



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

% Reserved on: 6th March, 2023
Decided on: 26th June, 2023

+ **CRL.A. 484/2015**

RAJ KUMAR & ANR Appellants
Represented by: Mr.H.R.Khan Suhel, Advocate with
Mr.Praful Sinha, Mr.Shubhang
Sharma, Advocates.

versus

STATE Respondent
Represented by: Mr.Prithu Garg, APP for the State
with Inspector Anuj Yadav,
P.S.Dwarka North.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellants challenge the impugned judgment dated 27th March, 2015 and the order on sentence dated 30th March, 2015 whereby the appellants were found guilty and directed to undergo rigorous imprisonment for 5 years along with fine of ₹10,000/- in default whereof, simple imprisonment for 2 months for offence punishable under Section 365/34 of the Indian Penal Code, 1860 ("IPC"); rigorous imprisonment for 2 years for offence punishable under Section 356/34 IPC; rigorous imprisonment for 30 years along with fine of ₹40,000/- in default whereof, simple imprisonment for 6 months for offence punishable under Section 376D IPC; and also rigorous imprisonment for 2 years for offence punishable under Section 506 IPC. Appellant Dinesh was also found guilty



for offence punishable under Section 411 IPC and was directed to undergo rigorous imprisonment for 2 years.

2. Briefly case of the prosecution is that on the intervening night of 18th-19th June, 2014, the victim, who is a Nigerian national, came out of her friend's party at the District Centre at Janakpuri and while she was looking for an auto, a white color car stopped near her and the appellants abducted her and took her to appellant Raj Kumar's sister's house, where they both raped the victim. After committing rape on the victim, the appellants put her in the car and dumped her near metro pillar 781 and took her bag away containing her mobile phone. An old man took the victim to the police check-post, where the police officials told her to make a call at No. 100. She tried to call at No. 100 from her other mobile phone, but as the call did not get through, she requested an auto rickshaw to take her to the police station, where her statement (Ex.PW-2/A) was recorded. The IO (PW-20) prepared the *rukka* on which FIR No.387/2014 dated 19th June, 2014 under Sections 365/376D/392/506/34 IPC was registered at PS Dwarka-North (Ex.PW-1/A). From the police station, she was taken to the hospital, where she was got medically examined and her clothes were taken by the doctor. Later, her statement was also got recorded by the learned Magistrate (Ex.PW-2/B).

3. Dr. Ramesh (PW-8) at the DDU Hospital prepared the MLC (Ex.PW-8/A) and noted that no fresh external injury was noticed on the body, and the victim was referred to Gynae Department. Dr. Reema (PW-7) at the Gynae Department examined her and prepared the MLC (Ex.PW-7/A) and opined that she did not find any external injury on her body and that there was no tear, bleeding or injury on the vagina. She took the perennial swab,



vaginal swab and smear, cervical swab and smear, nail clippings, pubic hair sample, blood and also seized her clothes which she was wearing and handed over the same to the police.

4. On the basis of identification of the house where the victim was allegedly raped, the police arrested appellant Raj Kumar (Ex.PW15/A) on 21st June, 2014 who was found to be in possession of the keys of the house and at Raj Kumar's instance, appellant Dinesh was also arrested (Ex.PW-15/D). After completion of investigation, charge-sheet was filed and the appellants were charged for offences punishable under Sections 365/34 IPC, 376D IPC, 506/34 IPC and 356/34 IPC. Appellant Dinesh was also charged for offence punishable under Section 411 IPC. To prove its case, the prosecution examined 22 witnesses.

5. Learned counsel for the appellants assails the impugned judgment on the ground that the learned Trial Court did not rightly appreciate the evidence on record and wrongly convicted the appellants, and thus, prayed that the impugned judgment be set aside and the appellants be acquitted of all charges. It was contended that the appellants have been implicated due to mistaken identity. It was the case of the prosecution that the appellants were arrested on the basis of identification of the house by the victim, however, the victim herself denied this factum of identification of house. Even in her statement under Section 164 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), as well her examination-in-chief, the victim stated that one of the appellants used to bend her downwards in the car so that she does not get to know the place where she was taken, and therefore, it would be highly improbable for such person, more so being a foreigner, to identify a house



situated way inside a colony. It was further contended that as per the DNA Report (Ex.PA), the DNA profile of the semen found on the undergarments and the other clothes of the victim did not match with the DNA profile of the appellants. Even as per the MLC of the victim, no external injuries were found on her body. Reliance was placed on the decision in (2010) 9 SCC 747 Santosh Kumar Singh v. State, to contend that the court cannot substitute its opinion with that of an expert in science such as DNA profiling and thus, the Trial Court erred in not relying upon the DNA report. It was further contended on behalf of the appellants that they had rightly refused the TIP as not only their photographs were shown to the victim, but that from the cross examination of WSI Vinod (PW-20), it is evident that the appellants were arrested in victim's presence. It was further contended that the conviction in the present case rests merely on the uncorroborated testimony of the victim, and there is no other evidence on record to connect the appellants with the crime. It was also submitted that conviction cannot be based on this sole uncorroborated testimony of the victim, especially when she was herself unable to depose. It was also submitted that both the learned Magistrate who recorded the statement under Section 164 Cr.P.C. and the Trial Court erred in recording the statement of the victim with the help of a translator, as such procedure is not warranted by the Code of Criminal Procedure. It was submitted that the statements should have been recorded verbatim. It was also pointed out that the translator herself admitted that she was not a qualified translator. It was also pointed out that as the prosecutrix herself stated that she was unable to understand the contents of any document including her statement (Ex.PW-2/A) and



therefore, no sanctity could be given to any such document. It was contended that even Sunita (PW-11) who was the owner of the house where the incident allegedly took place, did not support the case of the prosecution and stated that she was present in the house at the relevant time and that no one came to the house on that day.

6. On the other hand, learned APP for the State submitted that the present appeal is devoid of any merit thus, be dismissed and the impugned judgment of the Trial Court be upheld. To buttress his contention, learned APP relied upon the following facts:

i. The prosecutrix identified the appellant during her deposition in the Court and also identified appellant Dinesh as the one who had dragged her in the car and also the one who had snatched her Nokia mobile phone. She categorically deposed that Dinesh had raped her first and thereafter, Raj Kumar raped her. She also identified her Nokia mobile phone. Her statement was recorded with the help of an interpreter Deborah Kembabazi (PW-4) who was an attaché to the Uganda Embassy.

ii. WSI Vinod (PW-20) categorically deposed that the police conducted the CDR analysis of the phone numbers of the victim to identify the house where the victim was raped. She also stated that she took the victim to the Dass Garden Area at Uttam Nagar, but the house could not be located, only after “intense search”, that the victim was able to identify the house i.e. H.No.43, Deep Enclave, Uttam Nagar.



iii. The place of incident i.e. the abovesaid house belongs to the sister of appellant Raj Kumar, Sunita (PW-11) sister of appellant Raj Kumar and her husband Ajay Vashisth (PW-18) deposed that they had gone to Hapur to attend a wedding on the day of the incident, however, during trial, both these witnesses turned hostile.

iv. Ajay (PW-18) informed the police that appellant Raj Kumar was running an electronics shop in furniture market at Nangloi Road at Najafgarh, from where he was arrested (Ex.PW-15/A) and on Raj's disclosure, Dinesh was arrested from his own house no. 1280, Near Krishna Mandir, Najafgarh (Ex.PW-15/D).

v. Victim's Nokia mobile phone was produced by Dinesh from his pants' pocket which was seized vide memo Ex.PW-15/G.

7. It was contended by learned APP, that the present case is primarily based on the testimony of the prosecutrix and as such, there are no inconsistencies in her statements, rather she has narrated the incident in detail. Further, reliance was placed on the decision in (2022) 2 SCC 74 Phool Singh v. State of Madhya Pradesh wherein it was held that in case the version of prosecutrix was found to be credible and trustworthy, further corroboration is not required. Therefore, in view of the testimony of the prosecutrix, alongwith the successful identification of house by the victim as also the recovery of her mobile phone from the appellant Dinesh, the conviction of the appellants is justified.

8. Having heard both the parties at length and perusing the record, the following evidence emerges.



9. Prosecutrix 'N' (PW-2) stated that she was not fluent in English and therefore, her statement was recorded through an interpreter Deborah Kembabazi (PW-4) who was an attaché to the Uganda Embassy. She deposed that on 18th June, 2014, she had gone to District Centre, Janakpuri to attend a party hosted by her friend Zera at about 9.00 PM. She left the party at about 11 pm and came out on the main road in search of an auto rickshaw when two persons came in a white color car and pulled her inside the car. The person who pulled her was on the rear seat and another person was driving the car. She stated that her head was bent so nobody could see her from outside. Thereafter, she was taken to a room on the ground floor of their house, where both of them raped her one by one. She tried shouting, but her mouth was gagged. Thereafter, they took her out of that house, again put her in the car and dropped her at a place near metro pillar 781 at about 5.00 AM. She further stated that the appellant took her handbag which contained her Nokia mobile with phone No. 8826563625. After they left, an old man reached there, and took her to police check post, where the police officials told her to make a call at No. 100. She tried calling at No. 100 from her other mobile phone No. 8826310589, but the call could not be connected after which, she requested an auto to take her to the police station. At the police station, her statement was recorded after which she was taken to a hospital for medical examination. She was taken to a magistrate where her statement was got recorded (Ex.PW-2/B). She identified Dinesh as the person who dragged her in the car, raped her first and snatched her bag. She identified Raj Kumar as the person who raped her after Dinesh. She further stated that she did not take the police to the house



where she was raped rather police took her to that house and she identified the same. Thereafter, she was declared hostile. In her cross examination, she stated that in the police station, her statement was recorded on dictation and the same was read over to her. She also stated that whatever she stated to the Magistrate was correct.

10. Sunita (PW-11) who is the sister of appellant Raj Kumar and owner of the house where the rape was committed deposed that they had not gone out of Delhi in the month of June, 2014 and were continuously staying in their house. She also stated that no incident took place in her house. Thereafter, she was declared hostile as she was resiling from her previous statement. In her cross-examination, she stated that her father-in-law belongs to Village Kakori, Hapur, U.P. and that her husband, her father-in-law and her children had gone to Hapur on 18th June, 2014 to attend a marriage but she was present at the house on that day.

11. Ajay Vashisth (PW-18), the husband of Sunita corroborated her version and was also declared hostile. In his cross-examination, he admitted to have told the police that appellant Raj Kumar was running a shop by the name of 'Sharma Electronics' in Furniture Market, Nangloi Road, Najafgarh.

12. IO/WSI Vinod (PW-20) deposed that at about 8.30 AM on 19th June, 2014, she was called to the police station Dwarka North by the SHO. On reaching the police station, she found the prosecutrix present there and she recorded her statement (Ex.PW-2/A) and prepared the *rukka* (Ex.PW-20/A) and got the FIR registered. Thereafter, she got the prosecutrix medically examined at the DDU Hospital. The prosecutrix led the police team to Dass



Garden Area at Uttam Nagar to locate the house where she was raped and to trace the assailants, but she was unable to locate the house. Thereafter, IO collected the CDRs of both the mobile numbers of the prosecutrix. Statement under Section 164 Cr.P.C. of the prosecutrix was also got recorded on 21st June, 2014. On the same day, she along with her team and the prosecutrix again went to the Deep Enclave Part-II Uttam Nagar in search of the appellant and after intense search, the prosecutrix was able to locate the house where she was raped. It was House No.43, Gali No.4, Deep Enclave, Part-II, Uttam Nagar. Upon entering the house, the prosecutrix pointed out the room where she was raped and at her instance, bed-sheet spread on the diwan in the room was seized (Ex.PW-13/A). After making inquiries from the owner of the house, Shri Ajay Sharma, told her that he along with his family had gone to Hapur for a marriage on 18th June, 2014 and returned on 20th June, 2014 and that he had handed over the keys of his house to the appellant Raj Kumar. Thereafter, she went to the shop of Raj Kumar and arrested him (Ex.PW-15/A) and recorded his disclosure statement (Ex.PW-15/C). Thereafter, appellant Raj Kumar took them to the house of appellant Dinesh i.e. House No.1280, near Krishna Mandir, Najafgarh, from where Dinesh was arrested ((Ex.PW-15/D) and his disclosure statement (Ex.PW-15/F) was recorded. She further stated that the white colour Wagon-R car bearing RC No.DL 1YB 5450 was recovered from the house of Raj Kumar (Ex.PW-15/H). Thereafter, appellant Dinesh led the police party to the drain at Jai Vihar where he had thrown the mobile phone and purse of the prosecutrix but none of the articles could be



recovered. She stated to have prepared the site plan of the house (Ex.PW20/A).

13. WSI Manju Chahar (PW-21) was entrusted with further investigation on 24th June, 2014. She deposed that the appellant refused to participate in the TIP and as no further investigation was required, charge-sheet was filed in the court.

14. As per the FSL Report (Ex.PA), semen was not detected on the cotton wool swab (perineal, Ex.1), vaginal swab and smear (Ex.2), cervical swab and smear (Ex.3), nail clipping (Ex.4), pubic hair (Ex.5), t-shirt (Ex.7a) and brassier (Ex.7d). Further, the DNA isolated from the jean's skirt (Ex.7b), underwear (Ex.7c) and Saree (Ex.14) did not tally with the DNA of the appellants.

15. In his statement under section 313 CrPC, appellant Raj Kumar stated that he was lifted by the police from his residence and that he had provided the residential address of Dinesh to the police. He stated that he refused to participate in the TIP and also stated that he was innocent and was falsely implicated in the present case.

16. Appellant Dinesh Sharma in his statement under Section 313 Cr.P.C. stated that police had come to his shop M/s Krishna Electronics at Najafgarh and had arrested him. He also stated that he refused to participate in the TIP and that he was innocent and was falsely implicated in the present case.

17. As noted above, the case of the prosecution is based on the sole testimony of the prosecutrix and the legal position in this regard has been well settled by the Hon'ble Supreme Court as reiterated in Phool Singh (supra), wherein, it was held as under:



“7. At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.

8. In Ganesan, this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paras 10.1 to 10.3, it is observed and held as under : (Ganesan case, SCC pp. 578-82)

“10.1. Whether, in the case involving sexual harassment, molestation, etc. can there be conviction on the sole evidence of the prosecutrix, in Vijay, it is observed in paras 9 to 14 as under : (SCC pp. 195-98)

‘9. In State of Maharashtra v. Chandraprakash Kewalchand Jain this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under : (SCC p. 559, para 16)

“16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars.



She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

10. In State of U.P. v. Pappu this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other



evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under : (SCC p. 597, para 12)

“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under : (SCC pp. 394-96 & 403, paras 8 & 21)

“8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her



and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

* * *

21. ...The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The



testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

12. In State of Orissa v. Thakara Besra, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In State of H.P. v. Raghubir Singh, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.’

10.2. In Krishan Kumar Malik v. State of Haryana, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai



Sandeep v. State (NCT of Delhi). In para 22, it is observed and held as under : (SCC p. 29)

‘22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and 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. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral,



documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.’ ”

(emphasis in original)

9. *In Pankaj Chaudhary, it is observed and held that as a general rule, if credible, conviction of the accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of the prosecutrix should not be doubted by the court merely on basis of assumptions and surmises. In para 29, it is observed and held as under : (SCC p. 587)*

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217]]. It is well settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K.].”

10. *In Sham Singh v. State of Haryana, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to*



be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paras 6 and 7, it is observed and held as under : (SCC pp. 37-38)

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the



courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam.]”

[Emphasis supplied]

18. In the light of the law laid down by the Hon’ble Supreme Court, the testimony of the prosecutrix which was duly translated by PW-4 is to be analyzed. Before discussing the testimony of the prosecutrix (PW-2), it would be appropriate to note the Section 277 CrPC which reads as under:

“277. Language of record of evidence.—In every case where evidence is taken down under section 275 or 276,—

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the



Court is not required by any of the parties, the Court may dispense with such translation”.

19. Since in the present case, the prosecutrix was not in a position to depose in English, her statement was interpreted through Ms. Deborah Kembabazi (PW-4), who on oath stated that she was called to the Dwarka Court to interpret the statement of the prosecutrix. The prosecutrix made a statement before the learned Magistrate in her language which PW-4 translated and the learned Magistrate recorded the same vide Ex.PW-4/A being her statement under Section 164 CrPC. Further, in her cross-examination, though it was elicited that she was not a qualified interpreter, however, nothing was elicited to the effect that PW-4 was not conversant with the vernacular language of the prosecutrix. Further, PW-4 was again called during the course of deposition of PW-2 before the Court on 5th September 2014 when examination-in-chief and cross-examination was recorded. No illegality can be found in the testimony of PW-2 on the count that the same was recorded through an interpreter when the interpreter appeared as PW-4 on 5th September 2014 and in her cross-examination denied that she had interpreted the statement of the prosecutrix wrongly being a fellow citizen. Thus while recording the evidence of the prosecutrix, learned Trial Court ensured due compliance of Section 277 Cr.P.C.

20. Before analyzing the deposition of the victim-prosecutrix, it would be appropriate to note her examination-in-chief and cross-examination before the Court as under:



“On 18.06.14, I had gone to District Centre, Janakpuri to attend a party hosted by my friend Zera. I had reached there at about 9.00 p.m and left the party venue at about 11.00 p.m. I came out on the main road and was looking for an auto rickshaw to return to my residence. Soon two persons came there in a white colour car. One of them came out of the car and pulled me inside the car. That person and myself were on the rear seat of the car. The other person was on the driving seat .and he started driving the car. My head was bent downwards so that nobody could see me in the car from outside. They took me into a room on the ground of their house. I do not know that place. Then both of them raped me one by one. They had laid me on a bed and raped me there. I tried to shout but they gagged my mouth and did not permit me to shout. I pleaded to them not to kill me and they told me that they are not going to kill me. Thereafter, they took me out of that house and again put me in that car. They dropped me at a place near Metro Pillar No. 781 at about 5.00 a.m. in the morning. They took my handbag which was containing my Nokia Lumia mobile phone bearing no. 8826563625. Some people were watching this scene from a distance. After those boys had left, an old man came near me and told me that he would take me to police. He took me to a police checkpost. The police officials at the checkpost told me to make a call at Tel. No. 100. I had another mobile phone with me bearing no. 8826310589. I made a call at Tel. No. 100 but the call did not get through. Meanwhile a person in an auto rickshaw came there and on my request took me to police station. I made a complaint in the police station. My statement was recorded in the police station which is Ex. PW2/A bearing my signature at Point A. From police station I was taken to a hospital where my medical examination was conducted. All my clothes which I was wearing including undergarments were taken by the doctor.

Police officials also produced me before a Ld, Magistrate who recorded my statement.

(At this stage, an envelope sealed with the seal of 'SKS' lying in the court file is taken out and on opening of the same, it



is found containing the statement of the prosecutrix recorded u/s.164 Cr.PC. Same is shown to the witness.)

This is my statement and bears my signature as well as thumb impression at Points A1, A2, A3 and A4. Same is Ex. PW2/B.

I can identify those two persons who have raped me on the aforesaid night. The witness points towards the two accused Rajkumar and Dinesh Sharma present in the Court today saying that these are those two boys who raped her.

The accused in pink shirt (Dinesh Sharma) had dragged me into the car. He raped me first in the room and thereafter the other accused Rajkumar raped me. Accused Dinesh had snatched my bag.

(Further examination of witness is deferred till 2.00 p.m. being lunch time).

XXX XXX XXX

I did not take police officials to the house in which I was raped. Police officials took me to the house and I identified the same. Similarly, when police officials had taken me to Metro Pillar No. 781, I identified that pillar also. Pointing Out Memos were prepared at both the places which are Ex. PW2/C & D respectively, both bearing my signature at Point A.

I can identify my mobile phone which was taken away by the accused.

At this stage MHC{m} has produced one sealed cloth pulinda having the seal of RKD, Same is opened and was found containing one green colour Nokia mobile phone having black screen. Same is Identified by the witness which was taken from her by the accused. Same is Ex. P1.

I can identify my clothes also which were taken- by the doctor at the time of my medical examination.

(At this stage, Ld. APP submits that the clothes have been sent to FSL for forensic examination and have not been received back as yet. She submits that the witness may be put to cross examination with liberty to call her again for identification of her clothes, if need arises in future. Liberty granted).



I cannot identify the car, in which I was taken away from District Centre, Janakpuri. I had not seen or noticed the registration number and make of the car.

(It is observed by the Court the witness has sometimes deposed herself in English language and sometimes assistance of interpreter was sought in understanding what she wanted to say).

(At this stage, Ld. APP for State declares the witness hostile and seeks permission to cross examine her as she is partly resiling from her previous statement, and is suppressing the truth. Heard. Allowed.)

XXX by Ms. Satvinder Kaur, Ld. APP for the State.

It is correct that during the commission of rape upon me, the two accused had threatened me not to raise alarm or otherwise they would kill me. It is wrong to suggest that I had shown the house in which I was raped as well as the metro pillar No. 781 to the police. It is wrong to suggest that I am deliberately not identifying the car in which I was taken away.

XXXXX by Sh. Hari Dutt Sharma, Advocate for both the accused.

There were many persons present in the party of Zera but I cannot tell their number. I did not see any of my friends in the party and that is why I came out very soon. Zera was known to me as I used to see her in the club but she was not my friend. I do not have mobile number of Zera. I have the mobile number of my sister saved in my mobile phone. I had made a call to my sister when I had reached police station in the morning. She did not come to the police station as she was not fine. She was sick. I was alone in the police station. I did not submit any written complaint in the police station as I cannot write English. I do not know the name of police official who recorded my statement. It is correct that at that time there was no interpreter in the police station.

The statement Ex. PW2/A was recorded by police officials on my dictation. The same was read over to me but I did not understand its contents. I did not tell the police officials the registration number or make of the car. When I came out of the club and was on the main road, there were no public persons passing by the road. However, there were cars plying on the



road. I had been on the road for about five minutes before I was taken away in the car. I don't remember whether shops or showrooms situated in District Centre, Janakpuri were open or not at that time.

Q. In your statement to police Ex. PW2/A. you have stated that when you came out of party venue on to the main road Najafgarh, two boys were already standing there, tried to talk to you but you did not listen to them and Ignored them. However, in your statement to Ld. M.M Ex. PW2/B you have stated that when you were waiting for an auto to go back home, two boys came to you in a car and asked you to accompany them. Which of these statements is correct?

A. Whatever I have stated to the Ld. M.M is correct.

It is wrong to suggest that my statement has been recorded wrongly by police or that I made a wrong statement to the police. Only one of those two boys had dragged me into the car. It is wrong to suggest that I have given a wrong statement in this regard to the police. None of the accused had shown any weapon to me. They did not show any weapon to me even during travel in the car to the house where I was raped. They did not show me any weapon inside the house also. I did not notice any name plate or any sign board at any place in the area where I was taken. I cannot tell the name of gali or area where I was taken. It is wrong to suggest that I had found my mobile phone on the ground near metro pillar no. 781 where I had been dropped. It is wrong to suggest that the accused did not snatch either my purse or any other belonging.

It is wrong to suggest that I have identified the accused today for the reason that they are in custody and are present alone in the Court It is wrong to suggest that neither of the accused had taken me away in the car and neither of them had committed rape upon me. it is wrong to suggest that I had given my statement to the Ld. M.M at the instance of the IO.

I had seen a sign board of Vikaspuri on the way while I was being taken in the car and therefore I said in my statement to Ld. MM that they drove on the Vikaspuri road. I have told this fact in my statement to police also but probably they did not



understand the same and hence it did not mention in my statement Ex. PW2/A. I cannot say whether the house in which I was raped belong to the accused. I have said in my statement to Ld. M.M Ex. PW2/B that they took me to their house as I had seen them opening the house and got the impression that it must be their house.

I had not mentioned in my statement to the police that the accused used to bend me downwards so that I do not get to know the place where they are taking me.

I had told the police that I was first made to climb stair in the house and to go to a dark room but when I refused they brought me down to another room where there were two beds. Probably they did not understand what I had stated and hence it did not mention in my statement Ex. PW2/A.

I had stated, to the police whatever I have mentioned in my statement to Ld. M.M Ex. PW2/B. But it seems that they did not understand whatever I told them and hence many things are not mentioned in my statement Ex. PW2/A. I had also stated to the police that at the time when I was being raped, my sister called me and the accused asked me to take the call but when I started talking to my sister, they grabbed my phone and my sister started negotiating with them that they should not hurt me.

It is wrong to suggest that I have given a concocted and fabricated statement to the Ld. M.M."

21. This deposition of the prosecutrix is in consonance not only with her statement in ruqqa (Ex.PW-20/A) drawn on 19th June, 2014 at 9.15 AM but also with the alleged history recorded in the MLC (Ex.PW-8/A) at 11.55 AM on the 19th June, 2014.

22. The truthfulness of PW-2 is evident from the fact that she stated that she did not take police officials to the house in which she was raped, rather the police officials took her to the house and she identified the same. Similarly, when police officials took her to Metro Pillar No. 781, she



identified that pillar also. From her deposition, it is evident that the prosecutrix was kidnapped by the two appellants at around 11 p.m. at night when she was looking for an auto-rickshaw. She was pulled inside the car and thus, she would not have noted the car number and could not have identified the car as it would have taken a few seconds or few minutes to the kidnappers to have kidnapped the prosecutrix, giving her no time to see the car number or details of the car. Further, while taking the route to the place where she was raped at night, it would have been difficult for a person who is not an ordinary resident, to identify the roads, which is further compounded by the fact that as per the prosecutrix, her head was bowed down in the car so that nobody could see her.

23. No motive can be attributed to the prosecutrix to falsely implicate the appellants. Further, there is also corroboration to the fact that the house where the rape was committed belonged to the sister and brother-in-law of the appellant Raj Kumar who appeared in the witness box as PW-11 and PW-18 respectively. Though Sunita, the sister of the appellant Raj Kumar stated that she had not gone out of Delhi in the month of June 2014 and she was continuously staying in the house throughout the month of June 2014, however, in her cross-examination by the learned APP, she admitted that on 18th June 2014, her husband, father-in-law and children had gone to Hapur to attend a marriage which fact was also deposed to by her husband Ajay Vashisth (PW-18). Nothing has come in the deposition of this witness as to why she would be staying alone at home when the entire family had gone to attend the marriage on 18th June 2014 to Hapur. Further when the two appellants were asked to join the TIP, they refused to participate on the



ground that the Police officers took their photographs, however no suggestion was given to the prosecutrix that the Police showed her the photos of the appellants.

24. The second ground on which the testimony of this witness is assailed is that despite the claim of the prosecutrix that both the appellants committed rape on her, the DNA analysis report does not support the claim. However, absence of semen which could on DNA analysis account for the alleles of the two appellants does not discredit the version of the prosecutrix that she was raped by the two appellants one after another. For an offence of rape, it is sufficient to prove that there was penetration.

25. Version of the prosecutrix is further corroborated by the fact that upon the arrest of the appellant No. 2, pursuant to his disclosure statement, a Nokia mobile phone belonging to the prosecutrix was recovered from his pant's pocket which was seized vide seizure memo Ex.PW-15/G.

26. Considering the evidence on record and that the version of the prosecutrix is not only wholly reliable but is also supported by other facts and circumstances, lending a further assurance to her version, this Court finds no error in the impugned judgment of conviction.

27. A perusal of the order on sentence would reveal that the appellants have been awarded rigorous imprisonment of 30 years along with fine of ₹40,000/-, in default whereof, simple imprisonment for 6 months for offence punishable under Section 376-D IPC. As submitted by the learned counsel for the appellants that both the appellants have no previous involvements and the appellant Dinesh is still unmarried whereas the appellant Raj Kumar has two minor children and parents to look after and the possibility of their



reformation cannot be ruled out, thus this Court deems it fit to modify the period of sentence for offence punishable under Section 376-D IPC to rigorous imprisonment for a period of 20 years along with the fine of ₹40,000/-, in default whereof, to undergo simple imprisonment for 6 months. The sentence for the remaining offence(s) would remain the same as awarded by the learned Trial Court. Thus, modifying the sentence for offence punishable under Section 376-D IPC, the impugned order on sentence is also upheld.

28. Appeal is accordingly disposed of.

29. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent, Tihar Jail for intimation to the appellants, updation of records and necessary compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
‘vn’