SUPREME COURT OF INDIA

Rai Sandeep

Vs.

State of NCT of Delhi

Crl.A.No.2486 of 2009

(Swatanter Kumar and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

07.08.2012

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla,J.

1. These two appeals at the instance of the accused arise out of the common judgment dated 27.01.2009. Hence, we will dispose them of by this common judgment. Both the appellants were convicted for the offence of gang rape by the trial Court and were sentenced to undergo rigorous imprisonment for 10 years each with a fine of Rs. 3,000/- each, in default to undergo further rigorous imprisonment for one year each under Section 376 (2)(g), IPC.

2. The case of the prosecution was that on 15.08.2001 in the night at about 1.30 a.m. the prosecutrix (PW-4) aged about 34 years was in her sister's house, namely, Seema, that she heard the noise of knocking at the door, that the minor daughter of her sister, namely, Noju (PW-10), opened the door and both the accused persons entered and the accused Rai Sandeep @ Deepu told the prosecutrix that he wanted to have sexual intercourse with her. According to the prosecutrix (PW-4), she rebuked their demand stating that she was not of that type and that the appellants threatened her, that in the meantime one Jitender (PW- 11), minor son of her sister Seema appeared and both the minor children asked the appellants to go out of their house but the appellants pushed the minor children into a room and bolted the door of the room from outside. The further allegation of the prosecutrix (PW-4) was that the appellant-Rai Sandeep @ Deepu in Criminal Appeal No.2486 of 2009 made her lie down in the Verandah outside the room and had forcible sexual intercourse with her while his companion, the appellant in Criminal Appeal No.2487 of 2009 was guarding the main door of the house. It was further alleged that after the appellant in Criminal Appeal No.2486 of 2009 had forcible intercourse with the prosecutrix (PW- 4), he took the turn of guarding the door while his companion, the appellant in Criminal Appeal No.2487 of 2009 also had forcible sexual intercourse with her, that both the appellants wiped their private parts with a red colour socks which was lying in the Verandah and while leaving the place of occurrence,

they took away a gold chain and a wrist watch which was lying near the TV inside the room. The appellants stated to have left the place by bolting the main door from outside. According to the prosecutrix (PW-4), since it was dark in the night she did not venture to go out at that time and in the morning she asked her nephew Jitender (PW- 11) to get out of the house from roof top and open the door which was bolted from outside. Thereafter, she is stated to have reported the incident to the police.

3. Based on the investigation, the appellants were arrested and thereafter the gold chain and the wrist watch was recovered at the instance of the appellant in Criminal Appeal No.2486 of 2009 and subsequently on his disclosure the appellant in Criminal Appeal No.2487 of 2009 was also arrested. The prosecutrix (PW-4) and the appellants were stated to have been medically examined, that the appellant in Criminal Appeal No.2487 of 2009 refused to participate in the test identification parade, that FSL report of Exhibits were also obtained and the charge sheet was filed for the offence of gang rape. Seventeen witnesses were examined on the side of the prosecution which included the prosecutrix (PW-4) as well as her niece Noju and nephew Jitender, minor children of prosecutrix's sister Seema who were examined as PWs-10 and 11. PWs 1 and 5 were the doctors who testified the medical report of the prosecutrix (PW-4). PWs-2, 3 and 13 were the doctors who deposed about the medical report of both the appellants. SI Rajiv Shah (PW-14) was the investigating officer. None were examined on the side of the appellants. The appellants have been convicted as stated above and the said conviction having been confirmed by the order impugned in this appeal, the appellants are before us.

4. Learned counsel appearing for the appellant in Criminal Appeal No.2486 of 2009 submitted that while the alleged offence took place on the night of 15.08.2001 at 1.30 a.m., the FIR was lodged at 14.20 hours on the next day, that in the FIR the name of the appellant in Criminal Appeal No.2486 of 2009 alone was mentioned and that there were very many contradictions in the version of the prosecutrix (PW-4) before the Court. Learned counsel by referring to the FSL report PW-14/N contended that the report does not implicate the appellant to the offence alleged against him. According to learned counsel, the trial Court as well as the High Court ignored the fact that the accused were neither identified nor their presence was established at the place of occurrence. It was also contended that there were material contradictions in the evidence of PWs10 and 11, and that of the prosecutirix (PW4) and, therefore, the conviction and sentence imposed is liable to be set aside.

5. Learned counsel appearing for the appellant in Criminal Appeal No.2487 of 2009 in his submissions contended that in the case on hand the evidence of the prosecutrix PW-4 definitely need corroboration, inasmuch as, there were contradictions in the entirety of her evidence which were fatal to the case of the prosecution. Learned counsel contended that the

appellant was not named in the FIR and was roped in due to the statement of the co-accused, namely, the alleged confession Annexure P-3(colly) in Criminal Appeal No.2487 of 2009 stated to have been made on 30.08.2001 based on which the present appellant was implicated. Learned counsel also contended that the medical evidence also did not support the story of the prosecution. He also made extensive reference to the evidence of the prosecutrix (PW-4) to contend that the same was not in consonance with what was stated in the FIR and that, therefore, serious doubts were created as to the case of the prosecution and the trial Court failed to appreciate the defects of the case in proper perspective. By making reference to para 48 of the judgment of the trial Court, learned counsel pointed out that the statement found therein by referring to the deposition of PW-11 was totally misleading inasmuch as no such statement was ever made by PW-11. Learned counsel further argued that the blood group AB stated to have been detected from the semen sample did not match with that of the accused and no blood of the accused was ever detected. Learned counsel also pointed out that no injury was noted in the breast and thighs of the prosecutrix (PW-4) and, therefore, the allegation of forcible intercourse was not proved. He further argued by making a reference to Exhibit PW-4/B the recovery memo of the socks from the place of occurrence, that in her evidence the prosecutrix (PW-4) deposed that after preferring the complaint she was taken to the hospital for medical examination where she handed over the socks to the police when her petticoat was seized. Learned counsel, therefore, contended that the offence of rape alleged against the appellant having not been established in the manner known to law, the conviction and sentence imposed on the appellant is liable to be set aside.

6. As against the above submissions, learned counsel for the State very fairly contended that PWs-10 and 11 did not support the version of the prosecutrix (PW-4) and solely based on the evidence of the prosecutrix as deposed in her chief examination, the offence was held proved against the appellants. Learned counsel contended that the variation in her statement in the course of cross examination may be due to the time gap of two years after her examination in chief and, therefore, the same does not in any way affect the case of the prosecution. Learned counsel by referring to the reasoning of the trial Court, namely, that semen stains were found on the petticoat of the prosecutrix, that it was not the case of the accused that she had sexual intercourse with her husband on the previous night, that she was in the house of her sister on the date of occurrence, that the medical report Exhibit PW-5/A disclosed an abrasion on the right side of her neck below jaw and the said injury was not self inflicted and the prosecutrix being a married woman, there was no possibility of bleeding in vagina as the hymen was old torn and it was sufficient enough to prove the guilt of the accused. According to him, the refusal of the appellant in Criminal Appeal No.2487 of 2009 to participate in the test identification parade was sufficient to find the appellant guilty of the offence alleged against him. Learned counsel, therefore, contended that the conviction and sentence imposed do not

call for any interference. He placed reliance upon the decision of this Court reported as *State of Punjab v. Gurmit Singh & Ors*[1]in support of his submission. Learned counsel for the appellant in Criminal Appeal No.2487 of 2009 relied upon the decision in *Lalliram & Anr. v. State of Madhya Pradesh*[4]*Krishan Kumar Malik v. State of Haryana*[4]*and Ashok Kumar v. State of Haryana*[3]

7. Having heard learned counsel for the appellants as well as the State counsel and having perused the relevant papers on record as well as the judgments of the courts below, we feel it appropriate to refer to the various contradictions pointed out by the learned counsel for the appellants and the inconsistencies in the case of the prosecution as projected in the FIR as sought to be demonstrated before the Court in the form of oral and medical evidence. To recapitulate the case of the prosecution as projected in the FIR, on the night of 15.08.2001 at about 1.30 a.m., PW-4, the prosecutrix aged about 34 years, a married woman, who was staying in her sister's house, heard knocking of the door and that when she opened the door along with her niece Noju (PW-10) who was a minor girl, the accused alleged to have forcibly entered the house and demanded sex from the prosecutrix which she refused and the appellants forced themselves on her one after another after pushing her nephew Jitender (PW-11) and niece Noju (PW-10) inside a room and bolting it from outside, and that one of the accused kept vigil on the main door while the other had forcible sexual intercourse with her in turn. It was also alleged that after committing the offence and after wiping their private parts with a red colour socks lying in the verandah and while leaving the place of occurrence they stealthily removed a gold chain and a wrist watch and also bolted the door from outside. According to the prosecution, the appellant in Criminal Appeal No. 2486 of 2009 was apprehended in the first instance and based on the admissible portion of his confession, the gold chain and wrist watch were recovered and based on his disclosure the appellant in Criminal Appeal No. 2487 of 2009 was also arrested.

8. Keeping the above basic features of the offence alleged against the appellants in mind, when we make reference to the evidence of the so called 'sterling witness' of the prosecution, namely, the prosecutrix, according to her version in the chief examination when the persons who knocked at the door, were enquired they claimed that they were from the crime branch which was not mentioned in the FIR. She further deposed that they made a statement that they had come there to commit theft and that they snatched the chain which she was wearing and also the watch from Jitender (PW-11). While in the complaint, the accused alleged to have stealthily taken the gold chain and wrist watch which were lying near the T.V. It was further alleged that the appellant in Criminal Appeal No.2486 of 2009 was having a knife in his hand which statement was not found in the complaint. After referring to the alleged forcible intercourse by both the appellants she stated that she cleaned herself with the red colour socks which was taken into possession under Exhibit PW-4/B in the hospital, whereas,

Exhibit PW- 4/B states that the recovery was at the place of occurrence. The police stated to have apprehended the appellants at the instance of Jitender (PW- 11) who knew the appellant in Criminal Appeal No.2486 of 2009 even prior to the incident, that Jitender (PW-11) also revealed the name of the said accused to her and that, therefore, she was able to name him in her complaint. When the seized watch was shown to her in the Court, the brand name of which was OMEX, she stated that the said watch was not worn by her nephew Jitender (PW-11) as it was stated to be 'TITAN' and the chain was a gold chain having no pendant. She made it clear that that was not the chain which she was wearing and that it did not belong to her and that the watch found in the same parcel which was a women's watch was not the one which was worn by Jitender (PW-11).

9. All the above versions were found in the chief examination of the prosecutrix (PW-4). In her cross examination, there was a U-turn in the version of the prosecutrix where she went to the extent of stating that she never knew the appellant in Criminal Appeal No.2486 of 2009 prior to the incident and that she was not aware that accused Rai Sandeep was also known as Deepu, that she never stated before the police that Jitender (PW-11) knew Deepu prior to the incident or at the time of incident, that since it was dark on the date of occurrence, she could not identify the accused, that her statement of orally identifying the accused was at the instance of the police. When the learned APP wanted to cross examine her, the same was declined by the crime Court and there was also no re-examination of the prosecutrix (PW-4).

10. Keeping aside the version of PW-4, the prosecutrix, when we examine the so- called eye witnesses Noju (PW-10) and Jitender (PW-11), their version is much more revealing. Noju (PW-10) is the niece of the prosecutrix (PW-4), daughter of prosecutrix (PW-4)'s sister, who was 10 years old at the time of examination. Before recording her evidence, with a view to test the capacity of the witness to depose before the Court, the Court questioned her about her blood relations, education and as to whether one should speak the truth or lie and on being satisfied, PW-10 was questioned. The trial Court, after scrutinizing the replies and noting that the girl child was answering the questions in a rationale manner found her to be a competent witness. Thereafter when she was asked to identity the accused, she made it clear that they were not the persons. The witness Further deposed that prosecutrix (PW-4) is her aunt, that in the year 2001 when she was sleeping in the house she did not know as to what happened or as to anything happened at all. Learned counsel with the permission of the Court, cross examined the said witness when she deposed that two persons never entered her home or ever confined her or anybody else in any room nor they threatened anybody. She also deposed that their house was not bolted from outside and her brother did not open the door from outside.

11. Jitender (PW-11) who was 20 years old at the time of his examination stated in his chief examination that 3 years prior to the date of his examination in the month of August, he was

sleeping on the roof top, that he saw two persons quarrelling with his aunt, that he raised a hue and cry, that thereafter both the persons ran away and that nothing else happened. He also stated that he did not come down at all. He totally denied the sequence of events as alleged in the complaint and as narrated by PW-4 in her evidence.

12. Apart from the above version of the prosecution witnesses, when reference is made to the medical report relating to the prosecutrix as per Annexure P-4, there was an injury of abrasion on right side neck below her jaw and that there was no other injury either in the breast or her thighs. The hymen was torn old, that there was no injury on the valva and that there was no bleeding in her vagina. In the FSL report Exhibit PW-14/N, it is stated that there was no semen detected on the red colour socks. However, human semen was detected on the petticoat. But there was no matching of the blood group noted on the petticoat vis-a-vis the blood group of the accused.

13. Keeping the above evidence available on record, when we analyze the case of the prosecution as projected, we find that apart from the total prevaricating statement of the prosecutrix herself in her oral version before the Court, the other two witnesses PWs10 and 11 who were none other then her niece and nephew not supported the story of the prosecution. Leaving aside the version of the prosecutrix, we wonder why Noju (PW-10), a minor girl child should at all make a statement totally conflicting with the case of the prosecution. The prosecutrix being her maternal aunt, there is no reason for her to spin a different story and let her down. Going by her version, the accused persons were never seen in her house on the date of occurrence. She being minor child, the trial court ascertained her capability to depose as a witness. When we examine the nature of queries made by the learned trial Judge to the said witness, we find that her replies were all cogent and she knew for what purpose she was standing before the Court. She was very much aware that she should not utter any falsehood. The Court was, therefore, convinced of her composure and only thereafter proceeded to record her statement. The Court itself pointed out the accused present before the Court and asked her as to whether they were present in her house on the date of incident, to which she replied without any hesitation and deposed that they were not present. She went one step ahead and made it clear that on that night nothing happened at all. Again her brother Jitender (PW-11) stated that he heard two persons quarrelling with his aunt. He also made it clear that apart from the said quarrel and on his making a hue and cry both of them ran away and nothing else happened.

14. The other discrepancies which are to be mentioned are the categorical statement of the prosecutrix (PW-4) herself that after the alleged forcible sexual intercourse by both the accused, she wiped of her private parts with a red colour socks which was lying in the house, though at another place it was stated that both the accused used the red colour socks to wipe

of their private parts after the commission of the offence. Assuming both the versions to be true, we find that the red colour socks sent for chemical examination revealed that it did not contain any semblance of semen in it as per the FSL report Exhibit PW- 14/N. It was also pointed out that while according to her the socks was handed over to the police in the hospital when the petticoat and the socks were seized from her, according to the seizure memo the socks was recovered from the place of occurrence. She was a married woman and except the semen found in the petticoat, there is no other reliable evidence for implicating the accused-appellants to the crime alleged against them. In this background, when we refer to the oral version of the prosecutrix (PW-4), as pointed out by learned counsel for the appellant, very many facts which were not found in her original statement were revealed for the first time before the Court.

15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co¬relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

16. In the anvil of the above principles, when we test the version of PW- 4, the prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests mentioned above. There is total variation in her version from what was stated in the complaint and what was deposed before the Court at the time of trial. There are material variations as regards the identification of the accused persons, as well as, the manner in which the occurrence took place. The so-called eye witnesses did not support the story of the prosecution. The recoveries failed to tally with the statements made. The FSL report did not co-relate the version alleged and thus the prosecutrix failed to instill the required confidence of the Court in order to confirm the conviction imposed on the appellants.

17. With the above slippery evidence on record against the appellants when we apply the law on the subject, in the decision reported in State of Punjab v. Gurmit Singh & Ors. (supra), this Court was considering the case of sexual assault on an young girl below 16 years of age who hailed from a village and was a student of 10th standard in the Government High School and that when she was returning back to her house she was kidnapped by three persons. The victim was stated to have been taken to a tubewell shed of one of the accused where she was made to drink alcohol and thereafter gang raped under the threat of murder.

18. The prosecutrix in that case maintained the allegation of kidnapping as well as gang rape. However, when she was not able to refer to the make of the car and its colour in which she was kidnapped and that she did not raise any alarm, as well as, the delay in the lodging of the FIR, this Court held that those were all circumstances which could not be adversely attributed to a minor girl belonging to the poor section of the society and on that score, her version about the offence alleged against the accused could not be doubted so long as her version of the offence of alleged kidnapping and gang rape was consistent in her evidence. We, therefore, do not find any scope to apply whatever is stated in the said decision which was peculiar to the facts of that case, to be applied to the case on hand.

19. In the decision reported in Ashok Kumar v. State of Haryana (supra), this court while dealing with the offence under Section 376 (2) (g) IPC read with explanation held as under in Para 8:

> "8.Charge against the appellant is under Section 376(2)(g) IPC. In order to establish an offence under Section 376(2)(g) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle

of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence."

20. Applying the above principle to the case on hand, we find that except the ipse- dixit of the prosecutrix that too in her chief examination, with various additions and total somersault in the cross examination with no support at all at the instance of her niece and nephew who according to her were present in the house at the time of occurrence, as well as, the FSL report which disclosed the absence of semen in the socks which was stated to have been used by the accused as well as the prosecutrix to wipe of semen, apart from various other discrepancies in the matter of recoveries, namely, that while according to the prosecutrix the watch snatched away by the accused was 'Titan' while what was recovered was 'Omex' watch, and the chain which was alleged to have been recovered at the instance of the accused admittedly was not the one stolen, all the above factors do not convincingly rope in the accused to the alleged offence of 'gang rape' on the date and time alleged in the chargesheet.

21. In the decision reported as *State of Himachal Pradesh v. Asha Ram*[4]this Court highlighted the importance to be given to the testimony of the prosecutrix as under in para 5: 5It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case." (emphasis added)

22. That was a case where the father alleged to have committed the offence of rape on one of his daughters who was staying with him while his wife was living separately due to estranged relationship. While dealing with the said case, where the prosecutrix, namely, the daughter, apart from the complaint lodged by her, maintained her allegation against her father in the

Court as well. This Court held that the version of the prosecutrix in the facts and circumstances of that case merited acceptance without any corroboration, inasmuch as, the evidence of rape victim is more reliable even that of an injured witness. It was also laid down that minor contradictions and discrepancies are insignificant and immaterial in the case of the prosecutrix can be ignored. As compared to the case on hand, we find that apart from the prosecutrix not supporting her own version, the other oral as well as forensic evidence also do not support the case of the prosecution. There were material contradictions leave alone lack of corroboration in the evidence of the prosecutrix. It cannot be said that since the prosecutrix was examined after two years there could be variation. Even while giving allowance for the time gap in the recording of her deposition, she would not have come forward with a version totally conflicting with what she stated in her complaint, especially when she was the victim of the alleged brutal onslaught on her by two men that too against her wish. In such circumstances, it will be highly dangerous to rely on such version of the prosecutrix in order to support the case of the prosecution.

23.In the decision reported as *Lalliram & Anr. v. State of Madhya Pradesh (supra*) in regard to an offence of gang rape falling under Section 376 (2) (g) this Court laid down the principles as under in paras 11 and 12:

> "11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See Aman Kumar v. State of Haryana.)
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> 12. As rightly contended by learned counsel for the appellants, a decision has to be considered in the background of the factual scenario. Incriminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. In Aman Kumar case it was observed that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. In the latter case there is injury in the physical form while in the former both physical as well as psychological and emotional. However, if the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial." (emphasis added)

24. When we apply the above principles to the case on hand, we find the prevaricating statements of the prosecutrix herself in the implication of the accused to the alleged offence of gang rape. There is evidence on record that there was no injury on the breast or the thighs of the prosecutrix and only a minor abrasion on the right side neck below jaw was noted while according to the prosecutrix's original version, the appellants had forcible sexual intercourse one after the other against her. If that was so, it is hard to believe that there was no other injury on the private parts of the prosecutrix as highlighted in the said decision. When on the face value the evidence is found to be defective, the attendant circumstances and other evidence have to be necessarily examined to see whether the allegation of gang rape was true. Unfortunately, the version of the so called eye witnesses to at least the initial part of the crime has not supported the story of the prosecution. The attendant circumstances also do not co-relate to the offence alleged against the appellants. Therefore, in the absence of proper corroboration of the prosecution version to the alleged offence, it will be unsafe to sustain the case of the prosecution.

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

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

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

26. Applying the said principles to the facts of the case on hand, we find that the solitary version of the chief examination of PW-4, the prosecutrix cannot be taken as gospel truth for its face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellants.

27. The prosecution has miserably failed to establish the guilt of gang rape falling under Section 376 (2) (g), IPC against the appellants. The conviction and sentence imposed on the appellants by the trial Court and confirmed by the impugned order of the High Court cannot, therefore, be sustained. The appeals are allowed. The judgment and order of conviction and sentence passed by the trial Court and confirmed by the High Court are hereby set aside. The appellants are acquitted of all the charges and they be set at liberty forthwith, if not required in any other case.

Judgment Referred

[1]*1996 (2) SCC 0384*
[2]*2011(7) SCC 0130*
[3]*2003 (2) SCC 0143*
[4]*AIR 2006 SC 0381*