

Imran vs.state

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Court : Delhi

Decided On : Aug-22-2019

Appellant : Imran

Respondent : State

Advocate for Pet/Ap. : Ms. Naomi Chandra

Judgement :

\$~ * + % IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A.No.949/2018
Judgment reserved on:

08. h August, 2019 Judgment pronounced on:

22. d August, 2019 IMRAN Appellant Through: Ms.Naomi Chandra, Advocate
STATE Versus Respondent Through: Ms.Aashaa Tiwari, APP for State. Insp.
Fatesh Singh and SI Shiv Ram, PS Amar Colony CORAM: HON'BLE MR.
JUSTICE MANMOHAN HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
SANGITA DHINGRA SEHGAL, J1 The present appeal has been filed on behalf of
the appellant under Section 374(2) of the Code of Criminal Procedure, 1973,
(hereinafter referred as Cr.P.C.) against the impugned judgment dated 28.02.2018
and the order of sentence dated 14.03.2018 passed by the Court of ASJ (Spl.
FTC), South East, Saket Courts, New Delhi, in SC No.1688/2016 (FIR
No.937/2015, P.S. Amar Colony), registered under section 376/392/506 of the
Indian Penal Code, 1860 (hereinafter referred as IPC) whereby the appellant was

convicted for the offence punishable under Section 376/392/506 IPC and was sentenced to imprisonment for life for the offence punishable under Section 376 IPC with a fine of Rs.10,000/-, in default rigorous CRL.A9492018 Page 1 of 19 imprisonment for six months; RI for a period of 05 years for the offence punishable under Section 392 IPC with a fine of Rs.5,000/-, in default RI for three months and RI for 01 year for the offence punishable under Section 506 IPC with fine of Rs.5,000/-, in default RI for three months, all the term sentences to run consecutively.

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under:-

"On receipt of DD No.11 dated 22.08.2015 regarding a lady is lying in unconscious condition with whom a wrong act is done, SI Benktesh and Ct.Yogesh Kumar reached at the place of incident where prosecutrix met them and they took the prosecutrix to the Police Station and information was sent to NGO and thereafter prosecutrix (name withheld to protect her identity) made a complaint wherein she stated that she alongwith her family is residing in Sarita Vihar, New Delhi and she works of cleaning the toilet at Lotus Temple since 08.08.2015 and she used to go her work place at Lotus Temple from Mohan Co-operative via Metro at Kalkaji Metro Station. On that day, her Jeth dropped her from motorcycle at about 8:15 AM at Captain Gaur Marg near Canara Bank in front of Okhla Subzi Mandi towards the way of Garhi, Lajpat Nagar, where there is a short way between the broken wall for going to Lotus Temple through the jungle. She entered into the Astha Kunj Park, but as she did not know the correct place, she went on a wrong way and after crossing some distance, she did not find anyone on the way. A boy came and asked her if she wanted something, she refused, but he then caught hold of her hand. She raised alarm. In the meantime, another boy came and asked from that boy as to what he was doing. He asked him to go away. He made him run away from there. Then second boy caught hold of the CRL.A9492018 Page 2 of 19 hand of the prosecutrix, gagged her mouth and dragged her towards the bushes of the jungle where he committed rape upon her. She tried to raise alarm but could not since he had gagged her mouth. He then asked her what she has. She told him that she has nothing. She was having her mobile phone. He snatched her mobile phone and also slapped her and threatened her that if she

will tell it to anyone, he will kill her. She ran towards the stand and told the incident to a person at bus stand. Someone called the police. On this complaint, the case under section 354C/376(2)(n)/354/323 IPC was registered. 3. The accused person was charged under Sections 376/392/394/506 IPC to which he pleaded not guilty and claimed trial. In order to bring home the guilt of the accused person, the prosecution had examined 18 witnesses in all.

4. The accused person was examined and his statement was recorded under Section 313 of Cr.P.C wherein he denied the allegations of the prosecution and claimed that he had found the mobile phone unattended on the road, and he had been falsely implicated in this case by the police after manipulation of the report. The accused person also examined one witness in his defence.

5. The learned Trial Court, upon analysis, examination and evaluation of the prosecution evidence and after considering the rival submissions recorded conviction against the accused for the charged offences.

6. Ms. Naomi Chandra, learned counsel for the appellant contended that the impugned judgment dated 28.02.2018 was based on conjectures, surmises and had disregarded the cogent evidence, and thus be set CRL.A9492018 Page 3 of 19 aside. Learned counsel further contended that photos of the appellant were shown to the prosecutrix prior to his arrest, since the victim had already seen the appellant the TIP would have been a futile exercise and for this reason he refused to participate in the TIP. In support of the above, learned counsel for the appellant relied upon the case of Kanan and Ors. Vs State of Kerala 1979 SCC (Cri) 621.

7. Learned counsel further contended that the prosecutrix was sent for medical examination, her clothes were seized, slides were prepared and the vaginal swab of the prosecutrix was taken (Ex. 5 and 6), and after conducting a thorough medical examination, there was nothing on record to suggest that it matched the semen DNA (Ex.

7) of the accused, indicating that no offence of penetrative rape was committed.

8. Lastly, Ms. Chandra contended that the doctors had observed that there was no external injury to the prosecutrix and at the most an offence under Section 354B was committed.

9. Per contra, learned APP for the State contended that PW-1 (prosecutrix) had given a detailed description of the accused while getting the Rukka prepared, and on that basis, and the information of an informer the accused was apprehended on 23.08.2015; no photos of the appellant were shown to the prosecutrix prior to his arrest. Learned APP further contended that the Appellant had declined to participate in Test Identification Parade which was sufficient to draw reasonable and logical inference that he was guilty of the offence committed. CRL.A9492018

Page 4 of 19 10. Ms. Aasha Tiwari further contended that the FSL report of the prosecutrix evidently depicts that DNA test was successfully conducted and the same matched with the semen sample of the accused. Learned APP further contended that there was no logical explanation of semen being found in the private parts of the prosecutrix if there was no penetration, as on the day of the incident only one person was present on the spot who would have committed the crime, leaving no possibility of the semen being of someone else.

11. Ms. Aasha Tiwari, learned APP for the State contended that it is a settled law that the accused can be convicted on the sole testimony of PW-1 (prosecutrix) if it is trustworthy and inspires confidence; and that PW-1 (prosecutrix) has been consistent in all her statements. Lastly, Ms. Tiwari urged the court that the impugned order should be upheld. Finding of the Trial Court 12. The trial court in the impugned judgment has held as under:-

"17. To prove the offence of rape, prosecutrix is the most material witness. It is necessary to analyze the statement of the prosecutrix. The prosecutrix used to do the work of cleaning toilets at Lotus Temple, Kalkaji, New Delhi and as per her version, she used to go there by metro train, got down at Kalkaji Metro Station and from there, she used to go on foot. However, on 22.08.2015, her jeth dropped her at Subzi Mandi, Okhla on his motorcycle at about 8 a.m. As per her version, there was a way for going to Lotus Temple. One wall was broken. From there public was going. The way was from the jungle. She also took the way. After covering some

distance, she did not find anyone on the way. A boy came and asked her if she wanted something. She refused. He caught her. CRL.A9492018 Page 5 of 19 She raised alarm bachao bachao. In the meantime, another boy came and asked from that boy as to what he was doing. He asked him to go away. He made him run away from there. The second boy caught her hand, gagged her mouth and dragged her towards the bushes of the jungle where he committed rape upon her. She tried to raise alarm but since he had gagged her mouth. The said boy then asked her what she is having. She told him that she does not have anything. She was having her mobile phone. He snatched her mobile phone and threatened her that is she will tell it to anyone, he will kill her. He also slapped her. She ran towards the stand and became unconscious. After getting some consciousness, she told the incident to a person at bus stand. Police came there and took her to police station, called her jethani. Then, she was taken to the spot and site plan was prepared. Then, she was medically examined. The doctor had taken into possession the clothes she was wearing and given other clothes to wear. Thereafter, her statement was recorded by the Magistrate. She also went to Tihar Jail for TIP of the accused, he the accused had refused to join the TIP proceedings. The prosecutrix has identified her clothes as well as her mobile phone which was later on recovered from the possession of the accused. She has also identified the accused as the second boy, who had committed rape upon her.

18. In the cross examination, the prosecutrix has stated that she was going for the first time to Lotus Temple from that way. She has also stated that there were two ways from the broken wall and she lost the way and took the other way. She also deposed that she does not know the way to Lotus Temple from Subzi Mandi. During her cross-examination, she has also deposed that she joined the job at Lotus Temple on 08.08.2015. The incident had happened on 22.08.2015 and this fact gives support to statement of the prosecutrix that she did not know the way to Lotus Temple and took a wrong way from the temple which incident which has the unfortunate led to CRL.A9492018 Page 6 of 19 happened with her. She has also deposed that the first boy had not committed any wrong with her. Nothing adverse came out the cross-examination of prosecutrix. in 19. No suggestion is put by the accused to the prosecutrix with regard to any previous enmity between her and the accused leading to the implication of the accused in this case. It is not the case of

the accused that prosecutrix was earlier known to him. There is no reason to apprehend that the accused has been falsely implicated by the prosecutrix. External Injuries 13. The learned counsel for the Appellant had contended that there were no external injuries on the body of the prosecutrix when she was medically examined by the doctors on 22.08.2015. To rebut this contention learned APP relied upon State of Rajasthan vs. N.K reported at (2000) 5 SCC30 Germane portion of the judgment is quoted below: 18. Absence of injuries on the person of the prosecutrix has weighed with the High Court for inferring consent on the part of the prosecutrix. We are not at all convinced. We have already noticed that the delay in medical examination of the prosecutrix was occasioned by the factum of the lodging of the FIR having been delayed for the reasons which we have already discussed. The prosecutrix was in her teens. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfil his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. In Sk. Zakir [Sk. Zakir v. State of Bihar, (1983) 4 SCC10:

1983. SCC (Cri)

1983 Cri LJ1285 absence of any injuries on the person of the prosecutrix, who was the helpless victim of rape, belonging to a backward community, living in a remote area not knowing the need of rushing to a doctor after the occurrence of the incident, was held not enough for discrediting the statement of the prosecutrix if the other In Balwant Singh[Balwant Singh v. State of Punjab, (1987) 2 SCC27:

1987. SCC (Cri) 2

1987 Cri LJ971 this Court held that every resistance need not necessarily be accompanied by some injury on the body of the victim; the prosecutrix being a girl of

years of age was not in the facts and circumstances of the case expected to offer such resistance as would cause injuries to her body. In Karnel Singh [Karnel Singh v. State of M.P., (1995) 5 SCC518:

1995. SCC (Cri) 977]. the prosecutrix was made to lie down on a pile of sand. This Court held that absence of marks of external injuries on the person of the prosecutrix cannot be adopted as a formula for inferring consent on the part of the prosecutrix and holding that she was a willing party to the act of sexual intercourse. It will all depend on the facts and circumstances of each case. A Judge of facts shall have to apply a common-sense rule while testing the reasonability of the prosecution case. The prosecutrix on account of age or infirmity or overpowered by fear or force may have been incapable of offering any resistance. She might have sustained injuries CRL.A9492018 Page 8 of 19 but on account of lapse of time the injuries might have healed and marks vanished.

19. For the offence of rape as defined in Section 375 of the Indian Penal Code, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. Based on these provisions, an argument is usually advanced on behalf of the accused charged with rape that the absence of proof of want of consent where the prosecutrix is not under 16 years of age takes the assault out of the purview of Section 375 of the Indian Penal Code. Certainly consent is no defence if the victim has been proved to be under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else

the testimony of prosecutrix is such as would be inherently improbable. The prosecutrix before us had just crossed the age of 16 years. She has clearly stated that she was subjected to sexual intercourse forcibly by the accused 14. It is apparent that the absence of external injuries on body of the prosecutrix on the date of her medical examination would not necessarily mean that she had not been raped or that she had not resisted at the time of commission of the crime. Absence of injuries does not indicate her consent or the falsity of the allegations or discredit the version of the prosecutrix. CRL.A9492018 Page 9 of 19 Scientific Evidence 15. PW-1 (the prosecutrix) was medically examined on 22.08.2015 and her clothes were seized and slides were prepared. Vulval and vaginal swabs were taken (Ex. 5 and

6) from the prosecutrix, along with the DNA sample of the appellant (Ex. 7). The FSL report is reproduced as under: Result of analysis 1.

2. Blood was detected on exhibit 7. Blood could not be detected on exhibits 1a, 1b, 1c, 1d, 2, 3, 4, 5, 6 & 10. Human semen was detected on exhibits 1b, 5 & 6. Semen could not be detected on exhibits 1a, 1c, 1d, 2, 3, 4, 9 & 10. 3.

4. DNA Examination Exhibits 1b (salwar of victim), 5,6 (vulval and vaginal swab & smear) and 7 (Gauze cloth piece of accused) were subjected to DNA isolation. DNA was isolated from the source of exhibits 1b (salwar of victim), 5,6 (vulval and vaginal swab & smear) and 7 (Gauze cloth piece of accused). identifiler PCR amplification kit were used for STR amplification for each of the samples and data was analysed by using Gene Mapper IDx software. Male DNA profile was generated from the source of exhibits 1b (salwar of victim) and 7 (Gauze cloth piece of accused). However DNA profile could not be generated from the source of exhibit 5,6 (vulval and vaginal swab & smear). Result of DNA Analysis Amp FI STR DNA (STR) analysis performed on exhibits 7 (Gauze cloth piece of accused) & 1b (salwar of victim) is CRL.A9492018 Page 10 of 19 sufficient to conclude that DNA profile generated from the source of exhibit 7 (Gauze cloth piece of accused) is similar with the DNA profile generated from the source of exhibit 1b (salwar of victim).

16. According to FSL report (Ex. PW-13/A) and serological report which was sent for examination and analysis, it is apparent that the D.N.A. profile test of semen was conducted on the seized clothes of the prosecutrix (salwar/Ex. 1B) against the DNA samples of the Appellant (Ex. 7), and the vaginal swab and vulval swab (Ex. 5 &

6) of the prosecutrix.

17. After perusing the FSL report it is evident that human semen was detected on Ex. 1B, 5 and 6 and the DNA profile generated from the Ex. 7 of the appellant had matched with Ex. 1B (salwar of the prosecutrix). However, DNA profile could not be generated from Ex. 5 and 6, which is insignificant as the appellant has failed to explain how his semen was found on the salwar (Ex. 1B) of the complainant. Testimony of the Prosecutrix 18. The Apex Court has time and again held that the sole testimony of the prosecutrix is sufficient to implicate the accused if it inspires confidence. Reliance can be placed on Vijay v. State of Madhya Pradesh reported in (2010) 8 SCC191 Relevant paragraph of the judgment reads as under: 14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix. reliable, CRL.A9492018 Page 11 of 19 19. Averting to the facts of the present case, the statement of the prosecutrix was recorded by the police on 22.08.2015, on the basis of which the Rukka (Exhibit PW-1/A) was registered. Relevant portion of the same is quoted below : After walking a few steps, I met with a boy on the way who suddenly caught my hand and asked me as to whether I need something. Due to fear, I raised an alarm whereupon another boy came there whose name I did not know. The second boy had slim built, wheatish complexion, age years and had a mark of wound on right side of his cheek and had kinky teeth. His height was average. He came over there and asked the first one as what was he doing, get lost. Thereafter, the first boy left from there while the second boy dragged me in the nearby bushes and made me fall on the ground. He forcibly removed my lower (Salwar) and outraged my modesty. I started crying loudly. He hold my mouth from his hand and told me to keep quiet else he would kill me. 20. Further, during the trial, the prosecutrix was examined as PW- 1, wherein she

deposed as under: I used to do the work of cleaning toilets at Lotus Temple, Kalkaji, New Delhi. I used to go there by metro train. I used to get down at Kalkaji Metro Station. From there I used to go on foot. On 22.08.2015, my jeth dropped me at subzi mandi, Okhla on his motorcycle at about 8 a.m. There was a way for going to Lotus Temple. One wall was broken. From there public was going. The way was from the jungle. I also took the way. After covering some distance, I did not find anyone on the way. A boy CRL.A9492018 Page 12 of 19 came and asked me if I wanted something. I refused. He caught me. I raised alarm bachao. In the meantime, another boy came and asked from that boy as to what he was doing. He asked him to go away. He made him run away from there. The second boy caught my hand, gagged my mouth and dragged me towards the bushes of the jungle where he committed rape upon me. I tried to raise alarm but since he had gagged my mouth. He then asked me what I have. I told him that I do not have anything. I was having my mobile phone. He snatched my mobile phone and threatened me that if I will it to anyone, he will kill me. He also slapped me. I ran towards the stand and became unconscious. After getting some consciousness, I told the incident to a person at bus stand. I do not know who called the police. Police came there and made me sit in police gypsy. Police brought me in the police station. The police called my jethani. She came there. Police took me to the spot and prepared the site plan. Police recorded my statement which is exhibited as Ex.PW1/A bearing my signature at point A. Police took me to the hospital where I was medically examined vide MLC Ex.PW1/B bearing my signature at point A. During cross-examination, PW-1 (Prosecutrix) deposed as under:-

"My phone was in working condition but there was zero balance when the accused apprehended me. When I raised alarm no one came. I reached the bus stand from the spot in 10 minutes. I was going for the first time to Lotus Temple from that way. I did not know the way to Lotus Temple. I do not know the way to Lotus Temple from that bus stand. The first boy did not commit rape upon me. I did not know that boy. Police has asked my CRL.A9492018 Page 13 of 19 mobile number but I did not know that number. There were 10-12 persons at the bus-stop. xxxx xxxx xxxx xxxx It is wrong to suggest that the rape was committed by the first boy and I left him after taking money. There were no external injuries on my person. It is correct that the place was a jungle and there were bushes in the jungle. I was wearing

salwar-suit. Colour I do not remember. Gagged means accused put his hand on my mouth. It is wrong to suggest that I falsely implicated the accused since the accused did not pay me money. My Jeth used not to drop me daily. I did not know the way to Lotus Temple from subzi-mandi. I joined the job at Lotus Temple on 08.08.2015. 21. It is pertinent to note that PW-1 (prosecutrix) has been consistent throughout in her statement that intercourse was against her wishes and that there was no consent as she had forcibly been caught and threatened and thereafter, she had been subjected to rape.

22. Inspector Rajni Chopra, Investigating Officer was examined as PW- 17, she deposed as under: On 22.08.2015 I was posted as Inspector at Police Station Amar Colony. On receipt of DD No.12/A Ex.PW7/A, I along with SI Vanktesh and Ct. Yogesh Kumar reached at the spot i.e., in front of Captain Gaur Marg in front of Okhla Subzi Mandi. The prosecutrix met me there. She was perplexed. She requested me to take to her to Police Station. I gave her water and made her comfortable. I called her family members. I brought her to the police Station. I recorded her statement Ex.PW1/A. I prepared a rukka Ex.PW17/A and gave it to duty officer for the registration of the FIR. I sent the prosecutrix to AIIMS with Ct. Harmeet Kaur and SI CRL.A9492018 Page 14 of 19 Rajesh for her medical examination. I made inquiries from the local persons and tried to search the accused. I also briefed the secret informer about the incident who met me near the spot. We returned to police station. I showed the photographs in criminal register to the prosecutrix but she could not identify. I recorded the statement of witnesses. On 23.08.2015 I alongwith Ct.Dheeraj and Ct.Yogesh again went to the spot and tried to search the accused. In that process I met the secret informer near Okhla mandi who informed me that the accused of this case is present in house number A-43, Kalicharan Camp, Okhla Subzi Mandi. The secret informer also disclosed the name of the accused as Imran. I constituted a raiding party consisting on myself, Ct.Yogesh and Ct.Dheeraj. I asked some public persons to join the raiding but none agreed and left the place without disclosing their name and addresses. We reached at house number A-43, Kalicharan Camp, Okhla Subzi Mandi. Uncle and Aunt of the accused were present in the house. I asked them about Imran. They produced the accused Imran present in court today. I apprehended the accused. After interrogation the accused was arrested vide arrest memo

Ex.PW8/B and conducted his personal search vide memo Ex.PW8/C. XXXX XXXX XXXX XXXX Accused was produced before the court. He was taken on PC remand. The accused lead us to shop no.104 Okhla Mandi and got recovered a mobile phone of black colour Samsung. The phone was converted into a pullanda and sealed with the seal of RC and seized vide seizure memo Ex.PW17/D. to prosecutrix which was robbed by the accused at the time of incident from her possession. The said phone was belonging CRL.A9492018 Page 15 of 19 During cross-examination, PW-17 (Inspector Rajni Chopra) deposed as under : It is wrong to suggest that the photographs of the accused were shown to the prosecutrix and due to which he refused to participate in judicial TIP... 23. A conjoint perusal of the testimonies and statement of the PW-1 (Prosecutrix) and PW-17(IO Rajni Chopra), it is clear that the prosecutrix had given a detailed description of the accused to the police on the very day of the incident, and the police had even received information from an informer regarding the whereabouts of the appellant, whereafter, the Appellant was apprehended by the police on 23.08.2015 from his house. Recovery of mobile phone 24. At this stage we deem it essential to point out the recovery of the stolen mobile phone of PW-1 (prosecutrix). On the day of the incident, 22.08.2015, the prosecutrix in her statement to the police had stated that her mobile phone was stolen by the appellant, and when the appellant was apprehended on 23.08.2015 from his house, he led the police to a shop in Okhla Mandi where he had given the black Samsung phone.

25. In the statement under Section 313, the appellant took the plea that the phone was found on the road unattended, and his uncle had started had using the same. However, the uncle was not produced as the defence witness. Hence, no material witness has been examined who would point towards the innocence of the appellant, rather all CRL.A9492018 Page 16 of 19 facts are pointing towards the role of the appellant in the commission of the crime. Test Identification Parade 26. The learned counsel for the appellant had contended that photos of the appellant were shown to the prosecutrix prior to his arrest and the test identification parade was of no consequence and rightly the appellant had refused to take part in it.

27. The necessity of Test Identification Parade is just primary evidence to pinpoint that the investigation which is being conducted is going in the right direction,

however, it is not a substantive one. It is interesting to note that, if TIP is not conducted and the witness identifies the accused for the first time in the court of law, then, the evidence regarding identification in the court of law does not ipso facto become inadmissible and cannot be discarded on the ground that it was not preceded by TIP.

28. The Apex Court in the case of Mukesh & Anr vs State for NCT of Delhi & Ors. arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014, wherein the court held that identification in court, which is not preceded by any test identification parade is also equivalent to substantial evidence. Relevant portion of the same is quoted below:

145. In the case at hand, the informant, apart from identifying the accused who had made themselves available in the TIP, has also identified all of them in Court. On a careful scrutiny of the evidence on record, CRL.A9492018 Page 17 of 19 29. we are of the convinced opinion that it deserves acceptance. Indubitably, the refusal to participate in Test Identification Parade, if no plausible reason is offered, would be sufficient to draw an adverse inference against the appellant that had he participated in the Test Identification Parade he would have been identified by the prosecutrix. In the present case, all arrangements to hold the Test Identification Parade were made but the appellant refused to participate in the Test Identification Parade proceedings. It has also emerged from the testimony of PW-17 (IO Rajni Chopra) that no photos of the appellant were shown to the prosecutrix prior to his arrest. Since the appellant declined to participate in Test Identification Parade proceedings an adverse inference can surely be drawn against him at least in order to corroborate the prosecution case. Conclusion 30. As per the case of the prosecution, the prosecutrix was heading to her place of work on 22.08.2015 when she was caught by the appellant who then raped her and snatched her mobile phone. After thorough perusal of evidence on record, it is evident that the prosecutrix has been consistent in her statements and the same inspires confidence and can be relied upon as it also corroborates with the version of the IO.

31. The mobile phone was also recovered pursuant to the disclosure statement of the appellant which would clearly prove his involvement CRL.A9492018 Page 18 of 19 in the crime and the FSL report confirming Appellants semen on salwar (Ex. 1B) of the prosecutrix as well as human semen on vaginal and vulval swab (Ex. 5 and

6) corroborates with the version of the prosecution and establishes the appellants involvement in the crime.

32. In our view, the material available on record as recited above coupled with the law laid down by the Apex Court unerringly lead to one conclusion and that is the guilt of the appellant. Hence, we find no infirmity in the judgment passed by the learned Trial Court and we see no cogent reason to interfere with the same.

33. Accordingly, the present appeal being devoid of merit is dismissed.

34. A copy of this order be also sent to the Superintendent of Jail. SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

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