

\$~R-8 to R-12

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

Reserved on: 11.01.2023

Decided on: 26.06.2023

+ **CRL.A. 241/2018 & CRL. M.A.3699/2018**

AMAN @ SONU

..... Appellant

Represented by: Mr.Rajiv Bajaj and Ms. Shurti Khosla,
Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with IO SI Meena Yadav and Ins.
Satbir Singh, PS Subzi Mandi.

+ **CRL.A. 1177/2017**

RAHUL @ RAGHU

..... Appellant

Represented by: Mr. Vivek Sood, Senior Advocate
with Ms.Saahila Lamba and Mr.
Tarun Khanna, Advocates.

versus

STATE

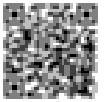
..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with IO SI Meena Yadav and Ins.
Satbir Singh, PS Subzi Mandi.

+ **CRL.A. 1118/2017**

MOHD WASIM @ SAHIL

..... Appellant



Represented by: Mr.Kanhaiya Singhal, Ms. Priyal Garg, Mr. Prasanna, Mr. Chetan Bhardwaj, Mr. Udit Bakshi, Mr. Ajay Kumar, Ms. Jasmeet S. Chadha, Advocates.

Versus

THE STATE GOVT OF NCT OF DELHI Respondent

Represented by: Mr.Laksh Khanna, APP for the State with IO SI Meena Yadav and Ins. Satbir Singh, PS Subzi Mandi.

+ **CRL.A. 417/2018**

SUNNY Appellant

Represented by: Mr. Vivek Sood, Senior Advocate with Ms.Saahila Lamba and Mr. Tarun Khanna, Advocates.

versus

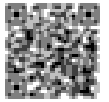
STATE Respondent

Represented by: Mr.Laksh Khanna, APP for the State with IO SI Meena Yadav and Ins. Satbir Singh, PS Subzi Mandi.

+ **CRL.A. 418/2018**

BALKISHAN Appellant

Represented by: Mr.Rajiv Bajaj and Ms. Shurti Khosla, Advocates.



versus

STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with IO SI Meena Yadav and Ins.
Satbir Singh, PS Subzi Mandi.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

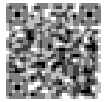
HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA,J.

1.0 Vide these appeals, the appellants, namely, Aman @ Sonu, Rahul @ Raghu, Mohd. Wasim @ Sahil, Sunny and Bal Kishan @ Karvaya have challenged the judgment dated 21.09.2017 passed by Ld. Addl. Sessions Judge-Special FTC-02 (Central), Tis Hazari Courts, Delhi, (“**impugned judgment**” in short), whereby :

- (i) the appellants Bal Kishan @ Karvaya, Sunny, Rahul @ Raghu and Aman @ Sonu were convicted for the offence under Sections 366/34 IPC and 376-D IPC ;
- (ii) the appellants Bal Kishan @ Karvaya and Rahul @ Raghu were convicted for the offence under Sections 376 (2) (n) IPC ;
- (iii) the appellant Mohd. Wasim @ Sahil was convicted for the offence under Section 376-D IPC.

1.1. The appellants have also challenged the order on sentence dated 10.10.2017, whereby all the appellants were sentenced as under :



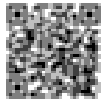
(i) all the appellants namely Bal Kishan @ Karvaya, Sunny, Rahul @ Raghu, Aman @ Sonu and Mohd. Wasim @ Sahil were sentenced to undergo rigorous imprisonment for life (which shall mean imprisonment for the remainder of convicts' natural life) each for the offence punishable under Section 376-D IPC with fine of Rs. 5,000/- each, in default of payment of fine, to further undergo SI for one year ;

(ii) The appellants namely Bal Kishan @ Karvaya, Sunny, Rahul @ Raghu and Aman @ Sonu are also sentenced to undergo an imprisonment for 10 years for the offence punishable under Section 366/34 IPC with fine of Rs. 2,000/- each, in default of payment of fine, to further undergo SI for one year.

(iii) The appellants namely Bal Kishan @ Karvaya and Rahul @ Raghu are also sentenced to undergo an imprisonment for life for the offence punishable under Section 376 (2) (n) IPC with fine of Rs. 2,000/- each, in default of payment of fine, to further undergo SI for one year.

All the aforesaid sentences of the appellants were ordered to run concurrently.

2.0 Briefly stating, the prosecution case is that, on 25.04.2014, at about 2.05 am, an information was received at PP Tis Hazari, PS Subzi Mandi through wireless that '*Mori Gate Petrol Pump near Pul Mithai, Phool*

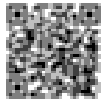


Mandi, Koocha Mahotwar Khan, Rain Basera, ek ladki 15-16 saal ki, jise koi saath laya tha aur uske saath galat kaam hua hai' which was recorded vide DD no. 5 (Ex. PW-39/A) ; said DD was marked to SI Pradeep Rai, who along with Ct. Dharmender and Ct. Amit (PW-25) reached at the informed place i.e. Phool Mandi, Rain Basera near Kucha Mohtar Khan, Mori Gate, Delhi. On reaching there, they met PW-4 Khushi Ram, who had made a call at 100 number from his mobile phone no. 9911247049); he produced Prosecutrix M (PW-1) informing that she has been raped. In the meanwhile, SI Meena Yadav (PW-32), W/Ct. Shipra and senior officers also reached there. Police took the prosecutrix to Aruna Asaf Ali Hospital, Delhi, where she was medically examined initially by Dr. Solomi (PW-23) vide MLC Ex. PW-23/A and then by Dr. Kiran, SR (Obs & Gynae) (PW-11) vide MLC Ex. PW-11/A. After getting the prosecutrix medically examined, PW-32 SI Meena Yadav recorded the statement of the prosecutrix M (Ex. PW-1/A), wherein she stated that as she wanted to meet her sister S (who used to live in Jalandhar, Punjab) she reached at Saloni (Saunoli) border on 23.04.2014 by bus from her village situated in Nepal and then to Basti Station by bus and then she boarded a train for Delhi. In the train, she met one boy who told her that he resided in Delhi and assured to help her and also provided his mobile number 8586880171, which she noted in her diary, (Ex. PW1/E) which was seized vide seizure memo (Ex. PW1/D). She further stated that after reaching Delhi on 24.04.2014 at around 12.00/12.30 noon, she took a ticket of general compartment for Jalandhar. While she was waiting for the train, she met another boy, who gave his mobile no. 9871193884, which also she noted in her dairy. Said boy took her for breakfast/food and as there was still some time for the train to arrive; she reached at platforms no. 15



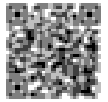
and 16 from platforms no. 12 to 14 and the said boy left. As she was roaming around, she missed her train which was scheduled for 2.15. She became tense and while she was moving around in tension, she met another boy, who on her asking, dialed mobile no. 9871193884, but the receiver (boy) refused to come on phone/talk to her. She became more tense, on which the said boy whose name she later came to know as Raghu/appellant pacified her and assured to make arrangement for her food and stay. Said boy/Raghu took her outside the platform and made a call and then took her to Rajghat (Samadhi of Mahatma Gandhi) in a van, in which four boys were already sitting. Thereafter, they all took her to a room, where all the five boys raped her one-by-one against her wishes. Then, they took her towards railway station, where she and the Rahul/appellant were made to get down from the Van and remaining persons left that place in van. Thereafter, two more friends of Rahul/appellant came and they all forcibly took her to a nearby secluded forest, where they all raped her against her wishes and then all of them left that place. While she was weeping, one person (PW-4 Khushi Ram) met her and asked her the reason for the same and she narrated the happening to him, who then made a call to the police.

2.1. On the aforesaid statement (Ex. PW-1/A), PW-32 SI Meena Yadav made endorsement, prepared rukka and got the FIR (Ex. PW-9/A) registered through PW-9 HC Rajinder Singh- Duty officer of PS Subzi Mandi. Prosecutrix was got medically examined at Aruna Asaf Ali Government Hospital ; her exhibits including undergarments, which she was wearing at the time of her medical examination, were seized by PW-32 vide seizure memo Ex. PW-32/B. Thereafter, the prosecutrix was taken to the place of



incident i.e. near Subzi Mandi, where PW-32 prepared site plan (Ex. PW-1/C) at the instance of the prosecutrix. Scene of crime was also got inspected by the Crime Team vide report Ex. PW-14/A (Phool Mandi). The prosecutrix could not point out the place where the first incident had taken place. Photographs (Ex. PW21/P-1 to Ex. PW21/P-3) of the scene of crime were also taken. Prosecutrix had also handed over her diary (Ex. PW-1/E), wherein the mobile numbers of the two boys from whom she had sought help at railway station, to the IO/PW-32 SI Meena Yadav, which was seized vide seizure memo Ex. PW-1/D.

2.2. Place of incident i.e. a room at Sanitary Depot, Jamuna Bazar (which was taken on rent by JCL M) (**the room**) was got inspected by PW-22 SI Meena Yadav through Crime team headed by PW-13 SI Mohit Kumar vide report Ex. PW-13/A and photographs Ex. PW18/A, Ex. PW18/B, Ex. PW13/DA and Ex PW13/A were also taken. During the course of investigation, the appellants were arrested ; their disclosure statements were recorded and recovery of incriminating articles was made from the accused person. They also pointed out the places of incidents vide separate pointing out memos. Separate proceedings against the JCL M were carried out. At the pointing out of the appellant Aman, car DL-3C-AA-3297 make Hyundai Accent was taken into possession from in front of his house vide seizure memo Ex. PW-32/F. All the appellants were medically examined, their respective exhibits were seized and they were sent to judicial custody. Exhibits of the prosecutrix as well as that of the appellants were sent to the FSL, Rohini for examination through Ct. Amit and Ct. Harish.

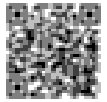


2.3. During the course of further investigation, on 19.05.2014, statement Ex. PW-1/B of the prosecutrix was recorded at IHBAS Hospital with the help of a psychiatrist and the said statement was also got video-graphed vide CD Ex. PW-5/B. PW-32 IO SI Meena Yadav also obtained Call Details Record (**CDR**) pertaining to the mobile number of the appellant Wasim @ Sahil and JCL M. Request for TIP of all the appellants was made vide applications Ex. PW-32/W and Ex. PW-26/A, but all of them refused to participate in the TIP. On 31.05.2014, PW-32 IO SI Meena also obtained the relevant CCTV footage of Old Delhi Railway Station in DVD which was seized vide seizure memo Ex. PW-25/G. Mobile phones used by the appellants Rahul @ Raghu and Sunny were also seized. On completion of investigation, charge sheet against the appellants was filed u/Ss. 376(D)/363/365 IPC for kidnapping, abduction and gang-rape of the prosecutrix.

3.0. Appellants Aman @ Sonu, Rahul @ Raghu, Sunny and Bal Kishan @ Karvaya were charged for the offences punishable under Sections 366/34 IPC and 376-D IPC. Appellants Rahul @ Raghu and Bal Kishan @ Karvaya were also charged for the offence punishable under Section 376 (2) (n) IPC and Mohd. Wasim @ Sahil was charged for the offence punishable under Section 376-D IPC.

4.0 In support of its case, prosecution examined 39 witnesses.

5.0 The appellants vide their respective statements under Section 313 Cr.P.C denied all the incriminating circumstances put to them and stated that they were innocent and were falsely implicated in this case. They further



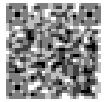
stated that the prosecutrix has wrongly identified them in the court and that they had refused to join the TIP proceedings as they were shown to the prosecutrix by the police in the police station.

5.1. Appellant Rahul @ Raghu had also stated that word 'Raghu' was got tattooed by the police on his wrist in the police station.

5.2. Appellant Aman @ Sonu also further stated that his photos were taken by police before TIP. He further stated that PW-4 Khushi Ram was a witness planted by the Police. He stated that around 7 days back from the date of alleged incident, he had got burnt injuries on his face, arm and leg in the kitchen and was still under treatment, when his father produced him in the police station.

5.3 None of the appellants led any evidence in their defence.

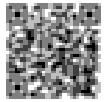
6.0. Ld. Counsel for the **appellant Wasim @ Sahil** argued that there are material improvements/contradictions in the statement of the prosecutrix recorded u/S 161 Cr.P.C, u/S 164 Cr.P.C and before the court, which render her testimony highly unreliable. Ld. counsel also argued that the appellant was not named in the FIR ; the prosecutrix leveled allegations against the appellant Mohd. Wasim only in her statement u/s 164 Cr.P.C ; and as per the prosecution story, he was involved in the alleged offence at the second place of incident i.e. Phoolmandi, whereas the prosecutrix stated that Sunny and Sahil came together in the van meaning thereby he was already there. Only during cross-examination of the Ld. Prosecutor, she stated that the appellant Sahil had raped her at Phoolmandi. Ld. counsel argued that the manner in which the prosecutrix was cross-examined by the Ld. Prosecutor is not



permissible and reliance in support was placed on *Umesh Kumar vs. State of NCT of Delhi, Crl. A. 805/2017*. He also submitted that as per Ex. PW-33/A, there is no incriminating forensic/DNA evidence against the appellant as allelic data of Ex. 19 in gauze cloth piece of the appellant was not accounted for in the Ex. 4 towel recovered from the scene of crime. He also argued that the prosecutrix could not even identify the place of incident. Further, CDR of the appellant's mobile phone shows that in the evening of 24.04.2014 at 19:19:57 upto 23:03:14 pm, the location of the appellant was at Frontier Hotel, SP Murkherjeet Marg and thereafter at Mori Gate. Therefore, his presence at the place of second incident, has not been proved beyond reasonable doubt.

6.1. Ld. counsel argued that no test identification parade (**TIP**) was conducted for the appellant as he had already been shown (through pictures) to the prosecutrix. Except Raghu, none of the appellants were identified even in court ; and only on the pointing out of the prosecutor, the prosecutrix/PW-1 identified them. Ld. counsel also argued that that the present case is based on the sole testimony of the prosecutrix, which is unreliable. The lacunas in her testimony also point towards prosecutrix being tutored and is thus unworthy of reliance. In support, Ld. Counsel relied upon the *Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. Vs. State of Maharashtra, [(2010) 13 SCC 657]*

6.2. Lastly, the ld. counsel made an alternate prayer submitting that considering his young age, the sentence of the appellant be reduced from life imprisonment to 20 years, the minimum prescribed under law.



6.3. Ld. counsel for the appellants **Aman @ Sonu and Bal Kishan** also argued that there are inconsistencies/contradictions in the statements of the prosecutrix recorded u/S 161 Cr.P.C, u/S 164 Cr.P.C and before the court. In her statement u/S 161 Cr.P.C, prosecutrix has stated that she was taken in a van, whereas in her deposition before the Court, she has stated that she was made to sit in a car. He also argued that the prosecutrix's statement u/S 164 Cr.P.C could not be recorded on 26.04.2014 as she was not in a fit state of mind to depose, as observed by the Ld. Magistrate. Her statement u/S 164 Cr.P.C was then recorded on 19.05.2014 without there being any medical record regarding prosecutrix's fitness to make the statement. He also argued that initially, the prosecutrix did not identify the place of incident and thereafter, she gave a very different description of the place where she was raped on the first occasion. Further, MLC of the prosecutrix shows no external injuries on her body and on her private parts, which also create serious doubt about her being raped repeatedly by the appellant Bal Kishan. Ld. counsel further contended that only evidence connecting the appellant Aman to the crime is *gamcha* which is not seen in the photographs. Even IO/PW-32 in his cross-examination admits that Gamcha is not seen in the photographs, PW-13 SI Mohit Kumar also admitted in cross-examination that Gamcha is not visible in the photographs Ex. PW-13/DA to Ex.PW-13/DB. Ld. Counsel further argued that *gamcha* cannot be the sole basis of the appellant's conviction. Ld. counsel also argued that the prosecutrix threw her underwear and took bath, but no explanation has come on record where did she take bath. He also argued that *the car* does not belong to appellant Aman and he does not even have a driving license. Further, the car was inspected by the crime team, but no incriminating material was found

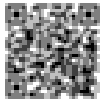


from the car. He also argued that PW-29 Ct. Ravinder Singh, who was with the IO could not even identify appellant Aman.

6.3.1. On behalf of **appellant Bal Kihsan**, Ld. counsel argued that the appellant was not named by the prosecutrix in her statement u/s 164 Cr.P.C and there is hardly any evidence against the appellant on record. The prosecution has failed to prove beyond reasonable doubt, the allegations against these appellants.

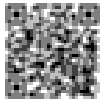
6.4. Ld. Senior advocate on behalf of the appellants **Rahul @ Raghu and Sunny** argued that as per record, Rahul @ Raghu, Sunny and Bal Kishan were employees of Primus Solutions Enterprises, which was providing cleaning services at the railway station ; and as per record, all of them were at the railway station on duty on the said date till 6.00 pm and therefore, their involvement in the first incident as alleged, was not possible. He submitted that it has been alleged that the appellant Raghu called from his mobile phone 8130644931 to Wasim on mobile number 8527194719 allotted to him by the Primus Solutions Enterprises. But, the said number 8130644931 was found to be in the name of Yogesh Jain. PW-3 Yogesh Jain in his testimony stated that though he was informed by the police that the said number has been issued on his ID, he had informed them that he was never issued said number nor did he hand over his ID to any one for this purpose. He even denied his signatures on the CAF. Same itself creates doubt about the said number 8130644931 being in use of Raghu @ Rahul.

6.4.1. Ld. Senior counsel further argued that DNA of Rahul and Sunny did not match with the semen found on the *gamcha*. Identity of Rahul @ Raghu is also doubtful as the prosecutrix stated that Raghu *cold drink wala* had



committed rape upon her. Further, there is nothing to connect Sunny to the crime not even the mobile phone.

7.0. Per contra, the Ld. Prosecutor submitted that victim/PW-1 has been consistent in her statements under Section 164 Cr.P.C and before the court about being gang-raped at two places and has given complete details. Her deposition that she had met Brij Mohan in the train is corroborated by PW-2. Her version that she was raped by the appellants Raghu, Sunny, Bal Kishan, Aman and JCL M in the room is also substantiated by PW-10 Ankit, who was in possession of that room and had given its keys to the JCL M ; and who also deposed about JCL M and appellants Sunny and Aman were known to each other. Further, her deposition about the second incident of rape in Phoolmandi is corroborated by PW-4 Khushi Ram. He further argued that the appellants Rahul, Sunny, Bal Kishan and Wasim @ Sahil were working with Primus Solutions Enterprises as per the testimony of PW-17 Joginder and PW-7 Manish Gulati leaving no doubt that all the appellants knew each other. PW-17 has testified that mobile number 8130644931 belong to the appellant Rahul @ Raghu. PW-7 testified that mobile no. 8527194719 was provided to Wasim by the company. The CDR of mobile no. 8130644931 Ex. PW-15/A shows that a call was made from Rahul @ Raghu's number to Brij Mohan and two return calls were made by Brij Mohan from his mobile no. 8586880171 to Rahul @ Raghu, which corroborates the prosecutrix's version that she had made a call from Raghu's mobile to Brij Mohan. Further, CDR of mobile no. 8527194719 of Wasim Ex. PW-15/B shows that multiple calls were exchanged between him and the appellant Rahul @ Raghu on the date of incident i.e. 24.04.2014. After the

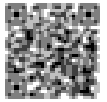


prosecutrix was seen with Raghu @ Rahul in CCTV footage, first call was made by Rahul @ Raghu to Wasim at 16:53:22 and thereafter repeated calls were exchanged till 23:05:39 and as per cell ID, location of both the appellants i.e Rahul and Wasim was at the second place of incident.

7.1. Ld. Prosecutor submitted that CCTV footage (Ex. PW-31/P-1) of camera installed at Delhi Railway Station from 2.40 pm to 3.20 pm on 24.04.2014 shows that Rahul @ Raghu took the prosecutrix out of the railway station and they were followed by Bal Kishan and Sunny, which clearly establishes the presence of the appellants with the prosecutrix at Old Delhi Railway Station. Even Attendance register Ex. PW-6/B of Primus Solutions Enterprises shows that Rahul @ Raghu, Sunny, Bal Kishan and Wasim @ Sahil were working together and the appellants Rahul @ Raghu, Sunny and Bal Kishan were on duty/present at Old Delhi Railway Station on the day of incident.

7.2. He also submitted that as per FSL report Ex. PW-33/B, human semen was detected on gamcha Ex. P-4 and bed sheet Ex. P-5 recovered from the first place of incident. As per the DNA analysis, it was opined that the DNA profiling on the source Ex. 4 i.e. towel (gamcha) was similar to the DNA Profile generated from the source Ex. 15 i.e. gauze cloth piece of accused Aman. Further, the recovery of gamcha from the scene of crime is also proved by crime visit report Ex. PW-13/A.

7.3. Ld. Prosecutor further argued that all the appellants refused to participate in judicial TIP on a flimsy grounds that their photographs were taken by the police official and shown to the prosecutrix. The said contention is baseless as the photographs were taken for dossier. Moreover,

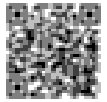


the prosecutrix identified the appellants before the Court. In view of these facts, an adverse inference needs to be drawn against the appellants for refusing TIP. Reliance in this regard was placed on the case titled *Mohd. Anwar vs. State (NCT of Delhi) (2020) 7 SCC 391*. Ld. prosecutor further submitted that in the absence of TIP, dock identification can be considered by the Court and reliance was placed on judgment in *Sidhartha Vashisht vs. State (NCT of Delhi) (2010) 6 SCC 1*.

7.4. Ld. prosecutor submitted that in view of the above evidence on record, the prosecution has proved its case beyond reasonable doubt against all the appellants and they have been rightly convicted and sentenced by the Id. Trial Court.

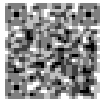
8.0. We have duly considered the submissions made by both the sides and have carefully perused the record.

9.0. PW-1 Prosecutrix has deposed that they are seven sisters and one brother. She got married in Nepal about 9 to 10 years ago and is having a daughter out of her marriage. But she was living with her parents due to ill-treatment of her husband. One of her sisters namely 'S' married to one Naraian has been living in Jalandar, Punjab. To visit her sister in Jalandhar on 23.04.2014, she left by bus from her village in Nepal and reached Sonoli border. From there, she took another bus to reach Basti and from there, she took a train for Delhi. While on her way to Delhi, she met one boy namely Rahul in the train and became friendly and he gave his mobile number as 8586880171, which she noted in her diary. She further deposed that on 24.04.2014, she reached Delhi Railway Station at about 1.30 pm and on reaching, she purchased a ticket for Jalandhar. While waiting for the next



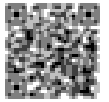
train, she along with Rahul went outside the Railway Station for taking food. After some time, Rahul left and she returned to the Railway Station. However by that time, she had missed the train.

9.1 PW-1 further testified that she met one boy namely Raghu, who was selling cold drinks at the Railway Station and she had noticed his name ‘Raghu’ engraved on his wrist. She requested Raghu for his mobile phone and then made a call to Rahul from that phone but Rahul did not pick up the phone. She then started waiting for the next train to Jalandhar which was scheduled to depart at about 4 pm. As there was still some time for the train she asked Raghu about any place which she could visit. Raghu took her to Samadhi of Mahatma Gandhi and India Gate on foot. After some time, she requested Raghu to take her back to the railway station but he made a call to someone; and when they were walking from India Gate towards railway station, she saw one car; Raghu asked her to sit in that car telling that by car they will reach the railway station fast. When she sat in the car “two more persons sat in the car along with Raghu and two persons were already sitting in the car on the driving seat and front passenger seat”. She further stated that instead of taking her to the railway station, they took her to the house of one of those boys and confined her in that room and all of them raped her one by one. She further stated that when it became dark, they brought her to *sabzi mandi* in the same car. Four boys left from there in the same car while Raghu remained with her and assured to take her to her sister’s house but soon thereafter, two other persons reached there and all three of them raped her and left her there. She started crying. After some time, two persons on a motorcycle asked her as to why was she crying and she told them about the



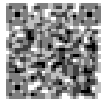
incident. On which, they called the police. Police arrived and took her to the police station. She was also taken to the hospital, where she was medically examined. Her statement Ex. PW1/A was recorded. She stated that she had thrown her underwear after the incident at the *subzi mandi*. Rest of the clothes were not seized by the examining doctor at the time of medical examination. On the next day, police took her to railway station and arrested Raghu at her instance. She also deposed that her statement under Section 164 Cr.P.C Ex. PW1/B was recorded by the Id. Magistrate. She also led the police to the place of the incident near *subzi mandi* and site plan (Ex. PW1/C) was prepared in her presence.

9.2. Initially, the Prosecutrix PW-1 stated that she was not able to remember the faces of the persons who raped her due to lapse of three months since the date of incident but she can identify Raghu by seeing his name tattooed on his hand. However, a while later, after looking at the accused persons present in the court, PW-1 identified all of them as the persons who had raped her. As she resiled from her previous statement, she was cross examined by the Id. Prosecutor. In her said cross examination, she stated it may be correct that the person who met her in the train and gave his mobile no. 8586880171 was Brij Mohan and not Rahul. On seeing the diary (Ex. PW1/E), she also admitted that it was the same diary in which she noted the mobile number of said Rahul as 8586880171 at point A. She further admitted that later on she came to know that accused Raghu is also known as Rahul. PW-1 also admitted that the appellants Rahul @ Raghu, Sunny and Bal Kishan were the three persons, who brought her out from the Railway Station. She also admitted that Aman brought the car and all of them along



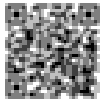
with one person/JCL (who she stated was not present in the court) took her to a room, where she was raped by them in the first incident. (24.04.2014). From the photographs (Ex. PW-1/P-1 to Ex. PW-1/P-4) shown to her, she even identified the car, which was used in the incident by the said accused persons. She also stated that she may have forgotten that her clothes have been seized by the examining doctor or not. PW-1 further admitted that she was taken to Phoolmandi from the first place of incident by accused Raghu and one more assailant (out of the remaining four) and they called the third person to phoolmandi. She also admitted that she was referring to 'Phoolmandi' as 'Subzi Mandi' in her deposition. On pointing out towards Bal Kishan, Raghu @ Rahul and Sahil (Mohd. Wasim) by the Id. APP, PW-1 admitted that these three accused persons committed rape upon her at Phoolmandi

9.3. PW-1 has stood by her deposition in material particulars and categorically denied that she identified the appellants at the instance of IO. She stated that though the complaint Ex.PW-1/A was written by the police official, it was as per her dictation and she had signed the same at the police station. PW-1 admitted that on 25.04.2014, she was quite upset and disturbed, but denied that she was not fit to make statement. PW-1 stated that the train by which she reached Delhi from Basti, arrived at Platform no. 14, at Old Delhi Railway Station at about 1.30 pm. She had purchased the train ticket for Jalandhar from the railway station itself for Rs. 210/-; said train was scheduled to depart at about 1.45/2.00 pm from platform no. 14. She further stated that it took them about 15 minutes in going out of the railway station and having meals and thereafter, returning to the said



platform, but by that time, the train for Jalandhar had already left. She also stood by her deposition that a phone call was made to Brij Mohan, who did not take up the phone. Much was argued by the Id. counsel for the appellants that in her deposition, PW-1 stated that he did not take her phone call which is contrary to what has been stated in her statement under Section 161 Cr.P.C (Ex. PW1/A) and under Section 164 Cr.P.C (Ex. PW1/B). On careful reading of her deposition and her earlier statements Ex. PW1/A and Ex. PW1/B, there is hardly any material discrepancy. In her deposition she has stated that Rahul (Brij Mohan) did not pick up her phone, in Ex. PW1/A, she stated that '*usne baat karne par, aane se mana kar diya*' and in Ex. PW1/B she has stated taht '*Raghu ke mobile se Rahul ko phone karwaya*'.

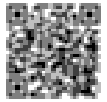
9.4. PW-1's version that she had met one boy Brijmohan in the train and had called him is corroborated by PW-2 Brij Mohan, who has deposed that on 24.04.2014 at about 7.30 am, he had boarded Raksool Express from Gajrola Railway Station for Delhi. In the train, he met one girl namely M/prosecutrix, who asked for his help for going to Jalandhar. He had provided his mobile number 8586880171 to her by writing the same in her diary, in case she needed any help. He also stated that at about 9.00/9.30 am, he got down at Shahdara Railway Station. At about 3.00/3.15 pm, he received a call from the said girl M, but he could not recollect the mobile number, from which she called. He further deposed that Ms. M/prosecutrix requested him to come to Old Delhi Railway Station as she had missed her train for Jalandhar but he expressed his inability as he was busy. On a leading question being put by the Ld. Prosecutor, PW-2 admitted that the



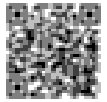
mobile number from which Ms. M/prosecutrix called him was 8130644931, which he had informed the police.

9.4.1. The fact that PW-2 Brij Mohan was using the aforesaid number 8586880171 though it was issued in the name of one Mitra Sen S/o Ratan Lal and the calls were made to PW-2 from 8130644931 has also come on record vide testimony of PW-8 Mitra Sen and PW-16 Anuj Bhatia, Nodal Officer, Vodafone Mobile Services Limited, CAF, voter ID furnished along with said application (Ex. PW8/A2) and CDR (Ex. PW16/A), which shows that a call was made from aforesaid mobile number to PW-2's mobile number. PW-2 had made a return call. Their testimonies remained uncontroverted as they were not cross examined.

9.5. Ld. Counsel for the appellant also argued that PW-1 is not even consistent about the vehicle in which she was taken. She refers to it sometimes as car and sometimes as Van. The said argument also does not hold much water. PW-1 in her cross-examination described the colour of the car as blue. The fact that seizure memo of the car Ex. PW-32/F mentions the colour of the car as 'Satin Grey' and in photographs (Ex. PW/P-1 to Ex. PW-1/P4) on record, colour of the vehicle does look blue, lends credence to the prosecutrix's version. Even otherwise, same is hardly of much significance keeping in mind the background of PW-1 and the trauma she underwent. She also explained that she cannot tell the registration number of that car, as she did not notice the same. Even with respect to the place of incident, the truthfulness of PW-1 is apparent from the fact that in her cross-examination, she stated that she never told the police that by referring to Subzi Mandi, she



meant Phool Mandi and went on to explain that she came to know later that the said place was Phool Mandi, but was not aware about the same earlier. Even with respect to place of first incident of rape, PW-1 truthfully stated that though she was taken by the police officers to a room and phool mandi, she was unable to identify the said place of incident. However, she explained that in the room where the rape was committed upon her in the first instance, was quite large and even described that it was double the size of the court room. She also gave further details and stated that there was only one bed in the said room ; and the said room had a small blub attached to a battery. She further stated that it took them 15/20 minutes to reach the said room by car ; the said room was on a kachcha road ; and that the car was parked in the courtyard of the house. She further described that the said courtyard was having boundary walls and its length was almost equal to the size of the court room, but its width was less. She also stated that in order to reach that room, they had to climb one set of staircase and they came down from the another staircase. PW-1's description of room and that there was one bed in the said room is corroborated by photos of the said room (Ex. PW-21/P1 to Ex. PW-21/P13). PW-1 even stated that they had reached that room at about 2-3 pm and left from there at about 6-7 pm, when it had become dark and then went on to voluntarily state that those persons did not permit her to leave the room. She gave even further details and stated that firstly Raghu (Rahul @ Raghu) committed rape, but could not tell who was the second person, who raped her. She categorically denied that the appellant/accused Aman was not amongst those boys/never raped her. PW-1 even explained as to why she did not raise alarm. She stated that as the



accused persons had threatened to kill her and she was in an unknown city, out of fear she did not raise alarm.

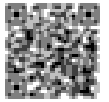
9.6. PW-1 stated that from the said room, it took about 20-25 minutes to reach the Phool Mandi by car to the said room. She further stated that the place, where the rape was committed upon her in the **second instance** was dark and there was no light. She described the area and stated that there were some residential houses at some distance from the spot. She also explained that from that place/Subzi Mandi/Phool Mandi, she went up to the road at a distance about 20 paces, where the motorcyclist met, when she was weeping. The motorcyclist who called number 100 had told the police, ‘subzi-mandi par kisi ka rape ho gaya hai’, on which she came to know that it was subzi-mandi area. She further described the spot and stated that the place in subzi-mandi, where the rape was committed, upon her was having only one roof on pillars, but there were no walls and it was in a big area and even further stated that *jahan bazaar lagta hai*. She also stated that there was no other person or chowkidar in the subzi mandi. There was no main gate of the subzi mandi.

9.7. In view of the above, considering PW-1’s background, testimony of prosecutrix is natural and inspires confidence. Inconsistencies pointed out by Id. Counsel for the appellants do not strike at the root of the prosecution case. Same rather show that PW-1 deposed as per her recollection of traumatic events and was not tutored.



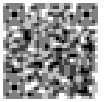
10.0. The testimony of PW-1 that at *mandi*, she met a person, who was on motorcycle and after inquiry from her, he had made a call at 100 number and police arrived, is corroborated by the PW-4 Khushi Ram. PW-4 has deposed that on the night of April 2014 at about 2.00 am, when he was going with his friend Arjun on his motorcycle, they stopped for smoke near Phool Mandi, which is behind his house. It was dark and he heard sound of a girl crying, who appeared to be disturbed. She told that her mobile phone and laptop had been stolen by someone, who had done galatkam with her and he made a call at 100 number from his mobile no. 9911247049, on which police arrived at the spot. PW-4 stood by his testimony in cross-examination and stated that the said girl was standing inside the gate of Phool Mandi at a distance of about 10 steps. He also stated that on his calling no. 100, PCR had reached after about 10 minutes and local police reached at the place five minutes thereafter. He categorically denied that he has deposed falsely at the instance of the police.

11.0. PW-4's version that he had made a call at number 100 and police arrived, is corroborated by DD no. 5 PP (Ex. PW-39/A) and testimonies of PW-39 Ct. Bhopal Singh and PW-25 Ct. Amit Kumar. PW-39 deposed that on 25.04.2014 while on duty at Police Post Tis Hazari, PS Subzi Mandi at about 02.05 am, he recorded DD no. 5 PP Ex. PW-39/A. As per DD no. 5 (Ex. PW-39/A), the PCR call was received from mobile no. 9911247049 on 25.04.2014 at about 2.05 am, to the effect that "*Mori Gate Petrol Pump near Pul Mithai, Phool Mandi Kuncha Mahottar Khan Rain Basera, ek ladki 15-16 saal ki jise koi saath laya tha aur uske saath galat kaam hua hai*"; and the same was handed over to SI Pradeep Rai, who along with Ct. Dharmender



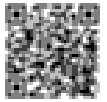
and Ct. Amit (PW-25) left for the spot. PW-25 Ct. Amit Kumar deposed that on 25.04.2014, on receipt of DD no. 5 PP, he along with SI Pradeep Rai and Ct. Dharmender reached Phool Mandi, Rain Basera, near Kucha Mohtar Khan, Mori Gate, Delhi, where they met one Khushi Ram who produced prosecutrix M informing that she had been raped. Meanwhile, W/Ct. Shipra along with IO SI Meena (PW-32) and other officials also reached. They took the prosecutrix to Aruna Asaf Ali Hospital, where she was medically examined. Prosecutrix's statement was recorded by the IO, on which rukka was prepared and handed over to him (PW-25) and he took the said rukka to the PS and got the FIR (Ex. PW-9/A) in the present case registered : and on return, he handed over the original rukka and copy of the FIR to the IO. PW-4 was not cross examined except on behalf of the appellant Rahul @ Raghu. His and PW-25's testimony has remained unimpeached.

12.0. PW-1's version that she was taken to a room, where the first incident of rape had taken place finds corroboration in the testimony of PW-10 Ankit. PW-10 Ankit, resident of House no. 1287, Old Gas Factory, Railway Colony, Kashmere Gate, Sanitary Depot, Yamuna Bazar, Delhi, deposed that one store room of MCD was lying vacant since long near his house; and about one year prior to this incident, he had started using the said vacant room for storing his goods as some construction work was going on in his house. About 3 months prior to the incident, one JCL M r/o Garhwal met him through one of PW-10's friends Om Prakash and requested that he be allowed to live in the said store room as he had come from Garhwal and had no other place to stay. He allowed JCL M to use the said store room for few days. He further deposed that two friends of JCL namely Sunny and Aman



used to visit him in the said room and duly identified both the appellants Sunny and Aman in the Court. He also deposed that he came to know that the incident of rape had taken place in the said room on 24.04.2014 when police came to make inquiries from him. PW-10 has stood by his deposition in his cross-examination that he had given the key of the lock to the said room to JCL 'M' when he permitted him (being a relative of his friend Om Prakash) to stay there. PW-10 also stated that the appellants Aman and Sunny also lived in that area near MCD store ; and rather Aman live opposite the said store/house, at a walking distance and that he had seen accused Aman and Sunny roaming in the said area. He further stated that he himself had not seen these appellants visiting JCL M, but JCL M had told him about the same. He also stated that there is an electricity connection in that MCD store/room. He denied that possession of the said room remained with him.

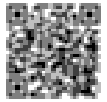
12.1. The fact that other appellants/accused persons were also known to each other has also come in the testimony of PW-17 Joginder @ Guddu. PW-17 deposed (on 19.3.2015) that he had been working with Primus Company for the last 8 years which was engaged in the work of cleaning at Old Delhi Railway Station ; and that he had left the said job about 6 months ago. He deposed that last year, date and month he could not recollect at about 2:00/2:30 pm, police officials of PS Subzi Mandi had come to make inquiry from him about a mobile number. He could not recollect the complete mobile number, but stated last three digits of the said number were 931. He informed the police that the said mobile number belonged to Rahul, who was also working in their company and was also doing the work of cleaning. He duly identified appellant Rahul in the court. PW-17 further



stated that he also knew accused Sunny, Bal Kishan and Sahil as they were also working with him in the same company i.e. Primus company and duly identified all three of them in the court. PW-17 further deposed that police had also made inquiry about Rahul from his supervisor (PW-6 Krishna) and had seized their attendance register. On being shown, PW-17 identified the attendance register Ex. PW-6/B ; and also identified the entry dated 27.04.2014 in the said register at point A and his signatures at point B. He stated that Rahul was not present on duty on 27.04.2014 when the police arrived and inquiry was made about him. He further stated that he had informed the police that he had seen Rahul going out from Old Delhi Railway Station and at his instance, the police apprehended the appellant/accused Rahul from outside the railway station. On leading question being put to the PW-17 by Ld. Prosecutor, he admitted that complete mobile number of Rahul is 8130644931. He also admitted that the police had come at Railway Station on 27.04.2014.

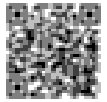
12.1.1. PW-17 stood by his version in his cross-examination by the appellant/accused Rahul. He reiterated that when the inquiries were made from him by the police, his supervisor Krishan was also present there. He also stated that he had talked to Rahul on his telephone for the last time on 27.04.2014. when he met Rahul. This witness was not cross-examined by other accused persons.

13.0. PW-6 Krishna deposed that he was working as supervisor in Prima Solutions Enterprises, which has a contract of house-keeping with railways ; he was posted at Old Delhi Railway Station at platform no. 1 to 8 and his



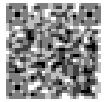
duty hours are 6.00 am to 6.00 pm, but turned hostile on certain aspects. He denied having handed over duty register to the police, seized vide seizure memo Ex. PW-6/A though, admitted his signatures on the seizure memo and stated that police had taken his signatures on certain papers when they met him on 26.04.2014 while he was on duty at railway station. He further stated that he did not know anything else about this case. In his cross examination by the Ld. Prosecutor PW-6 admitted that one Joginder @ Guddu (PW-17) is also working in his company. He also admitted that he knew the appellants Bal Kishan, Sunny, Rahul and Sahil and identified them in the court.

14.0. PW-7 Manish Gulati deposed that he has been working as Manager (Operations) with Primus Solutions Enterprises since November 2013. He knew appellant Sahil @ Mohd. Wasim as he was also working with the said company as a supervisor at Old Delhi Railway Station and that Sahil had joined their company in March 2014. He further deposed that their company had provided the mobile phone no. 8527194719 to Sahil @ Wasim, which was registered in the name of the company. He also stated that he had informed the Sahil's number to police and the said SIM was in working condition at that time, but later on, same was got stopped by the company. He produced copy of the e-mail Ex. PW-7/A sent to Airtel by the company requesting to deactivate the said mobile number and in response thereof, their company received an e-mail Ex. PW-7/B from Airtel about deactivation. He also produced the scanned copy of the consolidate bill of mobile phone connections used by the employees of their company and copy of the cheque by which the payment was made to Bharti Airtel Ltd. (Ex. PW-7/C (colly)). He also stated that by seeing the record, he can tell the date upto which, the



appellant Wasim came to work. He further deposed that the aforesaid mail was sent from his computer, which was under his use and control and he issued certificate u/s 65-B Indian Evidence Act (Ex. PW-7/D). He stood by his deposition in cross-examination and categorically denied that the company had not issued the aforesaid mobile number to the appellant/accused Wasim @ Sahil for use. Though he stated that he was unable to produce the document to show allotment of the said mobile number to the appellant Mohd. Wasim @ Sahil by the company. With respect to the e-mails sent by him, he stated that it was sent from the computer, which was used only by him and could be accessed only by his login ID. PW-7's testimony inspires confidence in view of the fact that said mobile number was got deactivated by the company vide e-mail (Ex. PW7/A) dated 02.05.2014 i.e., only few days after the happening of the incident. Said e-mail even specified the reason for deactivation that the employee using the said number is no longer their employee. In view of the above facts and circumstances, considering that admittedly, (admitted vide response to Q.22 in statement u/s 313 Cr.P.C), appellant Wasim was working with Primus Solutions Enterprises and taking into account the testimony of PW-7, copy of consolidated bill of mobile phones (provided to their employees) paid by way of cheque of the total amount (Ex. PW-7/C), same lends credence to the details mentioned in the consolidated bill which records mobile number 852194719 in the name of Sahil Supervisor.

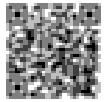
14.1. Thus, it has come on record that all the appellants were known to each other ; appellants Rahul @ Raghu, Sunny, Bal Kishan and Wasim @ Sahil



worked with Primus Solutions Enterprises ; and appellant Wasim was using mobile no. 8527194719.

15.0 PW-15 Vishal Gaurav, Nodal Officer Bharti Airtel Limited deposed that as per CAF mobile number 8527194719 was issued in the name of Ayush Services and Consultancy and proved the CDRs for the period 23.04.2014 to 26.04.2014 of mobile number 8130644931 (Ex. PW-15/A) and 8527194719 (PW15/B) and also CDRs of both the mobile nos for the period 15.02.2014 to 06.05.2014 (Ex. PW15/G), cell ID chart (Ex.PW15/H) and certificate under Section 65 B Indian Evidence Act (Ex. PW15/I)

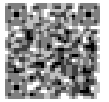
15.1 As per CDR (Ex. PW-15/B), on 24.04.2014, location of the appellant Rahul @ Raghu at 16:53:22 was at Jamuna Bazar, where the room, where the first incident of rape took place, is situated. Further, the aforesaid CDRs show exchange of multiple calls between the appellant Rahul @ Raghu and the appellant Mohd. Wasim @ Sahil on 24.04.2014, the date of the incident, first call being made at 16:53:22(35 sec) i.e. after the prosecutrix was seen leaving with Rahul @Raghu followed by Bal Kishan @ Karvaya and Sunny in the CCTV footage (Ex. PW-30/P-1). Thereafter, there are repeated calls from 16:54:11 to 23:05:39 between them. As per Cell ID chart, location of the appellants Rahul @ Raghu as well as Mohd. Wasim at 23:03:14 to 23:55:43 is at Sabzi Mandi i.e. the place of second incident of rape. Learned counsel for the appellant Mohd. Wasim @ Sahil argued that location of the appellant was at Frontier Hotel, SP Mukherjee Nagar from 19:19:57 to 23:03:14 and thereafter at Mori Gate. Suffice it to state that the said location is near the place of second incident. It is also noteworthy that about 20 calls



were exchanged between the appellant Rahul @ Raghu and appellant Mohd. Wasim @ Sahil on 24.04.2014. Whereas a day before i.e. on 23.03.2014, only two calls were exchanged between them. Same shows that the appellant Mohd. Wasim @ Sahil had joined at the place of second incident of rape on receiving calls from appellant Rahul @ Raghu, which lends credence to PW-1's version that the appellant Wasim had (later) joined at Phoolmandi.

16.0 Crime team report Ex. PW13/A proved by SI Mohit Kumar, PW-13 records presence of one short towel type cloth with white and pink print wrapped around the pillow on the bed, besides other articles at the place of first incident i.e., "inside room, adjacent to Sanitary Depot Nagar Nigam Aushdhalaya, Yamuna Bazar, Kashmiri Gate, Delhi/'the room'. The report also mentions that IO is advised to make exhibit inter alia, of the said towel. Further, Vide testimony of PW-29 Ct. Ravinder Singh, it has come on record that (cross by PP- page 139-140) IO seized two bedsheets, one gamcha and one mat from the spot/the room vide seizure memo PW29/G. Said *gamcha*, bedsheets besides other exhibits were sent to FSL for examination.

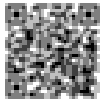
16.1 As per FSL report Ex. PW33/B, human semen was detected on *gamcha* (Ex. 4) and bedsheet (Ex.5) recovered from the room- place of first incident. As per DNA examination report/result, alleles from the source of Ex. 15 (blood gauze of accused Aman were accounted in the allelic data of the source of Ex. 4 i.e. *gamcha*/towel seized from the place of the first incident. It has been opined/concluded that DNA profiling on the source of exhibit 4 i.e. towel (*gamcha*) was similar to the DNA profile generated from



the source of exhibit 15 i.e. gauze cloth piece of accused Aman. Same clearly links appellant Aman with the incident of rape at the room.

17.0 Admittedly, all the appellants refused TIP. The appellants have stated that they refused to join TIP as they/their photos were shown to the prosecutrix by the police. Prosecutrix/PW-1 categorically denied that she identified accused persons at the instance of IO. With respect to identity of Wasim, she stated that she was shown photographs and she had identified the accused Wasim from those photos. PW-1 duly identified all the accused persons/appellants in the court. She identified appellant Rahul @ Raghu even from the tattoo on his arm ; and the appellant/accused Aman is connected with the crime even through DNA Examination report of FSL. No reason has been assigned by the appellants as to why would the prosecutrix falsely identify/implicate the appellants and let the real culprits go scot free. Thus, the appellants have failed to demonstrate that they have been wrongly identified by PW-1. Same even calls for drawing an adverse inference against the accused persons. [Mohd. Anwar's case (supra)]

18.0. Appellant Rahul @ Raghu in his statement under Section 313 Cr.P.C took the defence that name Raghu was got tatooed on his arm by the police, from which the prosecutrix has identified him. No such defence was put either to PW-1 or to any of the police witnesses in cross-examination which clearly shows that a false defence was taken by the appellant Rahul @ Raghu for the first time in his SA, to somehow wriggle out of the case. The same itself amounts to an incriminating circumstance against the appellant. (*Ramanand alias Nandlal Bharti V. State of Uttar Pradesh, 2022 SCC*

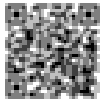


Online SC 1396 and Sharad Biridhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116

19.0. Ld. Counsel for the appellants also argued that prosecutrix's version recorded earlier/her testimony cannot be relied upon as she was not in a fit mental condition to depose. It is noted that PW-24, the Ld. Magistrate who recorded statement of PW-1 under Section 164 Cr.P.C, deposed that by making preliminary inquiry with the prosecutrix and after satisfying herself about her competency to make a statement, she recorded her (PW-1's) statement in the presence of and with the assistance of Dr. Khushboo, SR Psychiatric, IHBAS (PW-20). She also stated that she recorded the statement (Ex. PW-20/A) of Dr. Khushboo, whereby PW-20 certified that the prosecutrix is giving relevant and coherent answers to the questions posed by PW-24 and that the prosecutrix was in a fit mental state to make the statement. Further, PW-20 Dr. Khushboo deposed that she assisted the Ld. M.M. in recording the statement of the prosecutrix. She also stated that she had given a certificate Ex. PW-20/A to that effect. Nothing to the contrary has been observed even by the court while recording PW-1's deposition. Thus, there is hardly any merit in the argument of the Ld. Counsel for the appellants.

20.0. In view of the above, the prosecution has been able to prove beyond reasonable doubt that :

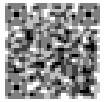
- (i) on 24.4.2014, the PW-1/prosecutrix alighted at Old Delhi Railway Station at about 1:30 pm for her onward journey to



Jalandhar for which she bought ticket from the platform but missed the train ;

- (ii) she contacted Brij Mohan (PW-2), (whom she had met inside the train) by calling him on mobile number 8586880171 in his use, from the mobile phone of Rahul @ Raghu bearing no. 8130644931 ;
- (iii) Prosecutrix duly identified all the accused persons/appellants in court. She also identified Rahul @ Raghu, Sunny and Bal Kishan as accused, who took her out from the railway station. Appellant Aman brought the car and all of them along with JCL 'M' took PW-1 in the said car to the room adjacent to Sanitary Depot Nagar Nigam Aushdhalaya, Yamuna Bazar, Kashmiri Gate, Delhi, where she was raped by all of them. The fact that appellant Aman raped the prosecutrix in the room is also corroborated by FSL report Ex. PW-33/A ;
- (iv) from the said room (the first place of incident), the prosecutrix was taken to Phool mandi by the appellants Rahul @ Raghu and Bal Kishan where the appellant Wasim @ Sahil joined and all three of them raped the prosecutrix at Phoolmandi.

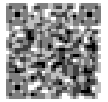
21.0. In view of the above, the appellants have failed to demonstrate any illegality in the impugned judgment convicting the appellants for the offences they were charged with.



22.0. Ld. Counsel for the appellants also prayed for reduction in sentence. It was pleaded on behalf of all the appellants that the appellants were young men aged about 25 years at the time of commission of offence. They are having their respective families consisting of wives, children, aged parents to support, being the only bread earners of their respective families. They have no previous involvement in any crime except appellant Aman who has been convicted for the offences u/Ss 323/506/341/186/353/427/34 IPC, in FIR no. 35/2014, PS Burari. Ld. Counsel further submitted that appellants have been in custody for last about 10 years. They are remorseful and have learnt their lesson. They be given an opportunity to reform themselves.

22.1. Considering the above facts and circumstances in entirety, background of the appellants, strata of society they belong to, their age and that they (except appellant Aman) are the first time offenders and have expressed remorse, we are of the considered opinion that for the offence punishable u/S 376(D) IPC, life imprisonment shall meet the ends of justice. Thus, appellants' sentence of imprisonment under Section 376(D) IPC is modified from 'life for the remainder of convicts' natural life' to 'life imprisonment'. Fine and sentence in default, shall remain the same. Sentence with respect to other offences does not call for any interference.

22.2. All the five appeals are disposed of accordingly.



23.0. Copy of the judgment be uploaded on the website and be sent to the concerned Superintendent Jail for updation of record and intimation to the appellants.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

JUNE 26, 2023/csc

