



2026:DHC:2778



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 18.03.2026*
Judgment pronounced on: 04.04.2026

+ **CRL.A. 286/2016**

HAJI MOHD. ALTAFAppellant

Through: Mr. S.C. Buttan, Mr. Himanshu Buttan, Mr. Ojasvi Annadi Shambhu and Mr. Nikhil, Advocates.

Versus

THE STATERespondent

Through: Mr. Utkarsh, APP for State

+ **CRL.A. 326/2016**

NARENDER SINGHAppellant

Through: Mr. Ravin Rao, Mr. Akshit Sawal, Mr. Ayan Sharma and Mr. Akshay Mathur, Advocates.

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for State

+ **CRL.A. 691/2016**

SUSHIL GULATI (VICTIM SINCE DECEASED)THR. LEGAL REPRESENTATIVES ASHA GULATIAppellant

Through: Appearance not given.



versus

STATE & ORS

.....Respondents

Through: Mr. Utkarsh, APP for State

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. CRL.A. 286/2016 and CRL.A. 326/2016 under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C) have been filed by the first and the second accused (A1 and A2) in Sessions Case No. 141/1/2010 on the file of the Additional Sessions Judge, Fast Track Court, North-West District, Rohini Courts, Delhi, assailing the judgment dated 25.02.2016 and order on sentence dated 29.02.2016 as per which they have been convicted and sentenced for the offences punishable under Sections 120B, 193, 195, 218, 465, 389 read with Section 120B of the Indian Penal Code, 1860 (the IPC).

2. CRL.A. 691/2016 under Section 372 Cr.PC. has been filed



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by PW12, Sushil Gulati, the victim in the case seeking enhancement of the sentence and the compensation awarded.

3. The prosecution case in brief is that on 29.08.2000 the accused persons four in number, in furtherance of their common intention entered into a criminal conspiracy to falsely implicate PW12 in a case of sexual assault and extort money from him. In furtherance of the said conspiracy and common intention, the accused persons forged and fabricated documents with the knowledge and intention that such documents may appear in evidence during judicial proceedings with a view to get a conviction of PW12 for offences punishable with imprisonment for life. Pursuant to the conspiracy hatched, PW12 was arrested on the allegation of committing rape of PW1. A2 Sub-Inspector, Police Post Tis Hazari Courts who had the duty to prepare the records, prepared false and incorrect records. Due to the aforesaid acts, PW12 was arrested and remanded to police and judicial custody for several days.



4. Initially, based on exhibit PW1/B FIS of PW1 given on 30.08.2000 Zero FIR was registered at Subzi Mandi, Police Station. Subsequently crime number 852/2000, Rajouri Garden Police Station, that is, exhibit PW11/A FIR, was registered by Sub-Inspector, Rajouri Garden Police Station alleging commission of offences punishable under sections 328, 376, 506 read with Section 34 IPC against PW12. The investigation was taken over by the Crime Branch, which investigation revealed that PW12 was innocent. Hence, he was discharged by the trial court as per order dated 09.04.2001. The further investigation conducted revealed the role of Haji (A1) and Narender Singh (A2) along with C.M. Dutta (A3), *Chowki-in-charge* Rajouri Garden, Police Station and Sameer Ahmed *alias* Sonu(A4). Hence the chargesheet/final report was filed alleging the commission of the offences punishable under Sections 193, 195, 218, 465, 389, 388, 120B of the Indian Penal Code, 1860 (the IPC).

5. When the accused persons were produced before the



trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.PC. Thereafter, in compliance of Section 209 Cr.PC, the case was committed to the Court of Session concerned.

6. On appearance of the accused persons before the trial court and after hearing both sides, as per order dated 18.08.2007, a Charge under Sections 120B and 193, 195, 465, 389, 218 read with Section 120B IPC was framed against A1 to A3, which was read over and explained to them, to which they pleaded not guilty. A4 Sonu died before the Charge was framed.

7. On behalf of the prosecution, PWs. 1 to 34 were examined and Exts. PW1/A-D, PW1/DA1-3, PW1/X1, PW2/A, PW2/DA1, PW3/A-E, PW4/A, PW5/A-C, PW6/A-B, PW7/A, PW8/A-E, Mark A-F (dated 04.03.2010), PW10/A-B, PW11/A-C, Mark A-F (dated 19.11.2011), PW12/A-K, PW13/A-B, PW14/A, PW15/A-B, PW16/A-D, PW17/A-C, PW18/A, PW20/A, PW21/A-B, PW27/A, PW29/A-B, PW30/A, PW32/A-D, and PW33/A-G



were marked in support of the case.

8. During the course of the trial, A3 C.M. Dutta, also died and hence the Charge against him stood abated. After the close of the prosecution evidence, A1 and A2 were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. A1 and A2 denied all those circumstances and maintained their innocence.

8.1 A1 submitted that he does not know PW1 nor has he ever met her. He submitted that he has been falsely implicated in the case by some police officials who have conspired against him.

8.2. A2 submitted that he has been falsely implicated in the present case and that he has performed his duties sincerely as per law and as per directions of the senior officials. He also submitted that he was being made a scapegoat in the case.

9. After questioning A1 and A2 under Section 313(1)(b)



Cr.P.C, compliance of Section 232 Cr.P.C was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C is seen made by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3)KHC89 : 2009 SCC OnLine Ker 2888**). Here, A1 and A2 have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

10. No oral or documentary evidence was adduced by the accused persons.

11. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 25.02.2016, found A1 and A2 guilty of the offences punishable under Sections 120B, 193, 195, 218, 465, 389 read with Section 120B IPC. *Vide* order on sentence dated 29.02.2016, A1 and A2 have been sentence to undergo,



rigorous imprisonment for a period of 02 years and to a fine of ₹20,000/-, and in default of payment of fine, to simple imprisonment for a period of 03 months for the offence punishable under Section 120B IPC; rigorous imprisonment for a period of 04 years and to a fine of ₹1,00,000/-, and in default of payment of fine, to simple imprisonment for a period of 06 months for the offence punishable under Section 195 read with 120B IPC; rigorous imprisonment for a period of 01 year and to a fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of 03 months for the offence punishable under Section 465 read with 120B IPC; rigorous imprisonment for a period of 01 year and to a fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of 03 months for the offence punishable under Section 218 read with 120B IPC; and rigorous imprisonment for a period of 02 years and to a fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of 03 months for the offence punishable



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under Section 389 read with 120B IPC. It has also been directed that in case of realisation of the fine amount, a sum of ₹2,00,000/- be paid as token compensation to the legal representatives of PW12 Sushil Gulati for causing enormous damage to his reputation and character. The sentences have been directed to run concurrently. Aggrieved, A1 and A2 have preferred these appeals.

12. The learned counsel for A1 submitted that the inculpatory statements made by the witnesses herein is not as per the procedure contemplated under law. The provisions of Section 306 or 307 CrPC was never resorted to by the Investigating Officer (IO). The IO ought to have made the prosecution witnesses, namely, PW1, PW2, PW6 and PW7 also co-accused in this case as it is clear that they were accomplices in the crime. But, the IO, without any justification or reasons have made them witnesses, which is not legally permissible. The trial court erred in not giving reasons as to why the persons making the inculpatory statements were not made accused in this case. The trial court also erred in



holding that the provisions of Sections 195 and 197 CrPC are not applicable. The prosecution witnesses in connivance with the IO have entered into a conspiracy to implicate the accused persons in a false case in order to save themselves. There are no independent witnesses to corroborate the testimony of the prosecution witnesses. PW1, PW2, PW6 and PW7 being accomplices in the crime, their testimony can have no value. Even assuming that their testimony is admissible, the same cannot be accepted without corroboration, goes the argument.

12.1. The learned counsel for A2 submitted that there is absolutely no evidence to show that A2 was at any point of time part of the criminal conspiracy. On the other hand, he was only discharging his duties to the best of his abilities and as instructed by his superior officers. It was submitted that the testimony of PW1, PW2, PW6 and PW7 can never be relied on as they are also accomplices in the crime. Reference was made to the dictum in **Abdul Razak vs. Union of India**, 2021 SCC OnLine Ker 3282.



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13. *Per contra* it was submitted by the Additional Public Prosecutor that as per Section 133 of the Indian Evidence Act, 1872, (the IEA) an accomplice is a competent witness and so the statements of PW1, PW2, PW6 and PW7 are certainly admissible. There is no inconsistency in the testimony of PW1 and the same is corroborated by the statements of the aforesaid witnesses as well as PW9 and PW12. The testimony of PW7 and PW12 though not cross examined is admissible under Section 33 of the IEA. Reference was made to the dictum in **Sarwan Singh v. State of Punjab AIR 1957 SC 637** in support of the arguments.

14. Heard both sides and perused the materials on record.

15. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/A1 and A2, by the trial court are sustainable or not.

16. Before I go into the merits of the case, I will first consider the main argument of the learned defence counsel for A1



and A2 that the testimony of PW1, PW2, PW6 and PW7 is inadmissible in evidence and cannot be relied on as the provisions of 306 or 307 CrPC was never resorted to. In support of the argument reference was made to the dictum in **Abdul Razak Alias Abu Ahmed** (*Supra*). In the said case the petitioner, one of the accused in a case pending before the Special Court for the Trial of NIA cases, Ernakulam, Kerala, challenged the order passed by the Special Court allowing an application submitted by the National Investigation Agency (NIA) permitting examination of one S.V.K as an additional witness in the case. According to the petitioner, the additional witness sought to be examined, was a co-accused who was tried and convicted by the NIA Court at New Delhi on the basis of the chargesheet filed by NIA, New Delhi Unit, based on the very same transactions and hence was not a competent witness. It was contended that an accused in a case can be examined as a witness only under Section 315 Cr. PC; the conditions under which were not satisfied in the said case.



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16.1. The sum and substance of the allegations contained in the charge sheet was that the petitioner therein along with accused no. 6, and S.V.K, the proposed additional witness, in furtherance of their common intention to wage war against Syria, and to physically join the proscribed terrorist organisation ISIS, attempted to reach Syria together. During transit when they reached Turkey, the petitioner and the additional witness, were apprehended by Turkish officials and later deported to India, while one among them, the 6th accused managed to enter Syria. Upon deportation, both the petitioner and S.V.K arrived together at Delhi Airport and were detained by the Special Cell of the Police at Delhi. Several documents and digital devices were seized from both of them. S.V.K was immediately taken into custody and a case was registered against him by the NIA Unit of Delhi. The petitioner who was released returned to Kerala, his native place. Upon reaching Kerala, he was apprehended by the State Police and a crime registered, which was later taken over by NIA Cochin Unit,



who filed the chargesheet after completion of investigation.

16.2. As against S.V.K, the Delhi Unit of NIA filed a charge-sheet. Pertinently in the said charge-sheet, the petitioner was arraigned as the 6th accused. The charge-sheet of the NIA, Delhi unit, detailed the investigation against several accused persons including the petitioner, but S.V.K alone was charge sheeted for the offences punishable under the various Sections of IPC, the Unlawful Activities (Prevention) Act, 1967 and Section 12 of Passports Act, 1967. In the said charge-sheet it was stated that as per the evidence collected, role of some more suspects had emerged. It was further stated that, as prosecutable evidence needs to be collected against the other accused as regards their role, including that of the petitioner, investigation against them was continuing. S.V.K pleaded guilty of the charges levelled against him as per the charge sheet of the NIA, Delhi unit, pursuant to which he was convicted. He was undergoing imprisonment in Tihar Jail, New Delhi. The investigation against the petitioner was



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continued by the NIA and the charge sheet, was filed by their Cochin Unit in the Special Court at Ernakulam. During the trial conducted by the Special Court, all the witnesses cited by the prosecution were examined except the Chief Investigating Officer. At this juncture, the prosecution moved an application under Section 311 Cr.PC seeking permission to examine S.V.K who was convicted in Delhi for an identical offence, which he carried out along with the petitioner-accused, as an additional witness. It was found that in both the charge sheets the acts which gave rise to the offence was identical and S.V.K, the proposed additional witness and the petitioner had an active role in the conspiracy as also the other acts constituting the offences charged. The essential facts which led to the charge sheet and the major offences charged against the accused were found to be one and the same.

16.3. The question that therefore, arose for consideration in the said case was whether a person accused of the very same offence arising from the very same transaction, could be permitted



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to be examined as a witness in respect of the trial that was being conducted against the co-accused. It was held that the right of an accused against self-incrimination is a right embedded in the constitutional mandate of Article 20(3) and one of the basic tenets of criminal jurisprudence. There could be only two exceptional circumstances where an accused could be examined as a witness against other persons accused of the very same offences, i.e. (i) if he has been tendered pardon by following the procedure contemplated under Section 306 or 307 of Cr. PC or (ii) under the circumstances mentioned in Section 315 Cr.PC. Both such situations did not arise in the case. A person, who is arraigned as an accused in a case, can be examined as a witness against the other accused persons, in a trial relating to the very same offence, arising from the very same cause of action only in the circumstances covered by Sections 306 or 307 Cr.PC. Under Section 315 Cr.PC an accused can be examined as a witness in the trial, on his request in writing and to disprove the charges him, in



which event the protection under Article 20 (3) does not arise, since the accused voluntarily mounts the box as a witness, and there is no element of compulsion. However, the additional witness sought to be examined was not a person who was subjected to the proceedings contemplated under Section 306 or 307 Cr.PC. From the materials available on record, it was evident that, even as per the case of the prosecuting agency, the transactions which formed the basis of the charge sheet submitted against the petitioner and the charge sheet submitted against S.V.K, the additional witness, were one and the same. Therefore, the entire proceeding against the petitioner was akin to a '*split-up*' trial based on very same charge sheet, where a co- accused cannot be permitted to be examined as witness; even if he was tried and convicted before the trial of the petitioner. Sections 306 or 307 could not be availed at that stage as pardon had to be granted before the final judgment was passed against the person who was sought to be examined. Section 315 also could not be invoked,



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even with a request in writing, as the additional witness was not being tried and so there was no question of his giving evidence in his defence. The additional witness for all the said reasons could not be treated as a competent witness for the prosecution. Holding so, the impugned order of the trial court by which the application of the NIA allowing examination of S.V.K as additional witness was set aside and the CRL.MC was allowed.

17. The dictum in the aforesaid decision is not applicable to the facts of the present case because in the said case the additional witness who was sought to be examined had also been arraigned as a co-accused. In the case on hand, none of the prosecution witnesses at any point of time had been arraigned as an accused in the case. In this context I refer to the dictum of the Apex Court in **Lakshmipat Choraria v. State of Maharashtra**, AIR 1968 SC 938. The appellants therein were convicted and sentenced for the offences punishable under Section 120B IPC and Section 167 (81) of the Sea Customs Act. The appellants were found to have entered



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into a criminal conspiracy among themselves and with others including one Yau Mockchi, a Chinese citizen in Hong Kong, to smuggle gold into India. The suitcases with the gold concealed were brought into India by air stewardesses, and Ethyl Wong (PW1), an Anglo Chinese girl employed by Air India, was one of them. Discovery came, after gold was successfully smuggled on many occasions, when Yau Mockchi approached one Sophia Wong of the B. O. A. C. line. She was engaged to a police officer, who informed her superior officers. A trap was laid. Yau Mockchi was caught with a suitcase with gold in it. On the search of his person and also of his place of business, visiting cards of several persons including those of Ethyl Wong and the appellants and their addresses and telephone numbers, and other incriminating letters, accounts cables, etc., were found. On the strength of these materials, the prosecution commenced.

17.1. During the trial, Ethyl Wong when examined as PW1 gave a graphic account of the conspiracy and the parts played by



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the appellants and her own share in the transactions. Her testimony was clearly that of an accomplice. Although she could have been prosecuted, she was not arraigned as an accused and it was her testimony which was the subject of a major part of the arguments before the Apex Court. The main argument advanced was that Ethyl Wong could not be examined as a prosecution witness because (a) no oath could be administered to her as she was an accused person since Section 5 of the Indian Oaths Act bars such a course and (b) it was the duty of the prosecution and / or the Magistrate to have tried Ethyl Wong jointly with the appellants. The breach of the last obligation, it was submitted vitiated the trial and the action was discriminatory. In the alternative, it was submitted that even if the trial was not vitiated as a whole, Ethyl Wong's testimony must be excluded from consideration and the appeal reheard on facts.

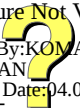
17.2. The question whether PW1 Ethyl Wong was a competent witness was answered in the affirmative by the Apex



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Court. It was held that under Section 118 of the IEA, all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them for reasons indicated in that section. Under Section 132 IEA, a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any criminal proceeding (among others) upon the ground that the answer to such question will incriminate or may tend directly or indirectly to expose him to a penalty or forfeiture of any kind. The safeguard to this compulsion that no such answer which the witness is compelled to give exposes him to any arrest or prosecution or can it be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. In other words, if the customs authorities treated Ethyl Wong as a witness and produced her in court, she was bound to answer all questions and could not be prosecuted for her answers. The argument that the Magistrate ought to have promptly put her in the dock because of her





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incriminating answers overlooks Section 132 (Proviso). The section is further fortified by Article 20 (3) which says that no person accused of any offence shall be compelled to be a witness against himself. This Article protects a person who is accused of an offence and not those questioned as witnesses. A person who voluntarily answers questions from the witness box waives the privilege which is against being compelled to be a witness against himself because he is then not a witness against himself but against others. Section 132 IEA sufficiently protects him since his testimony does not go against himself. In this respect the witness is in no worse position than the accused who volunteers to give evidence on his own behalf or on behalf of a co-accused. There too the accused waives the privilege conferred on him by the Article since he is subjected to cross examination and may be asked questions incriminating him. The evidence of Ethyl Wong could not, therefore, be ruled out as that of an incompetent witness. Since Ethyl Wong was a self-confessed criminal, in conspiracy with



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others who were being tried, her evidence was accomplice evidence. The word accomplice is ordinarily used in connection with the law of evidence and rarely under the substantive law of crimes. Accomplice evidence denotes evidence of a participant in crime with others. Section 133 IEA makes the accomplice a competent witness against an accused person. Therefore, Ethyl Wong's testimony was held to be that of a competent witness.

17.3. The appellants also contended that oath could not have been administered to Ethyl Wong in view of the prohibition contained in Section 5 of the Indian Oaths Act. It was contended that in interpreting the exclusionary clause every person against whom there is an accusation (whether there be a prosecution pending against him or not) is an accused person, more so a person against whom an investigation is going on or has been made. Referring to the Sections of the then Code of Criminal Procedure where the word 'accused' occurs, it was attempted to be established that



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sometimes the word is employed to denote a person on trial and sometimes a person against whom there is an accusation but who is not yet put on his trial. The expression 'in a criminal proceeding' was also referred to and contended that the words are of sufficient amplitude to take in a person against whom an investigation is to be made or has been made on an accusation. In either case, it was contended that, the case of Ethyl Wong would fall within the exclusionary clause. This argument was also rejected and it was held thus-

“11. The position that emerges is this: No pardon could be tendered to Ethyl Wong because the pertinent provisions did not apply. Nor could she be prevented from making a disclosure, if she was so minded. The prosecution was not bound to prosecute her, if they thought that her evidence was necessary to break a smugglers ring. Ethyl Wong was protected by S.132 (proviso) of the Indian Evidence Act even if she gave evidence incriminating herself. She was a competent witness, although her evidence could only be received with the caution necessary in all accomplice evidence, The expression 'criminal proceeding' in the exclusionary clause of S.5 of the Indian Oaths Act cannot be used to widen the meaning of the



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word accused. The same expression is used in the proviso to S.132 of the Indian Evidence Act and there it means a criminal trial and not investigation. The same meaning must be given to the exclusionary clause of S.5 of the Indian Oaths Act to make it conform to the provisions in pari materia to be found in S.342, 342A of the Code and S.132 of the Indian Evidence Act. The expression is also not rendered superfluous because if given the meaning accepted by us it limits the operation of the exclusionary clause to criminal prosecutions as opposed to investigations and civil proceedings. It is to be noticed that although the English Criminal Evidence Act, 1898, which (omitting the immaterial words) provides that "Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings" was not interpreted as - conferring a right on the prisoner of giving evidence on his own behalf before the grand jury or in other words, it received a limited meaning, see Queen v. Rhodes, (1899) 1 QB 77.

12. xxxxx

13. *On the side of the State many cases were cited from the High Courts in India in which the examination of one of the suspects as a witness was not held to be illegal and accomplice evidence was received subject to safeguards as admissible evidence in the case. In those cases, S.342 of the Code and S.5 of the Indian Oaths Act were considered and the word 'accused' as used in those sections was held to denote a person*



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actually on trial before a court and not a person who could have been so tried. The witness was, of course, treated as an accomplice. The evidence of such an accomplice was received with necessary caution in those cases. These cases have all been mentioned in. In re, Kandaswami Gounder AIR 1957 Mad. 727 and it is not necessary to refer to them in detail here. The leading cases are: Queen Empress v. Mona Puna, 1892 ILR (16) Bom 661; Banu Singh v. Emperor, 1906 ILR (33) Cal 1353, Keshav Vasudeo v. Emperor, ILR 59 Bom. 355 : AIR 1935 Bom 186, Empress v. Durant, (23) ILR 1899 Bom. 213, Akhoy Kumar Mookerjee v. Emperor, ILR 45 Cal. 720 : AIR 1919 Cal. 1021; A. V. Joseph v. Emperor, ILR 3 Rang 11 : AIR 1925 Rang 122; Amdumiyar v. Emperor, ILR 1937 Nag. 315 : AIR 1937 Nag. 17 (FB), Gallagher v. Emperor, ILR 54 Cal. 52 : AIR 1927 Cal. 307 and Emperor v. Har Prasad, ILR 45 All. 226 : AIR 1923 All. 91. In these cases (and several others cited and relied upon in them) it has been consistently held that the evidence of an accomplice may be read although he could have been tried jointly with the accused. In some of these cases the evidence was received although the procedure of S.337, Criminal Procedure Code was applicable but was not followed. It is not necessary to deal with this question any further because the consensus of opinion in India is **that the competency of an accomplice is not destroyed because he could have been tried jointly with the accused but was not and was instead made to give evidence in the case. S.5 of the**



Indian Oaths Act and S.342 of the Code of Criminal Procedure do not stand in the way of such a procedure.”

(Emphasis Supplied)

18. The aforesaid position was reiterated by the Apex court in **Chandran alias Manichan alias Maniyan & Ors. v State of Kerala** 2011 KHC 4315; AIR 2011 SC 1594. In the said case also, an argument was raised that the evidence of an accomplice who was arrayed as a prosecution witness could not be taken into consideration and it would be inadmissible because the witness though an accomplice was neither granted pardon under Section 306 CrPC nor was he prosecuted and that the prosecution unfairly presented him as a witness for the prosecution. This contention was rejected in light of the dictum in **Lakshmipat Choraria** (*Supra*). It was held that the evidence of an accomplice was admissible and there was nothing illegal in accepting the same.

19. In the light of the aforesaid precedents, the argument advanced by the learned counsel for A1 and A2 that the testimony



of the prosecution witnesses is inadmissible or cannot be relied on is liable to be rejected.

20. At the risk of repetition, I once again refer to the prosecution case. On 06.06.2000 while PW12 Sushil Gulati was sitting in the office of one Balraj Bhasin situated at Rajouri Garden Extension, Dr. Jeevan Prakash Gandhi (Dr. Gandhi), father of PW9, rushed to their office in a perplexed state and informed them that a stranger had intruded into his house and was misbehaving with his daughter-in law. Immediately, PW12 Sushil Gulati along with Balraj Bhasin rushed to the house of Dr.Gandhi, where they saw A3 Chandramohan Dutta (A3 C.M. Dutta) misbehaving with PW9's wife. PW12 Sushil Gulati knew A3 C.M. Dutta as the latter was earlier posted as *chowki*-in-charge of Rajouri garden area. PW12 Sushil Gulati rescued Jeevan Lata Gandhi, wife of PW9, from the clutches of A3 C.M. Dutta. This was not to the liking of A3 C.M. Dutta who left the house after abusing and threatening PW12 Sushil Gulati. The said incident resulted in registration of



Crime No. 579/2000 alleging commission of offences punishable under Sections 354 and 506 IPC against A3 C.M. Dutta, in which crime, PW12 Sushil Gulati was the main witness. Registration of the molestation case infuriated A3 C.M. Dutta and he threatened to implicate PW12 Sushil Gulati in a false case. Accordingly, a plot was devised by A1 to A4 for implicating PW12 Sushil Gulati in a false rape case for which the services of PW1, PW2, PW6, and PW7 was sought and obtained.

20.1. PW1 Rajni Gupta, earlier working in the marketing division of M/s Power & Power Company knew A1 Haji Mohd. Altaf, a practising lawyer at Tis Hazari Courts who had helped her earlier in procuring a disability certificate. PW1 due to her disability had to leave her marketing job and so she approached A1 Haji Mohd. Altaf in order to ascertain whether it would be possible for her to avail or get a job on the basis of her disability certificate. In the chamber of A1, PW1 Rajni Gupta happened to meet PW2 Savita as well A4 Sameer Ahmad @ Sonu, who was working as



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munshi and was associated with A1. PW1Rajni Gupta was in need of money and hence she agreed to become part of the conspiracy. Accordingly, with the assistance of PW2, PW6 Balbir Kaur and PW7 Najma, all the four accused persons acting in concert, staged a scene of rescue of PW1 from a roadside. As planned, A2 the then *chowki-in-charge*, Rajouri Garden, arranged for a PCR van to take PW1 to the hospital where she gave her initial statement under a fictitious name 'Seema Kaur', that is, exhibit PW1/B FIS/FIR to the police to the effect that she was raped by PW12 Sushil Gulati, and two of his associates in a moving car and thereafter thrown on to the road. Based on Ext. PW1/B FIS/FIR, Zero FIR, i.e. Ext. PW10/A was registered at Police Station Sabzi Mandi. Thereafter, FIR No. 852/2000 i.e. Ext. PW11/A was registered at Police Station Rajouri Garden alleging commission of offences punishable under Sections 328, 376 , 506 read with 34 IPC against PW12 Sushil Gulati and others. The clothes of the victim, blood sample as well as vaginal swab of PW1 taken at the Hindu Rao



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Hospital were seized. On 01.09.2000 statement of PW1 Rajni Gupta as Seema Kaur was recorded by the magistrate concerned under Section 164 CrPC, wherein she reiterated her case of rape by PW12 Sushil Gulati others. Thereafter, the investigation of the case was transferred to the Crime Branch. PW1 Rajni Gupta @ Seema Kaur was interrogated at length, during which interrogation the conspiracy that had been hatched against PW12 Sushil Gulati and how a crime of rape was cooked up, was revealed. Pursuant to the same, a second statement of PW1 under Section 164 Cr.PC was recorded on 11.09.2000 in which she confessed that the rape allegation was false and fabricated and that the same had been enacted pursuant to the conspiracy hatched by the four accused persons in order to implicate PW12 Sushil Gulati. The DNA reports exonerated PW12 Sushil Gulati, on the other hand it revealed that the source of semen found on PW1 was that of A4Sonu and that of one Babloo Mandal, a friend of PW1. Pursuant to the same A4 Sonu was arrested. On 08.03.2001, A3 C.M. Dutta



surrendered before the court. A1 Haji Mohd Altaf and A2 Narender Singh were arrested on 17.03.2001 and 19.03.2001 respectively. Investigation conducted by the Crime branch revealed that PW12 Sushil Gulati was completely innocent. Hence, the final report/charge sheet was submitted against A1 to A4 alleging commission of offences punishable under the above mentioned Sections.

21. Now coming to the evidence on record, relied on by the prosecution to prove the case. The reason why A3 C.M. Dutta harboured enmity against PW 12 is spoken to by the latter as well as by PW9. PW9 Dr. K.D. Gandhi deposed that C.M. Dutta (A3) was known to him through his brother -in- law K.K. Vaid. C.M. Dutta (A3) had threatened him over phone on numerous occasions between June 2002 to 2006 and claimed that he had received approximately more than 1000 such threatening calls. PW9 further deposed that in June 2000, he received a telephone call from Sushil Gulati (PW12), his neighbour, informing him that a young man



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was molesting his wife. Upon reaching his residence and calling the PCR, he found that the assaulter had already fled. He further deposed that on the same night, C.M. Dutta (A3) came outside his residence along with his relatives and associates at which time police officials were present inside his house recording his statement. He further deposed that C.M. Dutta (A3) and his associates threatened the police officials from outside, upon which the SHO, police station Rajouri Garden was called to the spot. An exchange of heated words took place between the SHO and C.M. Dutta (A3) and associates. The next day PW9 along with his wife appeared before the DCP and gave a statement which resulted in the suspension of C.M. Dutta (A3) from service. PW9 further deposed that on the same day, C.M. Dutta (A3) followed him to his residence and again threatened him to withdraw the complaint. In July 2000, while he was returning to his residence, a bus belonging to one Prabhjot Singh Gandhi obstructed his car, and thereafter Prabhjot Singh Gandhi and one Kailash Lamba



approached him and threatened him to withdraw FIR No. 579 of 2000, failing which they would harm him and his witnesses. PW9 further deposed that after about two to three months, a counter case was registered against him by C.M. Dutta (A3) and wife alleging commission of offence punishable under Section 406 IPC and certain other provisions. C.M. Dutta (A3) continued to extend threats to him over telephone. PW9 further deposed that in December 2000, a compromise was arrived at before the High Court in Criminal Writ Petition No. 1285 of 2000 between the parties. He also deposed that he had made several complaints against Prabhjot Singh Gandhi, Kailash Lamba, C.M. Dutta (A3) and wife from time to time. PW9 was not cross examined despite sufficient opportunity being granted.

22. PW12, Sushil Gulati, deposed that on 06.06.2000, on being informed by Dr. Gandhi (father of PW9) regarding the misbehaviour by C.M. Dutta (A3) with the former's daughter -in-law Jeevan Lata Gandhi (wife of PW9), he along with one Balraj



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Bhasin and others reached the house and found C.M. Dutta (A3) misbehaving with her. They rescued Jeevan Latha Gandhi from further assault by C.M. Dutta (A3), who left after threatening him and others with dire consequences. On the same night, he again went to the house of Dr. Gandhi on being called and found C.M. Dutta (A3) and associates creating disturbance. PW12 informed the SHO, PS Rajouri Garden over phone regarding the incident pursuant to which a truck carrying police force arrived at the house of PW9. However, by then, C.M. Dutta (A3) and associates fled the scene. Subsequently, on 07.06.2000, he was called to police station Rajouri Garden where his statement was recorded. He later came to know from PW9 that a crime under Section 354 IPC had been registered against C.M. Dutta (A3). PW12 further deposed that thereafter, C.M. Dutta (A3) and his wife Sanyogita Dutta started threatening him and pressurising him to withdraw the case, failing which he would be falsely implicated. On 29.08.2000 at about 10.30 pm, he received a suspicious telephone call asking about the



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details of his car from one Balbir Singh and shortly thereafter PCR officials reached his house. He was taken by police officials to police station Sabzi Mandi, where he was beaten by police officials including Addl. SHO Hari Ram Malik and Sub Inspector (SI) Vineet Soni. PW12 Sushil Gulati further deposed that SI Vineet Soni mocked him by saying that as he got C.M. Dutta (A3) suspended, he should enjoy the fruits of the same. He was then taken to Baba Hindu Rao hospital and shown to a lady who failed to identify him. At this time SHO Hari Ram Malik told the lady that the person shown to her is Sushil Gulati. PW12, further deposed that at a later point of time he had identified Seema Kaur @ Rajni Gupta. At that point, Najma (PW7) and Sonu (A4) were also present. Thereafter, Narender Singh (A2) also came. PW12 further deposed that he was illegally detained, beaten at various police stations, and forced to sign in blank papers. He also deposed that he was subjected to repeated custodial violence and was taken to multiple places including police station Rajouri Garden, police



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station Kirti Nagar, and hospitals for medical examination.

22.1 PW12 further deposed that during his custody, he saw Seema Kaur @ Rajni Gupta (PW1) and Balbir Kaur (PW6) in the police station interacting with police officials in a jovial manner, which according to him indicated the conspiracy and fabrication. He also stated that police officials in his presence discussed the preparation of documents of a rape case against him and forced him to sign documents. PW12 further deposed that he was beaten by SI Rajbir Singh with a lathi, and thereafter Inspector Hari Ram Malik and Inspector Hoshiyar Singh showed him a visiting card, which according to him had earlier also been shown to him at police station Subzi Mandi. On the front side of the said visiting card his name was hand written, while the card was printed in the name of Balraj Bhasin and Associates bearing the address WZ 106/44. On the reverse side of the card, the words “Maruti Car White 800 0444” were hand written. Upon seeing the said card, he pointed out to Inspector Hari Ram Malik that initially only an



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incomplete number “0444” of his Maruti car had been written, but when it was subsequently shown to him at police station Rajouri Garden, the complete number of his car had been mentioned. He further deposed that thereafter he was taken to DDU Hospital, where an unknown person advised him not to give his semen sample to the police, lest the same be planted against him. Thereafter he was taken to RML Hospital, where his medical examination was conducted. PW12 deposed that attempts were made to obtain his semen sample with the aid of creams, however, the same could not be obtained as he was unable to ejaculate, and hence only his blood sample and pubic hair were collected. He further deposed that the said medical examination took place in the intervening night of 30.08.2000 and 31.08.2000 and it was recorded in the MLC that he was not cooperating for giving semen sample. PW12 further deposed that at about 03.30 pm he was produced before DCP Sh. Kewal Singh, where Additional DCP Sh. Ajay Kumar was also present. In his presence, Additional DCP



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observed that commission of rape in a small car with transparent white glass appeared improbable, and both the officers discussed certain points for inquiry and directed Inspector Hoshiyar Singh to visit the place where the prosecutrix was found. PW12 further deposed that DCP Sh. Kewal Singh suggested that they should meet Advocate O.P. Wadhwa at about 05.00 pm. By this time, a message was received that investigation of the case had been transferred to the Crime Branch, and thereafter he was again put in lock up. During investigation by the Crime Branch, he disclosed his whereabouts on 29.08.2000 and denied involvement in the alleged offence.

22.2. PW12 further deposed that Babloo Mandal disclosed before him that the latter had sexual intercourse with PW1, and that the latter had no knowledge of any conspiracy. PW12 further deposed that while in jail, Sonu (A4), who came into his ward as a part of the planning, threatened him and demanded money, and also disclosed that the conspiracy had been hatched by



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certain advocates including Haji (A1) and others. PW12 further deposed that both his and Sonu's (A4) blood samples were collected at DDU hospital and subsequently, he was informed that his DNA report was negative, whereas that of Babloo Mandal and another person was positive.. PW12 further deposed that he made complaints to higher authorities including the Lieutenant Governor and Commissioner of Police regarding his false implication and conspiracy, that is, Ex. PW12/A and Ex. PW12/B. PW12 also deposed that he had informed the IO that prior to the incident, PW1 had visited his house and met his mother, and had handed over a letter written by one Sita Gupta, whom he later came to know as the owner of the house where Haji (A1) was residing as a tenant. PW12 was not cross-examined despite multiple opportunities being given by the trial court.

23. The testimony of PW12 is supported by the testimony of PW1Rajini Gupta; PW2 Savita Gupta; PW6 Balbir Kaur and PW7 Najma. Exhibit PW1/B FIS of PW 1, the informant, described as



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Seema Kaur, roughly translated reads thus- “..... On 17.08.2000, I went to Tis Hazari Court to get my physical disability certificate made. There, I met a man named Sushil Gulati (PW 12), who introduced himself as a property dealer and gave me his visiting card, which had his house and office address and telephone number written on it. He told me that the SDM was his friend and that he would help me in getting the certificate. Three or four days later, after speaking to Sushil Gulati (PW12) over the telephone, I went to his house at Q-34 Rajouri Garden around 5:00 P.M.as per his invitation. Sushil Gulati (PW12) and his mother were present there. Sushil Gulati (PW12) told me that my work had not been done yet and asked me to approach him after 8 to 10 days. On 29.08.2000 at about 1:00 p.m., I called Sushil Gulati at the office number given on the card. Sushil Gulati (PW12) spoke to me and asked me to reach at the office address mentioned in the card, that is, WZ-106/144 near MIG flats, Rajouri Garden by 02.30 pm. I reached the said address at about 02.30 pm. In the office I found



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two men, one about 28 to 30 years old and another about 34 to 35 years old. I enquired about Sushil Gulati (PW12). They told me that they were also waiting for him. They offered me a seat and so, I also sat in the office with them. By about 04:30-05:00 p.m., Sushil Gulati arrived in a white Maruti car bearing registration number DL-2-CL-0455 and said that the SDM sahab was not available on that day and that he would take me to another office and get me a job as a telephone operator. Sushil Gulati (PW12) sent one of the two men sitting in his office to get soft drinks. The said man returned shortly with four glasses of soft drinks. I drank the soft drink offered to me. Thereafter, Sushil Gulati (PW12) and his two friends made me sit in his Maruti car bearing registration number DL-2-CL-0455. I started feeling dizzy. Sushil Gulati sat with me on the back seat and his two friends, whose names I do not know, sat in the front. I was seated in the car at about 05.45 P.M. After a while, my disorientation increased and I kept losing consciousness, though intermittently, I remained half conscious.



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After about 15 to 20 minutes, Sushil Gulati (PW12), who was sitting on the back seat, removed my salwar and underwear. He placed my *chunni* under me on the seat and raped me in the moving car. Subsequently, his 2 friends took turns in sexually assaulting me in the same manner. I was unable to raise any alarm because they had threatened to kill me and due to my heavy state of intoxication. Later, I became unconscious. When I regained consciousness, I found myself lying in the road near St. Stephens hospital, from where the police took me to Hindu Rao Hospital. Sushil Gulati (PW12) and his two friends, after making me drink a soft drink laced with some intoxicant, committed forcible sexual assault on me in a moving car against my will and also threatened me.....”

24. PW1 in her statement, recorded under Section 164Cr.PC on 01.09.2000, that is, Exhibit PW1/PX1, reiterated her case in exhibit PW1/B FIS.

24.1. In PW1's subsequent statement under Section



164Cr.PC recorded on 11.09.2000, that is, Exhibit PW1/C, her case is – In September 1999, while she was working in the marketing division of a Company, she befriended a boy named Lucky. Lucky sent her to a lawyer named Haji (A1) at Tis Hazari, who helped her to get a disability certificate, which she got in January 2000. Due to her physical disability, she had to leave her marketing job. She again approached the lawyer to seek his help in getting a job, who told her that he would help her to get a STD and DD booth. Two months back, she met Savita (PW2) and Sonu (A4). She became friends with Sonu (A4). The friendship turned to love. Sonu (A4) tempted her and asked her to get her limb operated

upon(सोनू ने मुझे लालच दिया और handicap का operation कराने को कहा).

She told him that she did not have money for the same. Sonu (A4) then asked her to play a ‘game’ by which her leg could be operated on and she would get a shop too. When she asked him about the ‘game’, Sonu (A4) told her that a policeman Dutta had been



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suspended on the statement of Sushil Gulati (PW12) and that she would have to get him implicated in a rape case. Sonu (A4) showed her the photographs of Sushil Gulati (PW12), his car and gave her his card. As directed by Sonu (A4), she called Sushil Gulati (PW12) at his residential number. As she was unable to get him, she called him on his office number. As instructed by Sonu, (A4) and Haji (A1), she got an appointment to meet Sushil Gulati. On 08.08.2000 at 5.30 pm, she went to Sushil Gulati's house at Rajouri garden by bus along with Sonu (A4). Sonu told her that she should tell Sushil Gulati that she had been sent by Sita Gupta. Sonu (A4) waited outside. She went inside the house and met Sushil Gulati (PW12) and his mother. She told him that she had been sent by Sita Gupta for seeking his help to get a job. Sushil Gulati (PW12) assured her that he would help her. Sonu (A4) showed her the office of Sushil Gulati (PW12) and asked her to meet the former the next day.

24.2 On 28.08.2000, she again went to the chamber of Haji



(A1) at Tis Hazari. In the chamber, Haji (A1) and Savita (PW2) were there. Sometime later, a policeman also came. They explained to her the plan. Savita (PW2) gave her the address of one Balbir Kaur (PW6) from Baljit Nagar and told her that the said lady would play the role of her aunt. Savita (PW2) said that she would introduce her to the lady. Sonu (A4) told her that as she had to enact a rape scene, she must have physical relations with him. (सोनू ने कहा की चुकि मुझे Rape scene दीखना है तो में उसके साथ वह काम करूँ). She replied that she would make her own arrangements. On 28.08.2000, she called her friend Bablu and asked him to come to DTC colony, Shadipur. On 29.08.2000 at 10:00 A.M. She reached the place where Savita (PW2) was waiting for her. She along with Savita (PW2) and Bablu went to see Balbir Kaur's (PW6) house. Balbir Kaur (PW6) was not there but her daughter-in-law was there. They came back to a STD booth and called Haji (A1) and Sonu (A4), who told Savita (PW2) that she should make arrangements for PW1 and Bablu to have



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physical relations at her house. Savita (PW2) took them to her house in a rickshaw and left them there at 11.30 am. Savita (PW2) directed her neighbours not to disturb them. Then, she and Bablu had physical relations. At 02.00 pm, she called Sonu (A4) who asked her to reach Tis Hazari at 05.00 pm. So, they locked the door and gave the key to the neighbour. She and Bablu had lunch together and thereafter she proceeded to Tis Hazari, where she reached at 05.00 pm, at which time, Sonu (A4), Haji (A1), Savita (PW2) and Najma @ Nazmeen (PW7) were present. They explained the rape scene to her and gave her an orange drink and some *barfi* (sweet) with something mixed in it. She had the same. But she did not feel any intoxication. Najma (PW7) took her to a room on the upper floor of the chamber and gave an injection with a syringe with no needle. Najma (PW7) told her that she had to enact a rape scene and then asked her to open her salwar. Najma (PW7) herself opened her salwar and put the substance in the syringe on her private part. They came downstairs and then Sonu



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(A4) gave her tobacco. As soon as she ate the tobacco, she started feeling dizzy. Then, Sonu (A4), Haji (A1) and the policeman sent Savita (PW2) and Najma (PW7) to St. Stephen hospital to keep an eye on her. Sonu (A4) took her on his motorcycle and left her on the road near St. Stephen hospital, where Savita (PW2) and Najma (PW7) were already there. When she felt dizzy and held on to a pole, a policeman came and questioned her. As she could not reply, the policeman called Savita (PW2) and Najma (PW7) and asked them about her, but they feigned ignorance. The policeman called the police at number 100, who took her to the hospital in a jeep. In the hospital, she gave a statement as tutored by Sonu (A4), Haji (A1) and the policeman. After the medical examination, the policeman brought Sushil Gulati (PW12), whom she identified. Later Sonu and Balbir also came to the hospital. The police took her to the sabzimandi police station, where she gave a false statement (Exhibit PW1/B) as instructed by Sonu (A4) and Haji (A1). PW1 further stated that she gave the earlier false statement



as she was told that she would get money for the same (पिछला बयां मेने सोनू और हाजी के दबाव और लालच में दिया था क्योंकि उनहोने काहा था कि यहीं से हमें 5-6 पेटिया मिल सकती है तो हम्म बांट लेंगे। मेरे साथ किसी ने Rape नहीं किया। मुझे और कुछ नहीं कहना ,मैने ये बयान अपनी मर्जी से दिया है)

24.3. PW1, when examined before the trial court stood by her second statement recorded under Section 164, that is, Exhibit PW1/C.

She also deposed that her blood had been taken from her nostrils and preserved, and subsequently planted in the car of PW12, and that blood from the injuries of PW12 had been put on her clothes. PW1 deposed that after about three to four days of the incident, officials of the Crime Branch, including a lady officer Chander Prabha came and took her to Azadpur Crime Branch and upon seeing Sushil Gulati (PW12) being beaten up by the police, she came to repent and so disclosed to the police that the entire case



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was false and revealed her true identity. She was again taken to the court and then she gave Ext. PW1/C 164 statement.

24.4 PW1 stood by her case in the cross-examination. PW1 admitted that whatever she had done in the case was out of greed. She admitted that she had lodged a complaint with Inspector Chander Prabha Gulati alleging threats. PW1 further admitted that she had only met PW12 once on 08.08.2000 and thereafter had seen him at the Crime Branch office at which time there was no interaction between them. PW1 denied that she had been removed from the 'scene' to Hindu Rao Hospital in a PCR van by PW24. She asserted that it was A2 who did so. According to her, A2 was present alongwith other 2-3 police officials while her statement was being recorded, though she could not recall who had recorded it. PW1 denied the suggestion that A2 was not present in the chamber of A1 on 29.08.2000 and that he had not come to the spot or taken her to the hospital, or that he had not collected her hair samples. She also denied the suggestion that A2 was not present in



the vehicle in which she was taken to PS Rajouri Garden or that A2 was not a party to the conspiracy. PW1 further denied that she had falsely implicated A2 at the instance of Inspector Chander Prabha.

25. PW2, Savita Gupta, when examined before the trial court, deposed that in the year 2000 she was involved a case for which she had engaged Advocate Mohd. Irshad, whose chamber was situated at Tis Hazari Courts. She further deposed that the two brothers of the said advocate also used to sit in the same chamber, one of whom was A1, (whom she correctly identified before the Court). On 28.08.2000 she had gone to the chamber of her advocate, at which time Haji (A1) was present along with a disabled girl who disclosed her name as Seema or Komal. PW2 further deposed that SI Narender Singh (A2) had also come to the chamber for some time, at which time he was in uniform. According to PW2, Haji (A1) requested her to assist the disabled girl in obtaining a PCO booth and provided her with a photocopy



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of Ex. PW1/A disability certificate. Thereafter both Advocate Irshad and Haji (A1) told her that they want a room on rent and so she, along with her advocate Irshad, went to Baljit Nagar to look for a rented accommodation. She showed him a room in the house of PW6 (Balbir Kaur), and the latter shared her telephone number with Irshad. On 29.08.2000 at about 10.30 am, the disabled girl, whom she had seen in the chamber of Haji (A1), met her at Shadipur red light. She was accompanied by a boy whom the former introduced as her brother, and requested her to show them the house of Balbir Kaur (PW6). Accordingly, she took the girl (PW1) to the house of Balbir Kaur (PW6). However, Balbir Kaur (PW6) was not there. The girl then requested permission to rest in her house which she permitted on humanitarian grounds. She gave the keys of her house to the girl (PW1). She told the girl that she had to go to the Court and so asked the girl to hand over the keys of the house to her neighbour. On the said day, the opposite party in her case did not appear and so she called Haji (A1) who directed



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her to go to his chamber. Accordingly, in the evening at about 07.30 pm, she again went to the chamber of A1, where the latter, his brother, the disabled girl Seema (PW1); another lady by name Najma (PW7) and one boy Sonu (A4) were present. PW2 further deposed that at that time SI Narendra Singh (A2), who was in uniform, also came to the chamber and after talking to Haji (A1), left after some time. Sonu (A4) brought a piece of barfi and gave it to Seema Kaur (PW1). Thereafter, Haji (A1); Najma (PW7); Sonu (A4) and Seema Kaur (PW1) went to the first floor of the chamber. She wanted to return home, but her Advocate Irshad told her that as Najma (PW7) had to go to Nangloi, she should accompany her to which she agreed. Meanwhile, Sonu (A4) took Seema Kaur (PW1) on a motorcycle and left. She went along with Najma (PW7) through the backside of St. Stephen's Hospital, where a police booth was also situated. Najma (PW7) went to attend the call of nature by the side of the road. She then saw a crowd gathered there and they were saying that someone had thrown a



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girl from a bike. She saw a girl lying on the road, who was none other than Seema Kaur (PW1), whom she had met in the chamber of Haji (A1). One police official present there did not pay heed to her though she tried to tell him about having seen the girl earlier in the chamber of A1. The policeman without listening to her sent a message from his wireless set to the PCR. A police gypsy arrived in which SI Narendra Singh (A2) was present and he took the girl from the spot.

25.1. PW2 further deposed that they were about to take an auto when Najma (PW7) said that she wanted to make a call to Sonu (A4). Soon after, Sonu (A4) came and told her that he had to go to the house of Balbir Kaur (PW6) and that he would drop her at her house. Accordingly, she, along with Najma (PW7), went with Sonu (A4) on his motorcycle to the house of Balbir Kaur (PW6), where she overheard an altercation between Balbir Kaur and Sonu (A4) wherein Balbir Kaur (PW6) demanded ₹ 2,00,000/- for going to the hospital to see Seema Kaur (PW1). Balbir Kaur



(PW6) asked Sonu (A4) to first have a talk with Haji (A1). As directed by Haji (A1), she along with Balbir Kaur (PW6), Najma (PW7) and Sonu (A4) went to the house of a person whose name and address she was unable to recall. Haji (A1) met them there and he gave ₹500/- to Balbir Kaur (PW6). Thereafter, she returned home and the others went to the hospital.

25.2 On 01.09.2000, after reading about the incident in the newspaper, she along with Balbir Kaur (PW6) went to the chamber of Haji (A1), where accused Haji (A1), Sonu (A4) and Najma (PW7) were present. She heard them discussing about the false implication of PW12. According to PW2, she abused Haji (A1), Sonu (A4) and Najma (PW7) for involving her also and then returned home. On 02.09.2000 at about 01.30 am, Sonu (A4) and Balbir Kaur (PW6) came to her house and took her and her son to the house of Haji (A1) in Trans Yamuna area, where she was threatened by A1 and A4 not to disclose anything about the incident and she was allowed to return home only the next



morning. On 04.09.2000, when she went to attend her case, she was taken by her advocate Irshad and Haji (A1) to their chamber, where Sonu (A4) was also present. They gave her a letter to be handed over to Seema Kaur (PW1) who she was told was present at the house of Balbir Kaur (PW6). She took the letter and gave it to Balbir Kaur. Later on, she came to know that the same had been handed over to the Crime Branch by Balbir Kaur (PW6). PW2 also deposed that she had met Sonu (A4) for the first time on 28.08.2000 at the chamber of Haji (A1) and was not aware of his background. PW2 more or less stood by her case in the cross-examination.

26. PW7 Najma, deposed that from 1998 to 2003 she had been working as a clerk in the chamber of Advocate Satya Parkash Khatri, Tis Hazari Courts. While working in the said chamber, in August 2000, she met Sonu (A4) who took her to the chamber of Haji (A1), where he showed her a photograph of Sushil Gulati (PW12) and gave her a visiting card, stating that she had to falsely



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implicate him in a rape case. She asked Sonu (A4) the reason for the same and then the latter told her that Sushil Gulati (PW12) had got a police officer suspended from service. Initially she refused. However, on being offered ₹ 15,000, she agreed to the same. She further deposed that A4 handed over a paper describing the manner in which the game had to be played. Later on she refused to act as the victim. However, Seema (PW1) agreed to do the job for ₹40,000. When she refused to act as the victim, Sonu (A4) asked her to at least give an injection filled with semen in the private part of Seema (PW1), for which task she was promised ₹15,000/-. She agreed to the same. On the next day, she went to the chamber of Haji (A1) where Sonu (A4), Seema (PW1), Savita (PW2) and Narender (A2) were present. Seema (PW1) was given a burfi and a cold drink laced with intoxicants. Seema (PW1) told her that the former was used to taking intoxicants and also that she had come after having sexual intercourse with someone else. As directed, she went upstairs with Seema where she found a syringe filled with



white semi-liquid material. She inserted the same into the vagina of Seema (PW1) as planned. Arrangements were also made to show that Seema (PW1) was residing at the house of Balbir Kaur (PW6), who was to act as her aunt.

26.1 Sonu (A4) and Haji (A1) told her and Savita (PW2) to go near St. Stephen Hospital. Sonu (A4) told her that he would bring Seema (PW1) on his motorcycle and would 'throw' her near the aforesaid hospital. She and Savita (PW2) went near St. Stephen's Hospital. Meanwhile, Sonu (A4) came there and 'threw' Seema (PW1) on the road as planned and left the place. A police official approached them and asked whether they knew the lady on the ground. Seema (PW1) pretended to be unconscious. She and Savita (PW2) acted as per the plan and denied knowing PW1 and pretended to revive Seema (PW1). PW7 further deposed that subsequent events involved attempts to contact Balbir Kaur (PW6), visits to hospital, and discussions regarding payment, including a demand of ₹2,00,000/- by Balbir Kaur (PW6), which



was negotiated to ₹1,00,000/-. According to PW7, in the house of Haji (A1), a quarrel took place for money. Haji (A1) assured auntie (PW6) that she would be given money after the plan succeeded. Thereafter, she was paid ₹100/- and PW6 was paid ₹500/- by Haji (A1), PW7 further deposed that Haji (A1) told her that this plan had made on behalf of Inspector Dutta (A3) who was suspended because of Sushil Gulati (PW12) and that there was a larger plan involved of extorting money from PW12 after securing rejection of his bail application. PW7 identified A2 as the police official present during the execution of the plan in A1's chamber and near the hospital where PW1 was thrown. PW7 also deposed that she had not received any money during the entire process.

26.2 PW7 in her cross examination deposed that she acted on the instructions of Sonu (A4) alone and had no direct interaction with the other accused persons regarding the plan. She denied that her statement was made under pressure of the police and affirmed



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that her statement to the police and Magistrate were correct. PW7 also denied the suggestion that she had never seen A2 prior to his appearance in court.

27. PW6 Balbir Kaur deposed that on 29.08.2000 at about 10.15 pm, she received a telephone call from one Narendar Singh from Subzi Mandi area, claiming to be a police official that a girl, namely, Seema had been raped and was admitted in a hospital at Subzi Mandi. She then replied that she had seen her elder daughter Seema earlier in the day at which time she was perfectly fine. However, the said Narendar Singh insisted that she go to the hospital where Seema was admitted. He also said that Seema was residing in her house. She denied the same and disconnected the call. Thereafter, she again received a call from the same person who insisted that she should reach the hospital, which she again refused. About 15-20 minutes later, Narendar Singh (A2) along with Savita (PW2), Najma (PW7) and Sonu (A4), came to her house. Savita (PW2) informed her that earlier she had brought a



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lady(PW1) to take her house on rent(PW6's house), but before the same could be done the lady had been raped and that the said lady had given her address as that of PW6's. PW6 further deposed that when she was informed so by PW2, she had an altercation with the latter and questioned as to why her address had been given. PW6 also deposed that Narender Singh (A2) at the time was in police uniform and arrived at her house on a yellow motorcycle. During this time, Sonu (A4) contacted Haji (A1) on telephone and conveyed and informed that she was not cooperating with them. She knew Haji (A1) as she had approached him along with Savita (PW2) relating to an accident case of her son. Haji (A1) spoke to her on phone and told her that it was by mistake her address had been given and as there was no one to look after the lady, she should help. Though she had a feeling that something was wrong, she nevertheless agreed to accompany them. Thereafter, she was taken to Hindu Rao Hospital at about midnight, where she met a lady who on seeing her started crying after putting the latter's hand



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around her neck as though as the latter was known to her for quite long. Thereafter, she was taken along with the lady, who was being addressed by others as Seema to Subzi Mandi police station. Narendar Singh (A2) as well as the other officials in the police station told her that in absence of any lady constable, she was to remain with Seema for the night. Hence, she stayed with Seema (PW1). On the next day, she and Seema (PW1) were taken to PS Rajouri Garden by Narendar Singh (A2), before which some strands of hair of Seema (PW1) were plucked, which Narendar Singh (A2)said would be planted in a car.

27.1 PW6 also deposed that when she met Narendar Singh (A2), the latter told her that the initial two telephone calls had been made by him. On 30.08.2000 she was asked to take clothes for Seema (PW1), which she complied and thereafter Seema (PW1) was sent to Nari Niketan. On 02.09.2000, she went to the court where, on the request of Haji (A1) and Narendar Singh (A2), she took custody of Seema (PW1) after signing certain papers.



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Thereafter, she along with Seema (PW1) and Savita (PW2) went to various police stations and ultimately returned home with Seema (PW1). On their way, Sonu (A4) attempted to take Seema away but she resisted. Subsequently, they went to the chamber of Haji (A1) and later to Trans Yamuna area where discussions took place, but she refused to hand over Seema (PW1) and brought her back home. Seema (PW1) stayed at her house, during which time Sonu (A4) again came and attempted to take Seema (PW1) away, which was resisted. Thereafter, a letter was brought by Savita (PW2) given by Haji (A1) and Sonu (A4) containing instructions for Seema (PW1), including directions to destroy the same after reading it. PW6 further deposed that Sonu (A4) later came to her house and threatened her to hand over Seema (PW1), failing which he would kill her children, whereupon she slapped him pursuant to which he fled. Thereafter, Crime Branch officials were contacted and Seema (PW1) was handed over to them. PW6 also deposed that Narendar Singh (A2) used to visit her house frequently during



the aforesaid time. PW6 lastly also deposed that before handing over Seema (PW1) to Crime Branch, upon inquiry, the latter disclosed to her that the entire incident was a planned conspiracy at the instance of the accused persons. PW6 was not cross examined despite opportunity being granted.

27.2. The materials on record show that as per Ext. PW32/B DNA report, which is not seen challenged, it was the semen of Sonu (A4) and Babloo Mandal that were found in the clothes of PW1.

28. The other witnesses examined by the prosecution are police officials who deposed about the various steps taken during the course of investigation.

29. Now, coming to the question whether the aforesaid evidence is sufficient to prove the prosecution case beyond reasonable doubt against Haji (A1) and Narendar Singh (A2) and whether the trial court was justified in finding them guilty of the offences charged against them.



30. It is true that Balbir Kaur (PW6) and Sushil Gulati (PW12) were never cross examined. PW6 was examined-in-chief on 02.07.2008. However, her cross examination was not conducted on the said date. On the other hand, it was adjourned at the request of the defense counsel. The case was adjourned to 21.08.2007[sic](21.08.2008). On the further dates, PW6 was not examined as the case records had been sent to this court in connection with a revision petition moved by the accused persons against the order of framing the charge. On 03.02.2009, it is seen recorded that Balbir Kaur (PW6) expired. Likewise, PW12's examination- in- chief started on 17.02.2011 and was completed only on 21.01.2012. His cross-examination was adjourned on several dates, the details of which are as follows -

S. No.	Date of Order	Order of trial court
1.	21.01.2012	<i>".....Statement of PW12 completed. Certain fresh documents filed in the statement. Copy provided to accused persons. Cross deferred as defence counsel is not available.</i>



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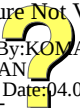
		<i>Put up for RPE on date already fixed i.e. 28.01.12.”</i>
2.	28.01.2012	<i>“..... PW Sushil Gulati, Ct. Lalit and Ct. Praveen were present, discharged unexamined..... Ld. P.O. is on leave today. As per the directions of Ld. P.O., put up for purpose already fixed for 18.02.2012.”</i>
3.	18.02.2012	<i>“..... Ld. P.O. is on leave today. Put up for the purpose already fixed for 3.3.12.”</i>
4.	03.03.2012	<i>“.....PW Sushil Gulati is present for cross examination. He is discharged on the request of accused persons. Put up for remaining PE on 31/03/2012.”</i>
5.	31.03.2012	<i>“Accused all three on bail. They seeks adjournment as their counsels are not available. Accordingly, PW Sushil Gulati is present and he is discharged unexamined..... Put up for RPE on 21/04/2012.”</i>
6.	21.04.2012	<i>“Both the accused on bail with proxy counsel. Proxy counsel seeks adjournment as learned defence counsel Sh. S.C. Butan is out of India..... PW Sushil Gulati is present for cross</i>



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		<i>examination. He is discharged unexamined.....</i> <i>One revision of the accused persons is also fixed for 16/05/2012 before the Hon'ble High Court of Delhi and file has been called. So, on request, put up for prosecution evidence on 26/05/2012."</i>
7.	26.05.2012	<i>"Discharge accused/witness Sushil Gulati is present. He has stated that file has been sent from the Hon'ble High Court of Delhi through some special messenger, but still the same has not been received.</i> <i>All the three accused on bail.</i> <i>Revision of the accused persons before the Hon'ble High Court of Delhi is 03/07/2012.</i> <i>PW Sushil Gulati and Lalit, who are present in the court today, are discharged unexamined.</i> <i>Put up on 07/07/2012."</i>
8.	07.07.2012	<i>"Discharged accused/witness Sushil Gulati is present for cross examination.</i> <i>Accused both on bail.</i> <i>Accused C.M. Dutta is exempted for today on medical ground.</i> <i>Learned defence counsels are not available for cross examination of PW Sushil Gulati. Waited</i>





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		till 2.15 p.m. Accordingly, witness Sushil Gulati is discharged unexamined. Put upon 28/07/2012 for RPE.”
9.	28.07.2012	“Discharged accused Sushil Gulati is present for cross examination. All the three accused on bail. Learned counsel for complainant has produced copy of order of Hon'ble High Court of Delhi, vide which, TCR was sent back, but the same has not been received. The next date before the Hon'ble High Court of Delhi is 16/08/2012. Constable Ramesh Chand not served. Inspector Prithvi Singh and Constable Lalit Sirohi are present. He is discharged unexamined. File be awaited. Put up for prosecution evidence on 04/08/2012.”
10.	04.08.2012	“.....Sushil Gulati is discharged unexamined for cross as main counsel for accused persons is not available. Put up on 25/08/2012 for remaining PE and also for arguments on application for waiver of cost already pending against the cost imposed on 05/12/2007.”





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11.	25.08.2012	<i>“Discharged accused/complainant in person.</i> <i>File not received from the Hon'ble High Court of Delhi. It is stated by discharged accused/complainant Sushil Gulati that next date before the Hon'ble High Court of Delhi is 28/08/2012, so case file has not been sent back to this Court.</i> <i>Accused C.M. Dutta, Haji Mohd. and Narender on bail.</i> <i>HC Kamal Singh, HC Lalit Sirohi, Constable Pawan Kumar and Ct Narender Pal are present. They are discharged unexamined.</i> <i>IO in-charge PP MIG Flats, PS Rajouri Garden is on leave till 27/08/2012.</i> <i>Inspector Prithvi Singh refused to accept the summons. Issue his bailable warrants in the sum of Rs. 5000/- with one surety in the like amount for the next date of hearing.</i> <i>HC Vijay Kumar is out of station.</i> <i>File be awaited.</i> <i>Put up for remaining prosecution evidence on 06/10/2012.”</i>
12.	06.10.2012	<i>“Discharged accused/complainant in person.</i> <i>Accused all three on bail with counsel.</i> <i>Copy of order also filed by accused C.M. Datta.</i>





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		<i>He has filed criminal Revision Petition before Hon'ble High Court of Delhi, which is pending for 20/11/2012.</i> <i>TCR is not received back as next date of hearing before Hon'ble High Court of Delhi is 08/11/12.</i> <i>BW of Inspector Prithivi Singh served. He is absent.</i> <i>Inspector Rajbir, Ct Pawan, HC Lalit, HC Kamal Ct Narender are present. All are discharged unexamined for want of TCR.</i> <i>HC Vijay Kumar is served but absent. On request he is exempted for today.</i> <i>Inspector Ajeet served but absent.</i> <i>Issue fresh BW as per previous order against Inspector Prithvi Singh for next date of hearing.</i> <i>Put up for remaining PE on 24/11/12."</i>
13.	24.11.2012	<i>"Accused all three on bail.</i> <i>Discharged accused/complainant is absent.</i> <i>Inspector Prithvi Singh is out of station.</i> <i>TCR is also not received back from Hon'ble High Court of Delhi.</i> <i>Put up for remaining PE on 15.12.12"</i>
14.	15.12.2012	<i>"All the three accused are on bail.</i> <i>Discharged accused/complainant in person.</i> <i>No PW is present.</i>



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		<i>TCR is also not received back from Hon'ble High Court of Delhi.</i> <i>Ld. P.O. is on leave today.</i> <i>As per direction of Ld. PO, put up for purpose already fixed for 19.01.2013."</i>
15.	19.01.2013	<i>"Accused all three on bail.</i> <i>Discharged accused/complainant in person.</i> <i>File be awaited for 23.02.2013."</i>
16.	23.02.2013	<i>"Discharged accused/complainant in person.</i> <i>Accused on bail.</i> <i>Accused C.M. Dutta is absent. Issue his NBWs and notice to surety U/s. 446 Cr.P.C. for the next date of hearing.</i> <i>File be awaited for 16/03/2013.</i> <i>23/02/2013 at 10.50 a.m.</i> <i>At this stage, accused C.M. Dutta has appeared.</i> <i>He has moved application for cancellations of NBWs. Heard. In view of submission, his NBWs are recalled. PB and SB restored.</i> <i>Put up on 16/03/2013, as already fixed."</i>
17.	16.03.2013	<i>"Discharged accused/complainant in person.</i> <i>Accused all on bail.</i> <i>File be awaited for 27/04/13."</i>
18.	27.04.2013	<i>"Discharged accused/complainant in person.</i> <i>All accused on bail.</i>



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		<i>Still file has not received back. Be awaited for 01/06/2013.”</i>
19.	01.06.2013	<i>“All the accused on bail. Discharged accused/complainant in person. It is stated that application of the accused persons has been dismissed. File be awaited for 20/07/2013.</i>
20.	20.07.2013	<i>“All the accused on bail. File received from High Court. Ld. PO is on leave today. Put up on 17/8/13.”</i>
21.	17.08.2013	<i>“.... Exemption Appln. is given. Ld. PO is on leave today. Put up for the matter already fixed for 21/9/13.</i>
22.	21.09.2013	<i>“.....PW Sushil Gulati is present for cross. He is discharged unexamined. Put up for appearance on 17/10/2013.”</i>
23.	23.09.2013	<i>“Accused Narender in person with counsel. Heard. In view of the submissions, NBW's of accused Narender are recalled. PB and SB restored. Put up on 17/10/2013, as already fixed.”</i>
24.	17.10.2013	<i>“Accused all three on bail. File received. PW Sushil Gulati is not present.</i>



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		<i>Issue summons to the witness. Put up for remaining PE on 26/10/13.”</i>
25.	26.10.2013	<i>“.....PW Sushil Gulati is present. He is discharged unexamined. Ct. Vinod is present. He is also discharged unexamined. HC Rohtash Singh is on election duty, hence exempted for today. Put up for appearance on 30/11/13.”</i>
From the period between 31.10.2013 till 15.11.2014 the matter was listed on several dates before the trial court for recording of evidence. However, Sushil Gulati (PW 12) was never examined. On the said dates, the examination of the other prosecution witnesses is seen conducted.		
26.	15.11.2014	<i>“Both the accused on bail with counsel. PW Sushil Gulati is present for cross examination. He submits that his sister expired and he has to go, so, he is discharged for today. Put upon 12/12/2014 for remaining prosecution evidence.”</i>
27.	12.12.2014	<i>“Both the accused on bail. Advocates are on strike. SI Ram Avtar is present. He is discharged unexamined for today being IO. HC Vijay Kumar is exempted for today on request.</i>



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		<i>PW Sushil Gulati is served but absent. Be called again. Put up for remaining PE on 24/01/2015.”</i>
28.	24.01.2015	<i>“.....Complainant Sushil Gulati was summoned for today. However, as per report he has expired on 19/12/2014. Copy of his death certificate has already been enclosed. No other witness except IO SI Ram Avtar (Retired) is present.....”</i>

31. A perusal of the orders of the trial court given in the aforesaid table demonstrates that Sushil Gulati (PW12) remained consistently present before the trial court on all dates of hearing. However, he was never cross-examined. It is further evident that the examination-in-chief of PW12 was recorded over a span of one year, and for nearly two subsequent years, while other prosecution witnesses were examined; the victim himself was never cross-examined. As to why, such a procedure was adopted by the trial court is not clear. More than sufficient opportunity was afforded to the defense for the cross-examination of PW12. Nevertheless, the



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defense failed to avail the opportunity. Despite being fully conscious of the fact that referring to the aforesaid orders of the trial court in detail would make this judgment prolix, the same has been purposely done to demonstrate the extent to which PW12 Sushil Gulati was harassed. I have already referred to in detail the testimony of the main prosecution witnesses, which would clearly prove the prosecution case, as I find no materials to disbelieve them. PW12 Sushil Gulati was not only falsely implicated in a heinous crime of gang rape but was also subjected to custodial violence and undue harassment at the hands of the police. He was further harassed by being repeatedly summoned to court on multiple dates, only to be sent back without his cross-examination being conducted. It is a matter of great concern that the trial court also did not effectively step in to prevent the harassment. The request for adjournments for cross-examination is seen granted for the mere asking. In addition to all this, quite an insensitive argument is seen advanced on behalf of A1 and A2 before the trial



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court that - “*they had no insight or supernatural knowledge that the witness would die later on.*” Nobody need have such “insight or supernatural knowledge”. But they could have prevented such a situation by cross-examining PW12 promptly instead of seeking adjournment on every occasion possible. This is nothing but a clear abuse of the process of law.

32. Similarly, it is seen that PW6 and PW9 were also not cross-examined despite opportunity being granted. It appears that delaying tactics was resorted to in the cross-examination of all the important prosecution witnesses and the process of law was misused to the maximum extent possible.

33. Here, it would be apposite to refer to Section 33 of the Evidence Act, which reads thus:-

“33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.— Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it



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states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided — that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

(Emphasis Supplied)

34. For the Section to apply that is, the evidence becomes relevant only when the witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party or his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable. In this case, the ingredients of Section 33 IEA are clearly attracted as ample opportunity was



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granted to the accused persons to cross-examine the witnesses. However, the same was never availed and hence, it cannot thereafter be argued that they never got an opportunity to cross-examine the witnesses. It also needs to be noted that as per order of this court dated 17.03.2009 in CRL.M.C. 8107/2006, direction had been given to dispose of the matter as expeditiously as possible, preferably within 08 months. The order was given as early as in the year 2009. In the light of the said order, the trial court ought not to have granted adjournments for the mere asking. PW12 Sushil Gulati died on 19.12.2014, that is, nearly 03 years after the completion of his examination-in-chief. There was more than ample time to complete his examination. The adjournments sought for and granted is in clear or blatant violation of the order of this Court. PW12 seems to have been harassed to the maximum extent possible. Not only was he falsely implicated in an offence of such heinous nature and later on beaten up/tortured in police custody, even after the matter came up before the trial court, no effective



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steps are seen taken to protect him or at least prevent harassment. On the other hand, he is seen to have been harassed to the maximum extent possible by making him appear before the court about 20 times, but sending him back without examining him. The trial court ought to have been more vigilant and ought not to have granted adjournments on the mere asking by the defence.

35. In the light of the dictum in **Lakshmipat Choraria** (*supra*), PW1, PW2, PW6 and PW7 are competent witnesses. Though they were extensively cross-examined, nothing was brought to discredit their testimony. A reading of their testimony makes it clear that they agreed to become part of the conspiracy when substantial amounts were offered to them. All the said witnesses, who appear to be from the lower financial strata of the society, is seen to have fallen for the same. This Court is in no way justifying their conduct. But, taking into account their financial status, they seem to have fallen easy prey to the bait offered by the accused persons. The argument advanced by the learned counsel



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for A2 that there is no evidence regarding the role of A2 in said conspiracy *sans* merit. The witnesses have deposed about the role of A2 all throughout the incident, beginning from his presence in the chamber of A1 and that too in uniform. There is no explanation given by A2 as to why he was present in the chamber of A1 on different occasions. Savita (PW2) and Najma (PW7) also speak of the presence of A2 outside St. Stephens Hospital where Seema Kaur (PW1) was ‘thrown’ by Sonu (A4). I have already referred to in detail the testimony of the witnesses, where several instances are referred to showing the involvement and presence of A2 in the conspiracy.

36. It is true that there are certain inconsistencies in the testimony of the prosecution witnesses. However, no prosecution case can be proved with mathematical precision. There are bound to be inconsistencies in the testimony of the witnesses because the incident took place in the year 2000 and the trial started only in the year 2007. The witnesses were examined after a long delay. That



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being the position it cannot be expected that the witnesses would be able to recall and recount the exact sequence of events that took place without any variations whatsoever. On an overall appreciation of evidence, I do not find any reasons to disbelieve them. Hence, I find no infirmity in the impugned judgment calling for an interference by this Court.

37. As stated earlier, CRL. A. 691/2016 was filed by the legal heirs of PW12, that is, by his wife and two children. The appeals were heard on 17.03.2026 and 18.03.2026. On 17.03.2026, the third appellant in CRL.A. 691/2016 appeared through VC and submitted that they do not want to pursue the appeal. As no lawyer was there to represent her, this Court directed her to submit her request in writing. Till date nothing in writing has come before this Court. But, once an appeal is admitted, the appellate court has to decide it on merits. The Court cannot dismiss the appeal for default. (See **Bani Singh v. State of U.P AIR 1996 SC 2439**). Even if an appeal is not pressed, it has to be decided on merits.



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(See **G. Raj Mallaiah & Ors. v. State of Andhra Pradesh**, AIR 1998 SC 2315). In **K.S. Panduranga v. State of Karnataka**, AIR 2013 SC 2164, it has been held that the appeal can be decided on merits in the absence of the counsel, provided the court appoints an *Amicus Curiae*.

38. In the case on hand, the submission that the legal representatives do not want to prosecute the appeal was brought to the notice of this Court only when the appeals were taken up for hearing. The appeals are of the year 2016. The incident is of the year 2000. 26 years have elapsed. PW12 Sushil Gulati, never got justice during his lifetime. Therefore, this Court did not want to further delay the matter. Hence, relying on the dictum in **Bani Singh** (*supra*), proceeded to consider the matter on merits after going through the records in the case.

39. The crime committed by A1, a lawyer and A2, a police officer is in no way justifiable. A lawyer is an officer of the Court, whose duty is to defend his client and assist the court and not to



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indulge in such acts of implicating innocent persons in crimes. Likewise, A2, a police officer, whose duty is to prevent crimes, has in complete disregard to the same, indulged in acts which are in no way justifiable. This is a fit case in which a more stringent sentence ought to have been imposed so as to send a strong message to the people occupying such positions, be it a lawyer or a police officer, that Courts would not treat such crimes lightly or turn a blind eye to such blatant misuse of their position and authority. However, no appeal has been filed by the State under Section 377(1)(b) Cr.P.C. against the sentence on the ground of its inadequacy. On the other hand, the appeal has been filed by the legal representatives of PW12 Sushil Gulati for enhancing the sentence and compensation awarded by the trial court. The appeal has obviously been filed by virtue of the proviso to Section 372 Cr.P.C. which contemplates three situations in which an appeal can be filed by a victim against an order passed by the trial court – (a) acquitting the accused; (b) convicting for a lesser offence or (c)



imposing inadequate compensation. Obviously (a) and (b) are not attracted in this appeal. What remains is (c), that is, against inadequate compensation. As noticed earlier, the trial court has directed that out of the fine amount, an amount of ₹2,00,000/- be paid as compensation to the legal representatives of PW12 Sushil Gulati. The total fine amount liable to be paid by A1 and A2 is ₹3,00,000/-, that is, ₹1,50,000/- each. In the light of the extent of harassment and humiliation to which PW12 Sushil Gulati was subjected to, I find that the compensation amount awarded is low. I am quite conscious of the fact that PW12 Sushil Gulati is no more and that the payment of any amount of compensation would in no way compensate for the humiliation and mental agony he had to undergo. Nevertheless, for meeting the ends of justice, I find that the compensation amount should be enhanced to the entire fine amount, that is, ₹3,00,000/-.

40. In the result, CRL.A. 286/2016 and CRL.A. 326/2016 are dismissed. CRL.A. 691/2016 is partly allowed. The order on



sentence of the trial court is modified thus – the entire fine amount of ₹3,00,000/- shall be paid as compensation to the legal representatives of PW12 Sushil Gulati.

41. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

APRIL 04, 2026
rs/mj/kd