony of a single witness. However, testimony of a witness, which is neither wholly reliable nor wholly unreliable would require corroboration. The relevant extract of the said decision is set out below:

“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. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

36. In the present case, this Court is unable to accept that the testimony of the prosecutrix is wholly reliable. For the reasons stated above, the testimony of the prosecutrix cannot be considered as one of a sterling witness. As noticed above, there are inconsistencies in the statement made at the initial stage and the statements made thereafter. Thus, in order to sustain a conviction solely on the basis of the testimony of the prosecutrix, it would be necessary that the same be

corroborated by some other material. However, in the present case there is no material on record, which corroborates her testimony.

37. The delay in filing of the FIR has also ensured loss of medical or forensic evidence that could possibly support the prosecution's case. To further compound the matter, the investigation agency has also not seized the mattress or the bed sheet, analysis of which could have provided any evidence to support the prosecution's case.

38. An offence of rape is, in most cases, committed in the privacy of confined or secluded places and more often than not it is not possible to find witnesses to support the case of the prosecution. In a number of cases, medical or forensic evidence may also not be available. In such cases, the prosecution has to necessarily rely on the testimony of the victim. Undeniably, the testimony of the victim has a very high evidentiary value. And, as discussed earlier, is sufficient to convict the accused, provided it is of an unimpeachable quality.

39. The standards of proof required to be met by the prosecution are not diluted under any circumstances. It is necessary for the prosecution to establish, beyond reasonable doubt, that the accused had committed the offence for which he/she is charged.

40. In the facts of the present case, this Court is unable to accept that the prosecution has met the said standard of proof.

41. In view of the above, the appeal is allowed and the appellant is acquitted of the offences for which he is charged. The appellant would be released forthwith in the event that he is not involved in any other case. The pending application is also disposed of.

AUGUST 5, 2020
RK

VIBHU BAKHRU, J



नित्यमेव जयते