**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Parveen Kumar Vs. State**

**Parveen Kumar Vs. State**

**SooperKanoon Citation** : sooperkanoon.com/51903

**Court** : Delhi

**Decided On :** May-29-2015

**Judge** : G. S. Sistani

**Appellant** : Parveen Kumar

**Respondent** : State

**Judgement** :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on 22.05.2015 Judgment delivered on 29.05.2015 + Crl. A. 660/1999 ROHIT BANSAL ..... Appellant Through : Mr. Rajeev Gaur Naseem, Advocate. Versus STATE ..... Respondent Through : Mr. Feroz Khan Ghazi, APP for the State + Crl. A. 661/1999 BALBIR @ BALLI ..... Appellant Through : Mr. M. L. Yadav, Advocate. Versus STATE ..... Respondent Through : Mr. Feroz Khan Ghazi, APP for the State + Crl. A. 677/1999 ANIL RAWAT & ORS. ..... Appellants Through : Mr. M. L. Yadav, Advocate. Versus STATE ..... Respondent Through : Mr. Feroz Khan Ghazi, APP for the State + Crl. A. 678/1999 MUKESH @ BITTOO ..... Appellants Through : Mr. Rajeev Gaur Naseem, Advocate. Versus STATE ..... Respondent Through : Mr. Feroz Khan Ghazi, APP for the State + Crl. A. 692/1999 PARVEEN KUMAR Through : ..... Appellant Mr. Vikas Pahwa, Senior Advocate with Ms. Aeshna Dahiya, Advocate. Versus STATE Through : ..... Respondent Mr. Feroz Khan Ghazi, APP for the State CORAM: HONBLE MR. JUSTICE G.S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL G. S. SISTANI, J.

1. Present appeals arise out of a common judgment dated 03.12.1999 and order on sentence dated 08.12.1999 passed by the learned Additional Sessions Judge, Delhi whereby the appellant Parveen was sentenced to undergo life imprisonment for an offence punishable under Section 376 (2) (g) of the Indian Penal Code with a fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for one year. Other six appellants viz. Mukesh @ Bittoo, Ajay Singh, Sunil Sharma, Balbir @ Balli, Anil Rawat and Rohit Bansal were sentenced to undergo rigorous imprisonment for ten years for an offence punishable under Section 376 (2) (g) of the Indian Penal Code and a fine of Rs.5,000/- each and in default of payment of fine each of the appellant to undergo rigorous imprisonment for one year. Appellant Parveen was also sentenced to undergo rigorous imprisonment for one year for an offence punishable under Section 342 of the Indian Penal Code. Appellant Parveen, Bittoo, Anil Rawat and Sunil were further sentenced to undergo rigorous imprisonment for one year for an offence punishable under Section 506 (II) read with Section 34 of the Indian Penal Code. All the sentences were ordered to run concurrently.

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

(i) The case of the prosecution is that on 7.9.94 Inspector Prithvi Singh, Inspector Raj Mohinder Singh alongwith ACP were called at the office of DCP Crime Branch. There DCP Crime Branch instructed them to meet one Sh. Nand Kishore Taneja at premises No.148 Preet Vihar and proceed with the case if the facts reveal the commission of a cognizable offence. (ii) These officers reached at the said house. There they recorded the statements of prosecutrix. (iii) She stated that she was residing at the aforesaid address alongwith her parents and is doing a course of interior designing at South Delhi Polytechnique. As a routine she comes upto Laxmi Nagar in a rickshaw and from there she took U-Spl. for South Extension. She developed intimacy with one Parveen who was residing at premises No.A-137 Preet Vihar. One day said Parveen took her to Connaught Place on the house of his friend Bittoo. Then Parveen committed rape upon her after threatening her. Bittoo, friend of Parveen had also sexual intercourse with her against her consent. Parveen took her photograph while Bittoo was committing rape upon her. However, she came to know about it. Later on when Parveen showed her

photograph to her on the same day, she became very much scared and asked Parveen to return photograph. Upon this, Parveen replied that only he knew about this secret and Bittoo was his friend. Parveen also promised to marry her at the earliest. So, she did not disclosed this fact to anybody. (iv) Thereafter accused Parveen had been blackmailing her. Parveen had been telephoning her and that is why she had been meeting him openly. In the first week of April, 94, Parveen took her to under-construction flats of a Society near Patparganj Depot after alluring and threatening her. There Sunil, Anil Rawat @ Anni, Bittoo and one more boy (whom she did not know but can identify him) met her and had sexual intercourse with her against her consent. Those boys placed the negative of thesaid photograph before her and told her that if she wants the said negative back, she had to succumb to their advances. Even after committing rape, these persons did not return the negative to the complainant. When she asked for it, they threatened to kill her brother. Hence, she did not disclose anything at her house. (v) On 17.7.94 Parveen called her, on the pretext of returning the negative to her, at Coffee House. Parveen took her on his motor cycle to Noida i.e. in an office in an under construction building. There Anil Rawat @ Anni, Bittoo and Sunil were already present. All these boys committed rape upon her. During the rape, two of the boys had caught her. She dis-engaged herself and started crying. Parveen became scared and made the other boys to stop this. She came to her house in a bus. She was threatened that her brother will be killed. Parveen had been threatening on telephone that he will get made the poster of her photograph and get the same sticked at South Extension and near her house. (vi) On 5.9.97 Parveen met her at Bengal Sweets, South Extension and compelled her to accompany him after showing her the said photograph. Parveen sweared that this time he will return the photograph and negative to her and they will not do anything with her. So, she had to accompany Parveen. Parveen took her in an office at second floor of a building at Darya Ganj. There a revolver and an open knife were lying on the table. There, Rohit and one more boy (whom she could identify and who was the owner of the office) were already present. Parveen told her that this was the last time and they shall not trouble her again and they would return her photograph and negative. Then all these three boys committed rape upon her turn by turn and told her that in the evening her photograph and negative will be

returned. Complainant threatened to commit suicide in case her negative and photograph are not returned. Parveen sweared that at that time he had no photograph and negative with him and shall return the same at 7.30 PM near Universal Public School. So, at the appointed time she reached there. There Parveen showed her photograph and negative and compelled her to have sex with him and one Balli @ Pappu (who was already there) Parveen also committed rape upon her. Still, Parveen did not return the photograph and negative to her. Both of them left the said place on motor cycle threatening that they will spoil her brother and sisters. She was so scared that she did not tell all this episode. As she was scared and weeping in the night, her mother asked her the reason for the same. As her mother asked repeatedly, she told everything to her. Her mother conveyed the same to her father. She could identify all those places where she was raped. (vii) Upon the statement of the prosecutrix a case U/s 506/342/376/34 IPC was registered. The prosecutrix was medically examined at SDN Hospital. Her vaginal swab was seized. The prosecutrix also produced her salvar, shirt and underwear which were also sealed and seized. (viii) I.O. recorded the statements of other witnesses. On the pointing out of complainant, accused persons Parveen, Mukesh @ Bittoo, Ajay Singh were arrested. Rest of the accused persons Sunil Sharma, Balbir, Anil Rawat were arrested on 10.9.94 from different places. All the accused persons were medically examined and their semen samples were taken. Their disclosure statements were also recorded. (ix) On the pointing out of accused persons, one photograph wherein Mukesh @ Bittoo was committing rape upon the prosecutrix, was recovered from the house of Parveen. The same was seized. On the pointing out of accused Parveen again, a camera, vide which the said photograph was taken was also recovered. The exhibits of the case were sent to FSL, Chandigarh. Report of CFSL was not received till the filing of the challan. (x) The statement of the prosecutrix was also recorded U/s 164 Cr.P.C. The accused persons also pointed out the places of committing rape. After completing necessary formalities, the challan was filed U/s 342/506/501/366/376/376 (2) (G)/120-B IPC.

3. The prosecution, in the course of the trial, relied upon the testimonies of 13 witnesses and also placed on record several exhibits. After the prosecution evidence, the learned Trial Court examined the appellants under Section 313 of

Code of Criminal Procedure. Appellant Parveen stated that since Preeti started loitering with some other boys, he refused to marry her and for this reason she falsely named him in this case. He also stated that FIR against them was registered with the connivance Sh. Markandey Singh, Ex-LG, who was a friend of the grandfather of the prosecutrix. Appellant Mukesh @ Bittoo claimed to be falsely implicated. He stated that he had not committed any crime and he was lifted from his house by the police. He further stated that he did not have any house in Connaught Place as alleged by the prosecution and he also denied his photograph. Moreover, he came to know the appellant Parveen in June, 1994, when he came to his workshop for getting his scooter repaired. Appellant Ajay Kumar also pleaded innocence and stated that he had been falsely implicated in this case by the prosecutrix and her parents. Appellant Balbir Singh pleaded innocence. He stated that on 09.09.94 at about 5/6 a.m., he was going to Sanjay Lake along with his friend for a morning walk and a car came there in which four persons were seated. They enquired from him about Flat No.561, Mayur Vihar and he showed his ignorance on which they started abusing him and some altercation took place. One person alighted from the car and caught him by his collar and forcibly push him inside the car. Thereafter, they went to the house of Parveen from where he was also lifted and ultimately brought to Police Station Adarsh Nagar and falsely implicated in this case. Appellant Anil Rawat stated that before the registration of this case, prosecutrix was residing in his neighbourhood at Mangal Bazar, Laxmi Nagar and she had affairs with one Gagan and Kapil. He further stated that prosecutrix also had an affair with Parveen and she suspected Anil that he had informed Parveen about her affairs with Gagan and Kapil and had a grudge for this and also named him in this case and got him falsely implicated. Appellant Sunil Sharma and Rohit Bansal stated that they had been falsely implicated at the behest of the prosecutrix. Two defence witnesses were got examined by the appellants.

4. Appellant Ajay Singh expired during the pendency of the appeal therefore his appeal stands abated.

5. Mr. Vikas Pahwa, Senior Advocate appearing for appellant Parveen Kumar has assailed the impugned judgment on several counts being that the prosecutrix was

an unchaste woman, having illicit relationship with many boys and the court below erred in not appreciating properly the evidence of the defence witnesses examined by the appellant. Elaborating his arguments, Mr. Pahwa contends that the prosecutrix had been confronted on large number of issues/facts with her statement recorded under Section 161 of Code of Criminal Procedure and embellishments/improvements are of such a large magnitude that her statement itself becomes unreliable. It is further argued that the sole testimony of prosecutrix is totally unreliable as well as full of material contradictions, concealment, improvements, exaggerations, inconsistencies and thereby does not inspire confidence and creates a genuine doubt about her version. Mr. Pahwa further added that in a case where sole testimony of the prosecutrix does not inspire confidence and corroboration, it is to be read in its totality and if the same is found improbable, in such case her testimony becomes liable to be rejected. In support of his contention, counsel relied upon the case of Rai Sandeep @ Deepu Vs. State : (2012) 8 SCC21 wherein it has been held that :

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.

Reliance has also been placed on Krishan Kumar Malik Vs. State : (2011) 7 SCC130 where Honble Supreme Court has held that :

31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of 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, 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. Indeed there are several significant variations in material facts in her Section 164 statement, Section161 statement (Code of Criminal Procedure), FIR and deposition in Court.

32. 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. 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.

Similarly in the case of State of Rajasthan Vs. Babu Meen : (2013) 2 SCALE479 it has been held :

8. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.

9. In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony. In her evidence she had stated that she was subjected to rape at 12.00 noon when her sister Jitendra, the wife of the accused had gone to purchase milk. However, during the course of investigation she alleged that she was subjected to rape at 06.30 A.M. When confronted with the aforesaid contradiction in the cross-examination, she could not explain the aforesaid discrepancy. Her statement that she shouted for help when she was subjected to rape also does not find support from the evidence of Ramchandra Salvi (PW-11), the owner of the house where the incident is alleged to have taken place. Dr. Smt. Sushila (PW-12), has also not supported the allegation of rape as also the Forensic Science Laboratory Report. In the face of what we have observed above, the evidence of the prosecutrix cannot be said to be wholly reliable.

6. Secondly, Mr. Pahwa contended that there was delay in registration of FIR, which was registered on 07.09.1994 whereas the alleged first incident took place in January, 1994. It is argued that the unexplained inordinate delay of nine months in registration of the FIR raises a grave doubt in the highly belated version of the prosecutrix and the possibility of false implication cannot be ruled out. In support of his contention, Mr. Pahwa relied upon Surjan and Others Vs. State of M.P. : (2002) 10 SCC214 wherein it has been held that :

The inordinate delay in lodging the complaint before the police, i.e. 10 days, has not even been attempted to be explained. Even when she was examined as a witness in the Court, no question was put to her on that long delay. In a case where six indicated persons should be visited with a minimum sentence of 10 years' RI, the Court cannot afford to act on the uncorroborated testimony of the prosecutrix unless the said evidence is wholly reliable. When looked at the testimony of PW1 from all the different angles highlighted above, we are unable to hold that has testimony is wholly reliable. In such a situation, materials for corroborating the testimony of PW1 could not be obviated. But unfortunately there is none.

In the case of Ram Dass and Others Vs. State of Maharashtra : (2007) 2 SCC170 the Apex Court observed that :

Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.

7. Thirdly, Mr. Pahwa contended that the allegation made by the prosecutrix has been shattered and have fallen flat by the medical evidence which clearly indicates that there was no sign of external injury on the body of the prosecutrix. It is further contended that where the oral evidence of the prosecutrix is not supported by the medical evidence, moreover it is dangerous to punish the accused for rape solely on the basis of her oral evidence. In support of his contention, counsel relied upon the case of Pratap Mishra Vs. State of Orissa : (1977) 3 SCC41 wherein it has been held :

9. Another aspect of the matter is that where there has been any real resistance there is bound to be local injury and marks of violence on the body and the limbs of the victim. Taylor in his book Principles and Practice of Medical Jurisprudence, Vol. II, observes thus at p. 64: Nevertheless, it is most likely that when there has been some real resistance, local injury will be apparent and probably also marks of violence on the body and limbs. Although according to the prosecutrix, three persons raped her with great force and violence resulting in great pain to her and

her breasts becoming swollen and red and other injuries, yet when she was examined by the Doctor P.W. 8 only after 16 to 17 hours of the occurrence, the Doctor found no marks of injuries on her body at all. In this connection P.W. .& has categorically stated thus: I examined her (P.W.

1) at 5-15 p. m. on 20-4-1972. There was no injury or bruise mark on the breasts or chest There was no injury mark on the face, thighs and over the whole body. If the story of the prosecutrix was true, then we should have expected an injury or bruise-mark on the breasts or chest or on the thighs or other part of the body. The learned Sessions Judge, with whom the High Court has agreed, seems to have brushed aside this important circumstance on the ground that as the prosecutrix was examined by the Doctor on April 20, 1972, at about 5 P. M about 17 hours after the occurrence injuries may have disappeared and has relied on an observation of Taylor at p. 66 of his book which runs as follows: Injuries from rape may soon disappear or become obscure, especially in women who have been used to sexual intercourse. The Sessions Judge explained that as the prosecutrix was habituated to sexual intercourse injuries may have disappeared. While referring to one part of the observation of Taylor, the learned Sessions Judge has completely lost sight of the other part which explains the real issue and which runs thus: After 3 or 4 days, unless there has been unusual degree of violence, no traces may be found. Where there has been much violence, the signs may of course persist longer. Thus, if such a serious violence was caused to the prosecutrix by the appellants, the injuries are not likely to have disappeared before 2 or 3 days and the signs were bound to persist at least when she was examined by the Doctor. The absence of injuries on the person of the appellants as also on the person of the prosecutrix is yet another factor to negative the allegation of rape and to show that the appellants had sexual intercourse with the prosecutrix with her tacit consent.

8. Another contention raised by the counsel for the appellant is that as per the case of the prosecution, the appellant used to blackmail and commit rape on the prosecutrix by extending threats of exposing her photograph and making it public, which was allegedly clicked at the time of commission of rape by the appellant Mukesh @ Bittoo in the month of January, 1994. This does not inspire confidence

and truthfulness as the alleged photograph does not show the face of the prosecutrix and thus there was no apprehension of same being misused. Moreso, the prosecution in her deposition has given different versions about the first incident when she came to know about the alleged photograph for the first time. Further, the fact that the negative was available with the photograph the original is in doubt. It is alleged that in fact the negative was prepared from the photograph in question.

9. It is next argued by the counsel that the presence and identity of the girl and the appellant Bittoo in the alleged photograph is highly doubtful as the face of the girl in the alleged photograph is covered with her hands whereas the person in the alleged photograph has been observed as appellant Bittoo from his hairstyle by the learned Trial Court and the same is totally bad in law and outside the purview of the Indian Evidence Act, 1872 and the appellants could not have been convicted in the absence of proper identification.

10. The Counsel further argued that it is an admitted case of the prosecution that the prosecutrix had an affair with the appellant Parveen from 1989 to January, 1994. However, when the appellant Parveen refused to accept the marriage proposal of the prosecutrix as she was in relationship with other boys, the appellant Parveen was falsely implicated by the prosecutrix.

11. Lastly, counsel argued that the Investigating Officer has not been examined by the prosecution resulting deprival of opportunity to cross examine the Investigating Officer which caused serious prejudice to their defence. It is further argued that the prosecution has failed to bring any landlord/tenant or neighbour of the places of occurrence where prosecutrix was raped. Moreso, prosecutrix failed to identify and point out those places and no pointing out memo was prepared and placed on record.

12. In view of the aforesaid submissions, Mr. Vikas Pahwa, Senior Advocate prayed for an order of acquittal against the appellant Parveen Kumar.

13. Mr. Rajeev Gaur Naseem, Advocate appearing for the appellants Rohit Bansal and Mukesh Kumar @ Bittoo adopted the arguments advanced by Mr. Vikas

Pahwa, Senior Advocate for the appellant Parveen Kumar.

14. Mr. M. L. Yadav, Advocate appearing for the respondents Balbir @ Balli and Anil Rawat also adopted the arguments advanced by Mr. Vikas Pahwa, Senior Advocate for the appellant Parveen Kumar.

15. Per contra, Mr. Feroz Khan Ghazi, Learned Counsel appearing for the State strongly refuted the submissions made by the counsel for the appellants and lent support to the judgment on conviction and order on sentence passed by the learned Trial Court. Counsel argued that the prosecution has proved their case beyond any shadow of doubt. The testimony of the sole witness so examined proves the guilt of the appellant and the findings so recorded by the learned Trial Court below do not warrant any interference. Thus, these appeals are liable to be dismissed.

16. We have heard the rival contentions of the parties and given our thoughtful consideration to the arguments advanced by them and have also perused the evidence as well as the exhibited documents carefully.

17. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. Rape not only lowers the dignity of a woman but also mars her reputation. The plight of the woman and shock suffered by the victim can be well visualized. The victim of rape grows with traumatic experience and an unforgettable shame haunted by the memory of the disaster forcing her to a state of terrifying melancholia. The torment on the victim has the potentiality to corrode the poise and equanimity of any civilized society. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The offence of Rape is grave by its nature, which warrants a strong deterrent by judicial hand. In Shyam Narian Vs. The State of NCT Delhi : (2013) 7 SCC77 the Honble Supeme Court has elaborately dealt the issue as discussed in Madan Gopal Kaakar Vs. Naval Dubey and Anr. : (1992) 3 SCC204 State of Andhra Pradesh Vs. Bodem Sundra Rao : AIR 1996 SC530and State of Karnataka Vs. Krishnappa : (2000) 4 SCC75and has held that :

It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed.

and in Jugendra Singh Vs. State of UP : (2012) 6 SCC297 Honble Apex Court has held :

Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law.

In Lillu @ Rajesh & Ors. Vs. State of Haryana : (2013) 14 SCC643 the Honble Apex Court has observed that :

11. In State of Punjab v. Ramdev Singh : AIR 2004 SC1290 this Court dealt with the issue and held that rape is violative of victim's fundamental right under Article 21 of the Constitution. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman, i.e. her dignity, honour, reputation and chastity. Rape is not only an offence against the

person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also violates the most cherished fundamental right guaranteed under Article 21 of the Constitution.

18. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence. The statement of the prosecutrix is more reliable than any other witness. Where the testimony of victim of sexual assault instills the confidence in court, the same can be relied for conviction of the accused. 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 to prudence under the given circumstances. In Vijay @ Chinee v. State of Madhya Pradesh : (2010) 8 SCC191 the Honble Apex Court has dealt with the issue and held that :

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

19. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances.

20. There are catena of judgments passed by the Honble Apex Court wherein it has been held that only the deposition of the prosecution by itself is also sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth. In Md. Ali Vs. State of UP :

2015. (3) SCALE274 the Honble Apex Court has held that Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based.

and in Mohd. Iqbal v. State of Jharkhand reported in (2013) 14 SCC481 the Honble Apex Court has held that There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

Testimony of Prosecutrix PW1 Billoo @ Preeti is not reliable 21. Coming to the facts of the present case, the moot point involved for consideration in these appeals is whether evidence adduced by the prosecution on rape, particularly testimony of prosecutrix PW1 Billoo @ Preeti is trustworthy, credible and worthy of reliance?.

22. In order to test the veracity of the deposition of Prosecutrix PW1 Billoo @ Preeti, it needs to be discussed threadbare. She was examined on oath in Court during trial where she deposed that respondent Parveen was residing in her neighbourhood with whom she developed friendship and the same was objected by her father but they kept on meeting. She deposed that in the month of January 1994 respondent Parveen called her to Preet Vihar Bus Stop and asked her to go on a pleasure stroll and took her to Janpath at the house of respondent Bittoo. According to her, Bittoo offered her cold drink and after consuming it she felt giddiness and when she regained consciousness she saw that Parveen was raping her. Further she deposed that when she asked for her jeans from Parveen, he forced her to allow his friend Bittoo to repeat a similar act and when she refused the same, both Parveen and Bitto used force against her and Bittoo pressed her mouth and committed rape on her. She deposed that when Bittoo was raping her, she was weeping and had covered her face with her hands at that point of time she realised that Parveen had taken her photograph. She had a fight with Parveen, who promised to marry her and thereafter she returned home.

23. In her testimony, she further deposed the second incident of rape by stating that after few months of the previous incident, Parveen came to meet her and asked her to Nirman Vihar Bus Stand where Parveen apologized. She further stated that she demanded the negatives of the photograph from him and he took her to the house of his friend Sunil at Patparganj and made her to sit and left for

some work. She again asked for negatives when Parveen returned on which Parveen sought her permission to have sex with her to which she refused but Parveen forcibly had sex with her and also gave beatings to her. She deposed that when she asked for her clothes from Parveen, he told her that the clothes would be returned to her, if respondent Anil was allowed to have sex with her. According to her, Anil, Bittoo, Sunil and Manish were brought by Parveen inside the room one by one and forced themselves upon her, gave her beatings and bit on her body and raped her one after the other without her consent. She deposed that lastly, Parveen threatened her that her brother would be killed in case she disclosed the same to anyone in connection with what has happened.

24. The prosecutrix PW1 while narrating the third instance deposed that on 17.07.1994, she received a phone call from Parveen who asked her to meet at the Nirman Vihar Bus Stop. She went there and Parveen again apologized to her and promised her to return her negative and photographs and took her on his motorcycle to an office which was under construction at Noida. She deposed that Bitoo, Sunil and Anil were already present there and Parveen threatened her as he was carrying a knife and a revolver. She futher stated that his friends who were standing there were laughing and all of them including Parveen forcibly had sex with her and threatened her with dire consequences, like killing of her brother and spoiling the future of her sister in case she disclosed the incident to anybody. She also deposed that she returned to her house and did not meet them for few months.

25. PW1 Billo @ Preeti disclosed that the last incident took place on 05.09.1994, she had gone to her college and as she had some free time she went to Bengali Restaurant to search for one of her friend. There, Parveen tried to talk to her but she did not respond and Parveen threatened her if she did listen to her, her photographs would be pasted outside her house and college. Parveen showed a knife to her and asked her to accompany him which she did and he took her to the house/office of his friend Ajay in Sita Ram Bazar. Ajay and one boy named Rohit with whom she was acquainted were also present there, she further deposed that she was taken to the second floor of office/house of Ajay and saw that two revolvers were lying on the table and glasses in which if water would be poured

than obscene pictures would appear. According to her, Parveen, Ajay and Rohit raped her despite her resistance. She further deposed that she was beaten and Parveen had also threatened to tear her clothes if she would create scene and consequently she would not be in a position to return home. PW1 deposed that she again asked for her photographs and negatives from Parveen and he told her to return the same at 7:30 P.M. in the Gali near Universal Public School near my house, so she returned to her home.

26. On the same day at about 7:30 P.M., when she reached there, she found Parveen with his friend Balli and Parveen Kumar. There Balli forcibly had sex with her and when she asked for her negatives and photographs, they refused and she had a quarrel with Parveen and returned home. On that night, she wept bitterly and narrated each and everything to her mother on her insistence, who further brought the facts to the notice of the father of the prosecutrix and he lodged a report with the police on next day.

27. The prosecutrix was cross-examined at length. She admitted that she and Parveen were living in Preet Vihar since 1989 and the house of Parveen was at a distance of about 1/2 minutes walk from her house. She further deposed that she first met Parveen outside her house in 1989 and between 1989 and 1990. They used to meet frequently and mostly at the bus stop. She deposed that she used to meet Parveen after school hours in Park. She stated that their school timings of return from the school were almost the same. She stated that she never told anything to her parents regarding the above meetings. She further deposed that they used to like and love each other and she saw 2/3 movies with Parveen during 1989-90. She used to leave her house on the pretext of going to visit her friend Preeti, Sonia etc. as and when inquired by her mother. They used to see English movies between 11 a.m. and 1.00 p.m. and used to bunk their school. They enjoyed tea, coffee and snacks in picture hall. That sometimes they used to leave the picture hall and go outside for a stroll; that Parveen and his parents had shifted their house but she did not know if they had shifted to AGCR Complex, in Feb. 1990, in H. No.278; that she used to write letters to Parveen in 1990 and 1991 and give them to Parveen when they used to meet me.

28. The prosecutrix had been confronted with her statements recorded under Section 161 and 164 of the Code of Criminal Procedure on several issues /facts contrary to her deposition in court, wherein she admitted the following facts which have not been recorded in her statements under Section 161 and 164 of Code of Criminal Procedure. I told the police that I and accused Parveen used to meet in park near my house and once my father had seen us and asked me not to meet him and rebuked me but still we kept on meeting (Confronted to Ex.PW1/A and Ex.PW1/DA not recorded.) Accused Parveen had called me at the bus stop of Preet Vihar and asked me to go on some pleasure stroll. (Confronted with Ex.PW1/A where it is not so recorded) I did not tell the police that the accused Parveen took me to Janpath, Connaught Place while we were talking to each other. (Confronted to Portion A to A of Ex.PW1/A so recorded) I told the police that I asked for my jeans but the same was not given to me and I was compelled to allow Bittoo to have intercourse with me; on my refusal both of them used force against me, the accused Bittoo pressed my mouth and made me lie forcibly on the ground. (Confronted with Ex.PW1/A where it is not so recorded) I do not remember if I had told the police about my second meeting with accused Parveen in May, 1994 in my FIR (Confronted to Ex.PW1/A wherein it is not so recorded). I do not remember if I had stated that the second instance/ incident took place in April, 1994 in Ex.PW1/A vide portion C to C. I told the police that I was made to sit in the said room and Parveen told me to come after five minutes and I again demanded my negatives back from him and Parveen asked me to allow him to have sex once again and I refused for the same (Confronted with Ex.PW1/A where it is not so recorded). I told the police that the accused Parveen forcibly had sex with me and gave beatings to me. Thereafter the accused Parveen brought accused Anil inside the room and I demanded back my clothes from Parveen but he kept the same in another room. (Confronted with Ex.PW1/A where it is not so recorded) I told the police that Parveen had told me that I would get my clothes only if I allow Anil to fuck me and when I refused, Anil used force on me and beat to me and bitten on my body and committed sex with me. (Confronted with Ex.PW1/A wherein it is not so recorded) I told the police that thereafter accused Parveen brought the accused Bittoo inside the room and he also committed sex with me without my consent. (Confronted with Ex.PW1/A where it is not so

recorded) I told the police that thereafter accused Parveen brought accused Sunil inside the room and Sunil forced me and committed sex without my consent. (Confronted with Ex.PW1/A where it is not so recorded) I told the police that Parveen called me to bus stop Nirman Vihar over telephone on 17.07.94 and I went there. (Confronted with Ex.PW1/A where it is not so recorded) I told the Police that one boy named Manish also had forcible sex with me without my consent and I did not know his name and when his father and he came to my house I knew his name as Manish. (Confronted with Ex.PW1/A where it is not so recorded) I told the police that the Parveen again threatened me and sought to have intercourse with me and was having a knife in his one hand and revolver in other hand and all the other persons were standing and laughing there. I told the police and Metropolitan Magistrate that I was given much beatings. (Confronted with Ex.PW1/A and Ex.PW1/DA where it is not so recorded). I told the police that they had threatened me to spoil my sisters (Confronted with Ex.PW1/A where it is not so recorded). I told the police that on 05.09.1994 I had gone to my college and there was ample time for my class to be held and thus I went to Bengali Restaurant to look for my friend and where the accused Parveen tried to talk but I did not talk and further Parveen told me that if I did not talk to him he would made the posters of my photographs and would paste the same outside my house and college. (Confronted with Ex.PW1/A where the making of the posters and photographs and their affixation is not recorded on 5.9.94 but is recorded immediately before 5.9.94) I told the police that thereafter I talked to Parveen and he at the point of knife told me to go with him and I accompanied him. (Confronted with Ex.PW1/A where it is not so recorded) I do not remember having told the police and the Metropolitan Magistrate that accused Rohit and Ajay were already present in the above office when I went there vide portion G to G of Ex.PW1/A (It is recorded in the above portion that two culprits were already present there). I told the Metropolitan Magistrate that two revolvers were lying there on a table. (Confronted with Ex.PW1/DA where it is not so recorded). I told the police and Metropolitan Magistrate that there were some glasses in which if the water would pour, the obscene photographs could appear in the glasses. (Confronted with Ex.PW1/A and Ex.PW1/DA where it is not so recorded). I told the police that the accused Parveen had forced me and on my refusal he with his one hand caught

hold of my hand from behind and with his other hand had opened my salwar. (Confronted with Ex.PW1/A where it is not so recorded) I told the police that the Parveen again had sex with me forcibly. (Confronted with Ex.PW1/A where it is not so recorded) I told the police and Metropolitan Magistrate that I was given much beatings. (Confronted with Ex.PW1/A and Ex.PW1/DA where it is not so recorded). I told the police that Parveen had threatened to torn my clothes and I could not be in a position to go to my house and after doing the above act the above accused persons would have no connection with me. (Confronted with Ex.PW1/A where it is not so recorded) 29. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

30. On careful analysis of the testimony of the prosecutrix, we find a large number of contradictions, inconsistencies, concealment, improvements and exaggerations in her statement which as noted above, which casts shadow of doubt and led us to find it difficult to rely upon her version. However, let us see whether any other evidence has been adduced by the prosecution on record to support the version of the prosecutrix. Medical Evidence 31. Having discussed the testimony of the prosecutrix in detail, it is significant to examine whether the medical evidence adduced by the prosecution finds support from the oral testimony of the prosecutrix. Dr. Rajeev Grover examined the prosecturix on 07.09.1994, proved his report Ex.PW6/A and opined that she was not under the effect of any drug nor there was any external injury on her body and referred the case to Gynecologist for detailed examination. Dr. Ashiko Sazerou, General Hospital, Gynecologist examined the prosecutrix and she opined on the MLC (Ex-PW-6/A) that there were no external injury mark seen anywhere on the body. During the cross examination, Dr. Ashiko Sazerou, revealed certain new facts which were not mentioned in the MLC and relevant parts thereof stated by Dr. Ashiko Sazerou in her cross

examination are recapitulated as under:

that I cannot comment on the fact that the prosecutrix P.T @ Bittoo was used to sexual intercourse because two finger could be inserted in her vagina. The reason being that some people are very relaxed and you can admit two finger so easily but the possibility of Billo @ Preeti being used to sexual intercourse cannot be rule out. I cannot say if I found in my examination that Preeti @ Billo has abortion few months prior to the examination. She did not tell me that she had an abortion. I had not found any bitting marks on the breast of the patient, on my examination.

32. Learned Counsel for the appellants contended that as per the prosecutrix last rape was committed on 05.09.1994 at 07:30 pm in a Kachi Gali for half an hour to which she resisted and also sustained injuries on her body. It is submitted that the medical evidence does not support the version of the prosecutrix and contradicts the commission of the crime.

33. On perusal of the testimonies of Dr. Rajeev Grover and Dr. Ashiko Sazerou, General Hospital, Gynecologist, it has emerged that there were no biting marks on the breast of the prosecutrix nor any external injury was found on the other parts of her body. Moreso, the prosecutrix concealed the fact from the doctor conducting the MLC that she was being successively raped. Prosecution has failed to adduce any material/evidence on record in support of her aforesaid claim. Furthermore, as per the MLC possibility of prosecutrix being habitual to sexual intercourse could not be ruled out.

34. Let us now examine another significant piece of evidence which is the CFSL Report Ex.PX tendered by PW13 SI Mehak Singh in evidence. During investigation, two slides smeared with some biological secretion marked Bio/A, one white colored kameez with black polka dots on it and embroidery done extensively around the neck and the sleeves end Bio/B1, white colour salwar with black polka dots Bio/B2, a sky blue coloured ladies underwear Bio/B3 and pale white coloured fluid Bio/C to Bio/I were sent for detection of semen and its grouping to the Central Forensic Science Laboratory, Chandigarh for detection of semen and its grouping. In the report Ex.PX, Dr. Sanjeev, Senior Scientific Officer opined that no semen could be detected on Bio/BI and Bio/B2. No spermatozoa

were detected, microscopically on Bio/A and eventually it was opined that no definite matching could be found out of Bio/A and Bio/3 (clothes of the prosecutrix) with Bio/C to Bio/I (Semen of the Accused). It is more than clear from MLC Ex.PW6/A and CFSL Report Ex.PX that the story of the prosecution is false and fabricated. If we believe the story of the prosecution to be true and if she was raped in a Kachhi Gali to which she resisted there is no reason that she would not have received injury. Also from the report Ex.PX, it is clear that none of the appellants got connected with the alleged crime as their semen was not detected/matched.

35. In Lalliram and Anr. v. State of Madhya Pradesh :

2008. (10) SCC69with 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.) 12. As rightly contended by Learned Counsel for the Appellants, a decision has to be considered in the background of the factual scenario. In criminal 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 aprosecutrix 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) 36. In view of the above, the reports of doctors, who have conducted medical examination of the prosecutrix as well as the CFSL

report do not co-relate the version alleged and thus the prosecution has failed to discharge its onus to prove the rape on the prosecutrix. Authenticity of Photograph and negative 37. Mr. Pahwa, Senior Advocate argued that the photograph Ex-1/B and negative have been planted by the prosecution and the entire story of the prosecution that she was blackmailed as she was under a threat that the photograph and negative would be made public which have been clicked by Parveen when Bittoo was raping her in the month of January,1994 and that she gained further time to procure the photograph and negative is a false story.

38. In photograph Ex-PW1/B the girl has covered her face with her hands and when seen with a naked eye the girl who has covered her face cannot be identified. There appears to be no apprehension of photograph being misused as the face of the girl is not visible in Ex-PW1/B. Moreso, the recovery memo Ex-PW-10/A has not been signed by Appellant Parveen on 09.09.1994. The recovery of the photograph and the negative is doubtful. As per record the recovery of the photograph and the negative were made from Appellant Parveen on 09.09.1994 when he was arrested vide Ex-PW-10/A but does not bear his signature. The copy of the said recovery memo was given to appellant Parveen Kumar vide Ex-PW1/DA dated 07.09.1994 under the signatures of SI Ashok Rana. PW-3 ASI V.S. Nagar deposed that the photograph was recovered on 07.09.1994 and PW-13 Ashok Rana also confirmed that Parveen Kumar was arrested on 07.09.1994 at the same time there is a cutting under the signatures of Investigating Officer Prithvi Singh on Ex. PW-13/G which is recovery memo of negative dated 13.09.1994 and the signatures of Parveen Kumar appears to have been taken on a blank paper as they do not appear to be at the right place. The negative Ex. PW-1/D appears to be planted and the possibility of padding by changing the date in the recovery memo cannot be ruled out. It is also significant to note that the prosecutrix has given inconsistent versions as to when the alleged photograph was shown to her first time. The observations of the learned Trial Court

132. It is correct that I have found that there is a square border around the negative but it cannot be said with certainty that square border comes around the negatives only when the negative is made from the photograph. No photographer or expert has been produced by the defence side to elaborate this fact, so it

cannot be said that the said negative was prepared from the photograph and the possibility cannot be ruled out that the film of the camera may be such which may give a square order on all the negative. are unfounded. The learned trial Court has erroneously appreciated the evidence while observing that :

133. I have seen accused Bittoo while appearing several times in the court. From his curly hairs, size of head and the structure, he can clearly be recognized in the photograph despite the fact that only his back is shown in the photograph. In daily routine, we can invariably recognize the persons (whom we know very well) by seeing their back or sometimes even by having a glimpse of the person.

Learned Senior Counsel has emphasized that the negatives have been prepared from the photograph in question and planted on the appellant.

39. As the learned Trial Court could not be a witness for identification of appellant Bittoo. Having said so, we are of the view that the photograph, identity of persons photographed and the genuineness of the negative have not been proved. Delay in registration of FIR40 It is urged on behalf of the appellants and the other respective counsel that the FIR in the present case has been lodged at a very belated stage i.e. on 07.09.1994, after about 9 months of the alleged incident which took place in January 1994. The delay has to be considered in the background of the facts and circumstances of each case and is a matter of appreciation of evidence. It is well settled that the delay in registering the FIR cannot be a ground to doubt the case of the prosecution. In cases of delay, the Courts are required to examine the evidence with a close scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the case of the prosecution cannot be dismissed merely on that ground. The disinclination to inform the family or report the matter to the police might be due to apprehension and attitude of the society towards the victim. Therefore, the delay in lodging the complaint in such cases does not necessarily indicate that her version is false.

41. In the present case, a series of rape committed on the prosecutrix which had started from January, 1994 and ended on 05.09.1994. In fact the prosecutrix was known to the appellant Parveen since 1989 and was having friendly relation with him and they used to meet on their way to school and also in the park. The prosecutrix as per her own Statment kept on meeting the appellant Parveen despite the opposition of her father. The prosecutrix alleged that during their friendship Parveen first raped her in January 1994 when she was served a cold drink, after consuming it she became unconscious and thereafter Parveen allowed his friend Bittoo to rape her and she was also photographed by Parveen on the basis of which he kept on blackmailing her. Finally, she disclosed this unfortunate story to her mother who further informed the same to complainant who got the FIR registered on 07.09.1994. The inordinate delay in registering the FIR casts a cloud of suspicion regarding credibility of the prosecution story when read with the testimony of prosecutrix, medical evidence and all other evidence led by the prosecution. The inordinate delay in registration of FIR and the time and opportunities which the prosecutrix had, to report the matter to the police or any other person by raising an alarm when she was forced to undergo the trauma of rape is unexplainable. Non-examination of IO and malafide investigation 42. Mr. Pahwa, Learned Senior Counsel for the appellant Parveen and other counsel for other appellants have vehemently argued that the Investigating Officer Prithvi Singh has not stepped in the witness-box nor put to the test of cross examination and the prosecution has withheld the testimony of the most vital witness which has caused great prejudice to the appellants and his non examination is fatal to the case of prosecution. It is well settled law that the appellants can be convicted on the basis of sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. The prosecution explained that the Investigating Officer had not been examined as he has sustained injuries in his backbone and there was no likelihood of his recovery in the near future and the material documents pertaining to this case were tendered by PW-13 SI Mahak Singh of Crime Branch. Even otherwise, Investigating Officer is not a material witness for the purpose of establishing whether the appellants committed the offence for which they have been charged. Hence, non-examination of the Investigating Officer in the present case is inconsequential. Malafide investigation

43. It has been strongly urged that the investigation in the present case is not fair but tainted as the same was under the direction of an very influential person who was a neighbour of the Grandfather of prosecutrix. From the material available on record, it is clear that the prosecutrix as well as Appellant Parveen were residents of same vicinity and the FIR was registered at Police Station, Preet Vihar. PW-3, ASI V.S. Nagar has testified that on 07.09.1994, Inspector Prithvi Singh gave him a Tehrir which was taken by him to the police station, Preet Vihar and thereafter FIR was registered in police station, Preet Vihar on the same day. PW7 HC Rakesh Kumar deposed in his statement that from 07.09.1994 he was a part of investigation team in the instant case. Though, there is nothing on record to suggest that the investigation was primarily conducted by Delhi Police and thereafter transferred to Crime Branch the same is evident from the testimonies of PW3 and PW7 that the FIR was registered in police station, Preet Vihar but from the inception i.e. from 07.09.1994, the case was formally in the hands of Investigating Officer Prithvi Singh, who was posted in Crime Branch, Adarsh Nagar. This fact has also been recorded by learned Trial Court that on 07.09.1994, DCP, Crime Branch called the ACP along with Inspector Prithvi Singh, Inspector Raj Mohinder Singh of the Crime Branch in his office and instructed them to act on the complaint made by father of the prosecutrix without delay. Keeping in view the above material, we are of the opinion that the contention of learned counsel for the appellants with regard to influenced investigation cannot be ruled out. False implication 44. The main thrust of argument as raised by Mr. Pahwa, learned Senior Counsel for appellant Parveen along with counsel for other appellants is that it is a false case in which Parveen and his friends were falsely implicated by the prosecutrix as the relationship between her and Parveen had turned sour when he came to know that prosecutrix was of easy virtue and was friendly with many other boys and refused to marry her bringing to an end the five years long relationship. It is further contended that thereafter, with the help of an influential person a false FIR was got registered and an objectionable photograph and negative, alleged to be that of prosecutrix with one of the appellant namely Bittoo, wherein the faces are not visible was planted by the Investigating Agency to implicate the appellants. It is argued that the testimony of the prosecutrix is not creditworthy and she cannot be called as a sterling witness whose version can be

accepted by the court without any corroboration. 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. In Rai Sandeep @ Deepu Vs State of NCT of Delhi : (2012) 8 SCC21 the Honble Apex Court has held that . 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.

45. In Narender Kumar Vs. State (NCT of Delhi) :

2012. (7) SCC171 it has been observed :

16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix is a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Anr.: AIR 2003 SC818 and Vishnu v. State of Maharashtra : AIR 2006 SC508.

17. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence.

46. The creditworthiness of the testimony of the prosecutrix has already been discussed in the earlier part of the judgment. The prosecutrix when put to the test as laid down in Rai Sandeep @ Deepu (Supra) fails the test of being sterling witness of a high quality and caliber whose version should therefore be unassailable and such quality should be in a position to accept it on face value without any hesitation. The prosecutrix when examined in court failed to disclose her relationship with Parveen but only when during cross examination confronted

with her love letter admitted that she had been writing letters to Parveen and finally also written to him that she would leave him bitten. Moreso, her statement neither stood corroborated from medical evidence nor any other material on record and the photograph Ex.PW1/DX is not free from doubt. DW1 Gagan Mehtora also testified that the prosecutrix and Parveen were known to each other for long.

47. There is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. An accused has also rights which are to be protected and the possibility of false implication has to be ruled out. The Supreme Court in Radhu vs. State of Madhya Pradesh reported in 2007 Cri. LJ4704had in this context noted as follows:

The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

and in Abbas Ahmed Choudhary Vs. State of Assam : (2010) 12 SCC115 the Hon'ble Supreme Court has held that:

We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.

48. In Raju v. State of Madhya Pradesh (2008) 15 SCC133 the Hon'ble Supreme Court has held that testimony of the victim of a rape cannot be presumed to be a gospel truth and observed that false allegations of rape can cause equal distress, humiliation and damage to the accused as well, in para 11, the supreme Court echoed the sentiments as under:

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

49. Keeping in mind the above cited judgments, the testimony of prosecutrix has to be consistent and natural in line with the case of the prosecution and free from infirmities which inspire confidence in the Court. It cannot be presumed that the statement of the prosecutrix is always true or without any embellishment.

50. In the instant case, the testimony of the prosecutrix is not natural and consistent with the case of the prosecution. Her version has no correlation with other supporting material being medical, scientific and expert evidence. After rescanning the entire case in its right perspective, we are of the firm view if the evidence of the prosecutrix is read and considered in totality of the circumstances alongwith the other evidence on record, in which the offence is alleged to have been committed, we are of the view that her deposition does not inspire confidence. The version of the prosecutrix has not been corroborated with medical evidence and has not disclosed the true genesis of the crime.

51. In view of the above discussion, there is no scope to sustain conviction and sentence imposed on the appellants, resultantly, these appeals succeed and are hereby allowed. The judgment dated 03.12.1999 and order on sentence dated 08.12.1999 passed by the learned Trial Court convicting and sentencing the appellants for the offences punishable under Sections 376(2)(g)/ 342/506 (II) read with Section 34 of the Indian Penal Code, are set aside and the appellants, accordingly, acquitted of the charges framed against them. Their bail bonds shall stand discharged. SANGITA DHINGRA SEHGAL, J.

**G. S. SISTANI, J.**

MAY29 2015/gr

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**