

ACMM 84/17

F.I.R. 718/2016
U/S 32B/305/376D/506 IPC
P.S - Ambedkar Nagar
State Vs Brij Mohan @ Birju

SCM 84/17
11/10/17

The District & Sessions Judge South
Saket Court, New Delhi

Sub. Case committed to Sessions Court for Trial for 11.10.2017

S.N.	Name and address of the accused	Status
1	Brij Mohan @ Birju, S/o Lt. Sh. Mahadev R/o. H. No. B-122, Madangir, New Delhi	On Court Bail
2	Manoj Kumar, S/o Lt. Sh. Panna Lal R/o. H. No. F-13, DDA Flats, Basti Narnol, Ajmeri Gate, New Delhi	On Court Bail
3	Ms. Asla W/O Sh. Panna Lal R/o. H. No. B-11/122, Madangir, New Delhi	

2/2 Witnesses attached as per list

Proven

This case has been
located to the court of
Ms. Sita Karwal
for trial before being committed
to court on 11/10/17 at 2 PM

Asl
District & Sessions Judge
Saket Courts Complex
New Delhi
12-10-17

Asl
10/10/17
ACMM-South
Saket Courts Complex
ACMM (South)
District Courts, Saket,
New Delhi




11 JAN 2022
अनुप्रमाणित/ATTESTED
परिष्कार/Examiner.....

Case No. 546/17
State vs. Brijmohan @ Birju & Ors.
FIR No. 718/16
P.S Ambedkar Nagar

29.10.2021

Present. Shri Anil Kumar, Ld. Addl. PP for State.
Ms. Vanya Priyadarshi, ld. counsel for DCW.
Accused Brijmohan, Manoj and Asha are present on
bail with ld. counsel Sh. Pankaj Srivastava

Vide separate judgment of even date, accused persons Brijmohan @ Birju and Manoj Kumar are acquitted of the charge for offence punishable u/s 365/328/376D/506/34 IPC and accused Asha is acquitted of the charge for the offence punishable u/s 109 r/w Section 376 IPC. Their bail bonds and surety bonds stand cancelled. They are directed to furnish personal bonds u/s 437A CrPC in the sum of Rs. 30,000/- with one surety of the like amount for the period of six months in terms of Section 437A CrPC forthwith with the condition that they will appear before the Hon'ble High Court in the event of any appeal being filed by the State.

At this stage, bail bonds u/s 437A CrPC are furnished and accepted.

File be consigned to Record Room.

(Vireeta Goyal)
ASJ/Spl. FTC/South District/29.10.2021



IN THE COURT OF MS. VINEETA GOYAL
ADDL. SESSIONS JUDGE - SPECIAL FAST TRACK COURT
SOUTH DISTRICT : SAKET COURTS: NEW DELHI

CNR No. DLST01-008122-2017

SC No. : 84/17

Case No.: 546/17

FIR No. : 718/16

U/s : 328/365/376D/506 IPC

PS : Ambedkar Nagar

State (Govt. of NCT of Delhi)

...Complainant

Versus

1. Brij Mohan @ Birju
S/o Lt. Sh. Mahadev
R/o H.No. B-II/122
Madangir, New Delhi.

2. Manoj Kumar
S/o Lt. Sh. Panna Lal
R/o H.No. F-13, DDA Flats
Basti Narnol, Ajmeri Gate
Delhi.

3. Ms. Asha
D/o Sh. Panna Lal
R/o H.No. B-II/122
Madangir, New Delhi.

...Accused Persons

Case Committed by the Court of Sh. Sandeep Garg, the then
Id.Addl. Chief Metropolitan Magistrate, South, New Delhi vide
order dated 06.10.2017.

Date of institution : 11.10.2017

Judgment reserved on : 22.10.2021

Date of Judgment : 29.10.2021

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Appearance : Shri Anil Kumar, Ld.Addl. Public Prosecutor for State
Ms. Vanya Priyadarshi, Id. Counsel for DCW
Shri Pankaj Srivastav, Id. Counsel for accused
persons

JUDGMENT

1. Consequent to the order dated 06.10.2017 of the Court of Sh. Sandeep Garg, the then Id. Addl. Chief Metropolitan Magistrate, South, the trial against the aforesaid accused persons was initiated for the offences punishable u/s 328/365/376D/506 of Indian Penal Code, 1860.
2. In compass, the allegations which emerges from prosecution case, are that on 21.12.2016, the prosecutrix (name and address withheld to protect her identity) gave a written complaint in police station Ambedkar Nagar wherein she stated that she got married with 'B' (name not disclosed to protect identity) on 06.06.2010 and thereafter, some dispute had arisen between her and her husband's family. On 05.06.2016 her jeth Manoj and Nandoi Birju came to her house and asked her to come at Ajmeri Gate so that a settlement could be effected between her and her husband. She accompanied them and on the way, her nanad Asha also joined them. Subsequently, the said three persons took her from Ajmeri Gate to first floor in a gali at Chandni Chowk, where Pepsi and samosa were served to her and after consuming the same, she became unconscious and when she came to her senses it was discovered that she was ravished by Manoj and Birju. Birju had also shown nude photographs on his mobile phone.
3. On the basis of the above complaint of the prosecutrix, FIR under Sections 328/365/376D/506 IPC was registered against accused persons.

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During the course of investigation, prosecutrix was produced before Ld. MM for her statement u/s 164 Cr.P.C and her statement was got recorded. After completion of investigation, charge-sheet was prepared and filed in the court.

4. On presentation of challan, copies of all the challan papers and other documents relied upon by the prosecution, were supplied to the accused, as required u/s 207 Cr.P.C and thereafter, the case was committed to this Court.
5. On consideration of the report u/s 173 Cr.P.C and the other documents relied upon by the prosecution, *prima facie* offence u/s 365/328/376D/506/34 IPC was found to have been made out against accused Birju Mohan @ Birju and Manoj Kumar and u/s 109 r/w Section 376 IPC against accused Asha, accordingly, they were charged thereunder. The contents of the charge were read over and explained to the accused persons, to which they pleaded not guilty and claimed trial.
6. The prosecution, in order to establish its case, examined nine witnesses.
7. PW1 ASI P.N. Subhash is the duty officer who got recorded the FIR Ex.PW1/A through computer operator on the basis of rukka handed over to him on 06.01.2018 by Inspector Saroj Bala. He proved certificate u/s 65B of Indian Evidence Act Ex.PW1/B.
8. PW2 is the prosecutrix 'P'. She deposed that she has been married on 06.06.2010 with Bunty and after her marriage, she started residing in the joint family. She know accused Brij Mohan, co-accused persons Manoj and Smt. Asha since the day of her marriage. Accused Brij Mohan is her Nandoi. Accused Manoj Kumar is her jeth and accused Smt. Asha



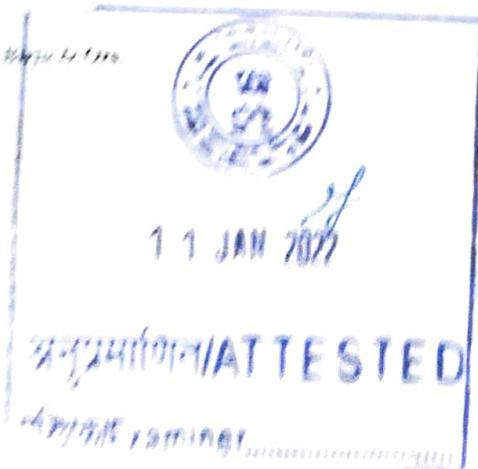
is her Nanad. She lived in her matrimonial house for about three years and she used to visit her parental house during the aforesaid three years and during her pregnancy period, her husband left her at her parents' house and thereafter, prosecutrix's husband never turned up to take her back and prosecutrix gave birth to a son at her parents' house and her husband left her at her parental house after giving her beatings.

8.1 She further testified that on 05.06.2016, she was standing outside her parental house along with her son. Her Jeth and Nandoi came to her and told her that they both will get her matter compromised with her husband. She along with her Nandoi went to Ajmeri Gate in an auto whereas her Jeth had left on his two wheeler scooter. As soon as auto reached at golchakkar of Ajmeri Gate, she found her jeth and nanad standing there and they both joined them in the same auto and she was in the parda in the auto. She made enquiry from her Nanad that where they are going and she told they are going to Chandni Chowk and it will take hardly half an hour and further told that her husband, mother-in-law and other Nanad will meet them there and the matter will be solved after discussion there. Her husband, mother-in-law and her Nanad did not meet them there. All the three accused persons namely Brijmohan, Manoj and Asha took her inside a flat on the first floor. She did not find anybody inside the said flat except them. She sat in the said flat at some distance from accused persons as she was in Parda. She made enquiry from her Nanad regarding her husband and mother-in-law and she told her that they are reaching soon. Thereafter, her Nandoi served her Pepsi and a samosa. Then her nanad left the said flat and her nandoi and jeth remained inside the flat. She drank pepsi and ate samosa and thereafter,



she started feeling giddiness and felt headache and she became unconscious. When she regained consciousness, she found herself in naked condition and she was feeling pain in her private part and prosecutrix was also bleeding from her private part and both the accused persons i.e. Brijmohan and Manoj were not inside the said room. She wore her clothes. After sometime, all the three accused persons came inside the room. She asked both the accused persons who had done wrong act with her. After hearing the same, her nanad went outside the room. Her nandoi told her 'jo ho gya so ho gya, agar kissi ko batayegi toh teri photo parivar me sabko dikhayengi'. Her nandoi showed her photographs on his mobile phone and in the said photographs she was not wearing clothes on upper part of her body. Her nandoi was bending over her and his back could be seen in the photograph. She was told that in case she told about the incident to anyone, she would be defamed by stating that she was doing prostitution. Thereafter her jeth made her sit in an auto and sent her to her parental house. She did not inform anyone about the incident out of fear.

3.2 She further testified that she was having a maintenance case against her husband at Saket Court and she came to Saket Court to attend the proceedings in the said case on 23.09.2016. On that day, her nandoi met her in the Saket Court and told her that he was having her photographs in his mobile phone and threatened her not to disclose about the incident to anyone otherwise he will defame her by showing her photographs to the relatives and family members. Accused Brijmohan again asked her to establish physical relations with him but she did not reply. She came to her parental house. She narrated the whole incident

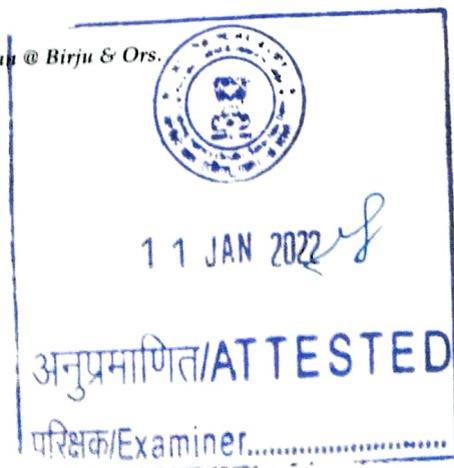


to her mother and thereafter she along with her mother went to PS and gave her written complaint Ex.PW2/A to the Police. After lodging her complaint with the police, she was taken to AIIMS Hospital for her medical examination. She was medically examined by the concerned doctor vide MLC Ex.PW-2/B. She had narrated the entire incident to the doctor who examined her. She was also produced by the police before learned MM where my statement u/s. 164 CrPC Ex.PW2/C was got recorded. After seeing the black colour LG mobile phone, she stated that the said mobile phone was not used by the accused persons for preparing her obscene photographs. The mobile phone which was used by the accused persons was of white colour. The data retrieved from the mobile phone of the accused by the FSL was viewed and IO gave report dated 16.04.2018 stating that though there are some obscene images, they do not pertain to the present case.

8.3 On being cross examined by Id. Counsel for accused persons, the prosecutrix stated that she has studied upto 6th class. She termed it correct that she and her elder sister 'S' are married in the same family. She was married to brother of accused Manoj on 06.06.2010, the same day she got married to Bunty, brother of accused Manoj. She termed it correct that accused Birju was mediator in their marriage. Her husband was running a shop of printing at the time of marriage. She termed it correct that her husband as well as his two brothers were working in the same shop and they were also having joint family. She had her first quarrel with her husband and his family after 2 – 3 months of her marriage. She termed it correct that during the said quarrels accused Manoj, Birju and Asha as well as her mother-in-law used to support her

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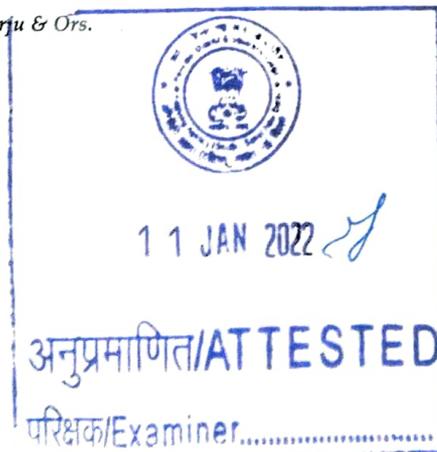
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husband Bunty. She volunteered to state that at times they also made efforts to make Bunty understand. They had quarrels over petty issues like her not cooking food, washing utensils, etc. The main reason for quarrel was that accused Birju (Behnoi) used to come to their house and stayed there for 2 – 3 months and during the said period he used to stay in their room. He used to enter their room as per his wishes and stayed there even at late hours of night. She had filed a police complaint against her husband Bunty earlier. It was filed since he had given her severe beatings after her father-in-law expired. She was advised by someone to file a complaint against him. She does not remember the date of her complaint. She is not aware if her mother-in-law had filed a complaint dated 11.08.2018 Mark PW2/DX against her at PS Hauz Khazi alleging that she was of quarrelsome nature and was demanding share in the property. She had told her husband that she wanted to stay in a separate accommodation with him since there were frequent quarrels in the joint family at her matrimonial house. She denied the suggestion that they could not shift to a separate accommodation as she was insisting upon her husband to take his share in the joint property before they moved out of the joint family house. She termed it correct that she had gone to her parental house on account of frequent quarrels in the matrimonial home or that a settlement was arrived at between her and in-law's family at PS Hauz Khazi thereafter. She admitted her signatures on the copy of settlement dated 16.05.2015 Ex.PW2/DA arrived at PS Hauz Khazi. She denied the suggestion that her relations with her in-law's never remained cordial since the time she got married with Bunty. There are 3 – 4 cases pending in the Courts between her and in-laws including her husband

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Bunty. She denied the suggestion that she has demanded share in the joint family property in the said cases. She had recently received Rs.1.5 lacs towards her istridhan permanent alimony and maintenance at the time of recording of their statements for the first motion petition for divorce by mutual consent. She termed it correct that her husband has agreed to pay another Rs.1.5 lacs to her at the time of the second motion petition. She termed it correct that she has filed her affidavit dated 09.02.2018 Ex.PW2/DD in case titled as 'Prosecutrix v. Bunty & Ors.' She termed it correct that in para 14 of affidavit Ex.PW1/DD she has mentioned that there are four accused persons in the rape case. IO had not asked her whether she had filed any complaint case U/s 156(3) CrPC in Tis Hazari Court and following question was put to her:

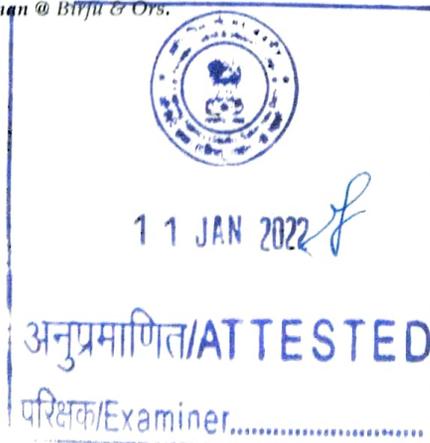
Question: Why you have withdrawn complaint case U/s 156(3) CrPC from Tis Hazari Courts?

Answer: I have been told by the court that as I had lodged a rape case at Ambedkar Nagar, Police Station against accused persons hence there was no need to pursue the complaint case and thus the same was withdrawn. Again said, I had withdrawn the complaint case as the Ld. MM directed me that no case is made out at Tis Hazari jurisdiction, hence, I withdrew the complaint case. I do no recollect whether the present case was registered at PS Ambedkar Nagar after withdrawal of complaint case.

8.4 On being further cross examined by Id. Counsel for accused persons, the prosecutrix stated that accused Birju and Manoj came to take her for Ajmeri Gate for compromise at around 10:00-11:00AM. At that time she was present outside of home with her son. Her mother was

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doing household work at that time. She left her son with her mother and accompanied accused Birju and Manoj in the auto. She did not tell anything to her mother at that time. It took about half an hour in reaching at the place of occurrence. She had told IO during investigation that she is unable to locate the place of occurrence but it was in the area of Chandni Chowk. She termed it correct that she had mentioned in her complaint Ex. PW2/DC that two unknown boys came in the said house and handedover Samosa and Pepsi to accused Birju and thereafter both of them left from there. She termed it correct that she has not mentioned the fact that two boys had brought Pepsi and Samosa and handed over same to accused Birju in her complaint Ex.PW2/A. She denied the suggestion that accused Birju never showed her obscene photo and video from his mobile phone or that due to this reason no such video or photograph was detected/retrieved from the mobile phone of accused Birju which was seized by the IO. She denied the suggestion that no such incident of rape as alleged by her in her complaint Ex. PW2/A had taken place or that she has filed a false complaint against the accused persons on account of her matrimonial dispute with her husband B.

9. PW3 HC Suresh testified that he had taken accused Manoj to AIIMS Hospital for medical examination and after medical examination, he brought the accused to police station and handed over his MLC and sealed pulanda to IO who seized the same vide seizure memo Ex.PW3/A.

10. PW4 Ms. Prabhdeep Kaur, the Ld. Metropolitan Magistrate. She proved an application Ex.PW4/A for recording of statement of prosecutrix assigned to her by the Ld. CMM, South, statement of

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prosecutrix u/s 164 Cr.P.C Ex. PW2/C (colly) and appended certificate Ex. PW-4/B certifying correctness of proceedings.

11. PW5 Dr. Piyush Bansal, Sr. Resident, AIIMS Hospital, proved the MLC Ex.PW2/B vide which the prosecutrix was medically examined by Dr. Neelam Prasad. He further stated that as per MLC, UPT was negative and no samples were collected as the incident was old one.
12. PW6 Ct. Kulbir testified that he had taken exhibits of the case to FSL vide RC No. 58/21/17.
13. PW7 Ct. Paras testified that on 23.12.2016, he had accompanied IO to the house of accused at B-2nd, 122, Madangir, Delhi from where accused was brought to the police station and later on he was arrested on the pointing out of prosecutrix vide arrest memo Ex. PW2/E. His personal search memo was also prepared vide Ex. PW7/A. Thereafter disclosure statement of accused was also recorded vide memo Ex. PW7/B. He took the accused to AIIMS Hospital for his medical examination. After medical examination accused was brought to police station and he handed over his MLC as well as exhibits to the IO, who seized the same vide seizure memo Ex. PW7/C. He identified accused Birju in the court.
14. PW8 Ms. 'B', the mother of the prosecutrix, testified that she two daughters and four sons. The prosecutrix is her younger daughter. The prosecutrix was married with Bunty and her elder daughter 'S' was married with Vicky about 7-8 years ago. She had given dowry articles to her daughters at the time of their marriage. After their marriage, her daughters were taken to joint family house. The prosecutrix came to her house about 2-3 months ago prior to the registration of the present case.

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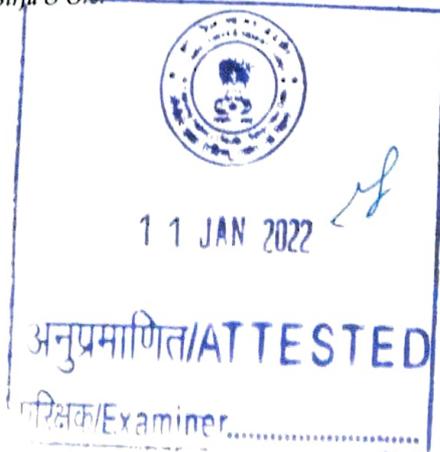
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Agam said. the husband of prosecutrix left her to her house. She does not know the reason why prosecutrix was left at their house. One day Manoj, Birju and sister of Manoj came to their house and took prosecutrix with them and committed wrong act with her. Prosecutrix used to remain silent and when she asked her she told her about the incident after about one month. She took her to police station. Thereafter she went with her on medical examination. She was not present when prosecutrix was taken away by accused person. She volunteered to state that prosecutrix was outside the house with her son.

It is significant to mention here that Ld. Addl. PP for the State sought permission to cross-examine the witness as she was unable to tell certain material facts as stated by her in her statement u/s 161 CrPC and the same was allowed.

14.1 On being cross examined by ld. Addl. PP for the State, PW8 stated that her statement was not recorded by the police. Again said, she does not recollect if she had made a statement since she forget things due to old age and illness. She denied the suggestion that her daughter had told her that she was given beatings by her husband and her in-laws. She denied the suggestion that she had stated to the police in her statement U/s 161 Cr.PC, Mark PW8/A that both her daughters had returned back to her house about 2 years ago due to ill treatment at their in laws house. She did not tell the police in her statement Mark PW8/A that accused Manoj and Brij Mohan had come to their house and told the prosecutrix that they had spoken to her husband and made him understand and thereafter they took her with them for settlement with her husband. She voluntarily stated that they had not come to their house on that day and



took the prosecutrix from outside. She told the police in her statement Mark PW8/A that prosecutrix told her that Manoj and Birju had forcibly committed wrong act with her and taken her obscene photographs and that if she made a complaint against them they would circulate her obscene photographs among the relatives.

14.2 On being cross examined by Id. counsel for accused persons, PW8 stated that her daughters went to stay in joint family after marriage. She is not aware if there were disputes in the family of her daughters with regard to the property. She termed it correct that whatever she is deposing today is based on facts told to her by the prosecutrix and she does not have any personal knowledge regarding the same.

15. PW9 Inspector Saroj Bala, the investigating officer of the case, testified that on 21.12.2016, she was posted as Inspector at PS Ambedkar Nagar. On that day, prosecutrix came to PS and handed over her written complaint to her and told that she got married in the year 2010 and she had differences with her in-laws and due to the said differences, she started residing in her parental house since two years. She also told her that on 05.06.2016, her jeth and nandoi had done wrong act with her. Thereafter, she sent her for her medical examination to AIIMS Hospital through L/Ct. Sumita. After her medical examination, the prosecutrix was brought to PS and she received her MLC from W/Ct.Sumita. No exhibits were received of the prosecutrix. She made endorsement on the complaint of the prosecutrix vide Ex.PW-9/A and handed it over to the duty officer for registration of the FIR. After registration FIR, duty officer handed over computerized copy of FIR and original rukka to her, thereafter prosecutrix was discharged. On 22.12.2016, the prosecutrix



was produced before the learned MM where her statement u/s. 164 CrPC was got recorded and she obtained the copy of the statement of the prosecutrix u/s. 164 CrPC through her application. On 23.12.2016, accused Brij Mohan @ Birju, nandoi of the prosecutrix, was arrested from his residence vide his arrest memo Ex.PW-2/E. She also conducted personal search of accused Brij Mohan @ Birju vide personal search memo Ex.PW-7/A. Accused handed over his mobile phone make LG and she seized the same vide seizure memo Ex.PW-9/B. The disclosure statement of accused was recorded vide Ex.PW-7/B. Thereafter accused Brij Mohan was sent to AIIMS Hospital for his medical examination through Ct. Paras. After medical examination, accused Brij Mohan was brought to PS and she received his MLC as well as exhibits collected from accused by the examining doctor. The exhibits were seized by her vide seizure memo Ex.PW-7/C. Accused Brij Mohan was produced before the Court and from where he was sent to JC. She told the prosecutrix to accompany her for pointing out the place of incident for preparation of site plan but she told her that she was not aware about the said place. She gave this fact in writing to her and the same is Ex.PW-9/C. On 16.02.2017, she got accused Manoj, jeth of prosecutrix, who was on interim anticipatory bail, medically examined through HC Suresh. After his medical examination, she received his MLC as well as exhibits collected from him by the examining doctor. She seized the exhibits vide seizure memo Ex.PW-9/D. On 22.04.2017, accused Manoj was formally arrested by her as he got anticipatory bail from the Court of Sessions vide arrest memo of accused Manoj already Ex.PW-2/E. Asha, nanad of prosecutrix, was also interrogated by her. She recorded

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statement of witnesses. The exhibits were deposited in Malkhana and later on sent to FSL Rohini. After completion of investigation, she prepared chargesheet and filed the same in the Court through SHO concerned. The accused Asha was not arrested and her name was mentioned in column No.11. During trial, she submitted the FSL result Ex. PW9/P in the Court. She had viewed the PEN Drive received from FSL containing the extract of the mobile phone and found that nothing obscene material was available in the said PEN Drive qua the prosecutrix. She identified the black colour mobile phone make LG which was seized by her from the accused Brij Mohan as Ex.P-1.

15.1 On being cross examined by Id. Counsel for accused persons, PW9 stated that the prosecutrix came to police station for the first time on 21.12.2016. The prosecutrix had not disclosed her that she has some litigations pending with her husband and in-laws. The prosecutrix had not told her that she had submitted any complaint regarding commission of rape of her in P.S. Hauz Qazi. She denied the suggestion that she has deliberately not conducted the investigation in fair and unbiased manner and the accused persons were falsely implicated in this case. She further denied the suggestion that she has wrongly arrested the accused persons in this case.

16. During trial, in terms of Section 294 Cr.PC, accused Birjmohan @ Birju and Manoj Kumar admitted their potency test reports Ex.PX and Ex.PX1 and in view of same and on the request of Ld. Addl. PP for State, PWs Dr. Ramesh Pratap Anuragi and Dr. Deepak Prakash were dropped from the list of witnesses.

17. The statutory statement of accused persons was recorded as

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required u/s 313 Cr.P.C (Without Oath) in which the accused persons denied the allegations of the prosecution, pleaded innocence and false implication in this case. They stated that the prosecutrix is wife of 'B' who is brother of accused persons Manoj and Asha and brother-in-law of accused Brijmohan. The prosecutrix has matrimonial as well as property disputes with her husband in order to pressurize her husband, the prosecutrix has falsely implicated them in this case.

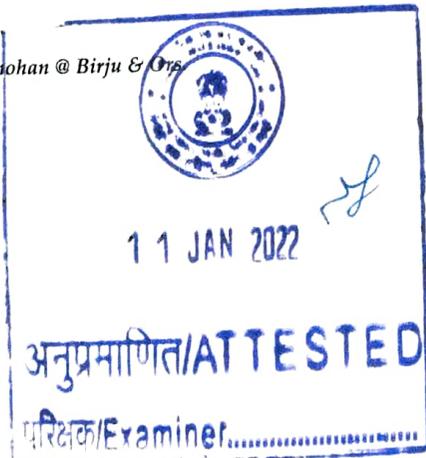
18. The accused persons examined Sh. 'B', the husband of the prosecutrix in their defence as DW1. He deposed that he was married with prosecutrix on 06.06.2010. After about 3-4 months of marriage, his wife created dispute with him regarding joint family property. As he was not agreeing for partition of the joint family property and the prosecutrix filed false complaints against him in the police station and brothers of prosecutrix also gave him beatings. He got registered FIR against the brothers of prosecutrix. Thereafter, the prosecutrix lodged the present FIR as counter blast to the case filed by him. About 2-3 months ago, he and prosecutrix have settled matrimonial disputes and he gave Rs. 3 lacs to the prosecutrix as settlement amount and they have mutually divorced. The prosecutrix was demanding Rs. 20 Lacs for settlement of this case but he refused.

18.1 On being cross examined by Id. Addl. PP for the State, DW1 stated that after marriage, the prosecutrix and he lived together for a period of about 4-5 years but during the said period, most of the times, the prosecutrix used to live at her parent's house. No panchayat was convened for resolving disputes between him and the prosecutrix. His jiji (brother-in-law) Brij Mohan had fixed his alliance with the



prosecutrix. His mother had made complaint in the police against the prosecutrix when she was troubling for partition of joint family property. Their joint family property consists of four houses and one shop. They are three brothers and three sisters. Part of their joint family property is also rented out. He was earning about Rs. 20,000/- to Rs. 30,000/- per month. He denied the suggestion that accused Manoj and Brijmohan picked up the prosecutrix from her house on 05.06.2016 on the pretext of settling the matrimonial dispute and thereafter, accused Asha also joined them and the prosecutrix was taken to a house in a gali on the first floor in Chandni Chowk where after serving her with intoxicated cold drink and samosa, the prosecutrix was raped by accused Brijmohan and Manoj with the assistance of accused Asha and the accused persons also took objectionable photographs of the prosecutrix. He denied the suggestion that he is deposing falsely to save the accused persons being his relatives. He further denied the suggestion that the prosecutrix did not demand any share in their joint family property.

19. I have heard arguments advanced by Ld. Addl. PP for State and Ld. defence counsel at length and have also perused the entire evidence on record of the case.
20. Ld. Addl. PP for the State submitted that the prosecutrix 'P' and other prosecution witnesses have deposed as per the case of prosecution and that testimony of the prosecutrix is consistent and cogent and worthy of belief. The prosecution has proved its case against the accused persons beyond reasonable doubt and has prayed that accused persons be convicted of charged offences.
21. Ld. counsel for accused persons submitted that the complaint



Ex.PW2/A is infact subsequent hand written complaint of the occurrence. Prior to that prosecutrix 'P' has filed a typed complaint before the Court of Ld. Metropolitan Magistrate, Central, Delhi which is proved as Ex.PW2/DC (colly) and prosecutrix came out with entirely different version which clearly goes to show that she took shifting stands from time to time which creates strong doubt towards her act and conduct. There is inordinate and unexplained delay in lodging of FIR which has not been at all explained by prosecution side. There are material discrepancies and contradictions in the testimony of the prosecution witnesses.

22.1 It is further submitted by ld. Counsel for accused persons that PW5 Dr. Piyush Bansal proved MLC Ex.PW2/B of the prosecutrix. He clearly stated that as per MLC, UPT was negative and no samples were collected as incident was old one. Further, a perusal of medical examination report of the prosecutrix clearly reflects that there is no medical evidence against the accused persons.

22.2 Ld. counsel for the accused persons further submitted that no obscene material as alleged by the prosecutrix has been recovered and the same stands proved from the deposition of investigating officer wherein she stated that she had viewed pen drive received from FSL containing the extract of mobile phone and found that nothing obscene material was available in the said pen drive qua the prosecutrix, which belies the case of the prosecutrix. It is further submitted that there is a strong motive for implicating the accused persons. The motive alleged for the offences is that there are various litigations pending between the parties and in such circumstances, it is totally unbelievable that



prosecutrix was subjected to rape and possibility of false implication cannot be ruled out. He further submitted that from testimony of DW1, it is clear that prosecutrix lodged the present complaint to counter blast the case filed by the husband of the prosecutrix against her brother and the present case is a case of false implication.

22. I have considered the submissions made by Id. counsels both the parties and perused the material on record.

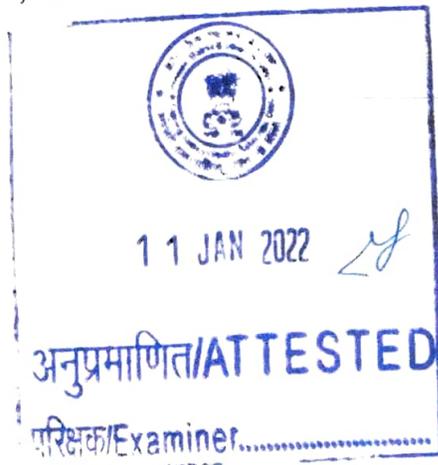
23. The relevant Sections of IPC are reproduced as under:

Section 365. *Kidnapping or abducting with intent secretly and wrongfully to confine person.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Section 328. *Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section 375 IPC--Rape.—A man is said to commit “rape” if he -

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or



d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.- A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife the wife not being under fifteen years of age, is not rape.

Section 376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which



shall mean imprisonment for the remainder of that person's natural life, and with fine:
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;
Provided further that any fine imposed under this section shall be paid to the victim.

Section 506. *Punishment for criminal intimidation. —Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; if threat be to cause death or grievous hurt, etc.*

24. Whether accused persons Brij Mohan @ Birju and Manoj Kumar are guilty of offences punishable u/s 365/328/376D/506/34 IPC or not. Whether the accused Asha is guilty of offence punishable u/s 109 read with Section 376 IPC.

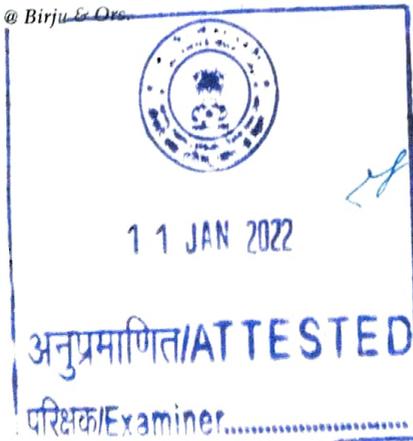
25. Before appreciating and analyzing the evidence adduced it is relevant to refer to the settled legal proposition which has bearing in this case.

26. It is settled proposition of law that the evidence of prosecutrix, who has been raped is very crucial piece of testimony to prove the case against the accused persons. It is now well settled that conviction for an offence of rape can be based upon the sole testimony of prosecutrix. If it is found to be natural, trustworthy and worthy being reliable in case of rape, the onus at behest of prosecution to prove firmly each ingredient of evidence it seeks established and such onus never shifts.

27. In the case of *State of Punjab vs. Gurmit Singh and others*, AIR 1996 SC 1393, the Hon'ble Supreme Court held that the Court can rely upon the evidence of the prosecutrix even without seeking corroboration. If evidence of the prosecutrix inspires confidence, it must be relied upon

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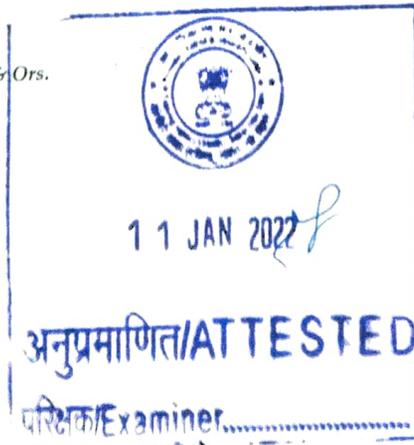
without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony.

28. Further, in case of *Rai Sandeep @ Deepu v. State*, (2012) 8 SCC 21 the Hon'ble Supreme Court while commenting on the quality of the sole testimony of the prosecutrix which could be treated as the testimony of a sterling witness and made the basis to convict the accused, held that :

"22. In our considered opinion, "the sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there

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should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

29. Thus in the case of rape, testimony of prosecutrix stands at par with that of injured witness and it is really not necessary to insist for corroboration if the evidence of prosecutrix inspires confidence and appears to be credible.

30. The delay in lodging an FIR in a rape case is not of much "significance" as the victim has to muster courage to come in the court in open and expose herself in the society and cannot be used for doubting the prosecution case. It only puts the courts on guard to search for and consider if any explanation has been offered for the delay. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishments or exaggeration in the prosecution version on account of delay, it is a relevant factor.

31. Hon'ble Supreme Court in the case of Parkash Chand vs The State of Himachal Pradesh AIR 2019 SC 1037 dealt with the delay of filing of FIR in rape cases. Hon'ble Court considered the decisions in the cases of Vijayan v. State of Kerala 2008 (14)SCC 763 and State of Himachal



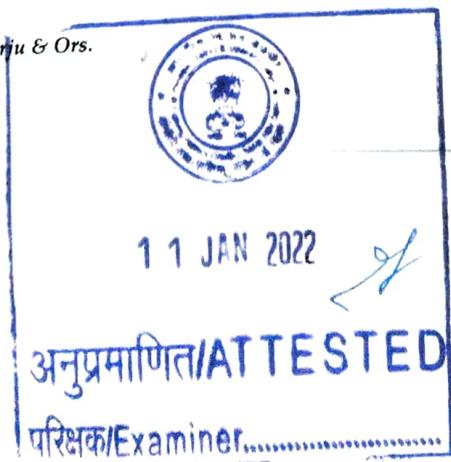
Pradesh v. Shree Kant Shekari AIR 2004 SC 4404. Hon'ble Court has essentially relied upon the principles about the impact of delay in Tulshidas Kanolkar v. State of Goa reported in 2003 (8) SCC 590 wherein rape was committed on a girl whose mental ability was undeveloped. The following was held:

".....In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render prosecution version brittle."

32. In *Vijayan case (supra)* Hon'ble court dealing with the delay of 7 months noted the facts that the prosecutrix who was aged about 17 years was the neighbor of the accused. In her testimony the prosecutrix set up the case that accused has raped her when no one else was there in the house and she was raped in the house. The accused- appellant was alleged to have been told that she need not worry as he will marry her. She did not give any complaint either to her parents and police in view of the promise. She became pregnant and while she was carrying a child of 7 months, she requested the accused to marry her. The accused

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declined. Thereafter a complaint was filed after 7 months. On these facts Hon'ble court noted that no complaint or grievance was made either to the police or the parents thereto. The explanation for delay in lodging the FIR was noted namely that the accused promised to marry her and therefore the FIR was not filed. The Court held as follows:

".....In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused."

33. Another facet of this issue was highlighted in the case of *H.P. vs. Shree Kant Shekari*, (2004) 8 SCC 153 the Hon'ble Supreme Court has held as follow :-

"17. The High Court has also disbelieved the prosecution version for the so-called delay in lodging the FIR. The prosecution has not only explained the reasons but also led cogent evidence to substantiate the stand as to why there was delay. The trial Court in fact analysed the position in great detail and had come to a right conclusion that the reasons for the delay in lodging the FIR have been clearly explained.

18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is

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34. In this case, the star witness is the prosecutrix. According to her, she got married with 'B' on 06.06.2010. She lived in matrimonial house for about three years. During her pregnancy period, the husband left her at her parents house and thereafter he never turned up. On 05.06.2016, her jeth Manoj and nandoi Brij Mohan came to her house and asked her to come to Ajmeri Gate so that a settlement could be effected between her and her husband. She alongwith her Nandoi went to Ajmeri Gate whereas her jeth left on two wheeler scooter and on the way, when their auto reached at golchakkar of Ajmeri Gate, her jeth and nanad Asha joined them. She has alleged that all the three persons took her in a flat on first floor at Chandni Chowk where her Nandoi served her Pepsi and a samosa and after consuming the same she became unconscious and when she came to her senses, she was ravished by Manoj and Birju. She has also alleged that her objectionable photographs were taken.

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The prosecutrix was examined as PW2. It is evident from her cross examination that she and her sister 'S' were married in the same family. She was married to brother of accused Manoj on 06.06.2010, the same day, she got married to 'B', brother of accused Manoj. She admitted she made a complaint at CAW Cell Srinivaspuri against accused persons and also against her mother-in-law and husband. She also admitted that her husband has filed an FIR on 22.09.2016 at P.S Hauz Qazi against her brothers 'S' and 'K'.

36. It is undisputed fact that accused persons are relatives of the prosecutrix, thus, looking into these facts is relevant. As mentioned above, prosecutrix is married to 'B' on 06.06.2010 and on the same the sister of prosecutrix is married to brother of accused Manoj. Accused Birju is Nandoi and accused Asha is sister of husband of prosecutrix.

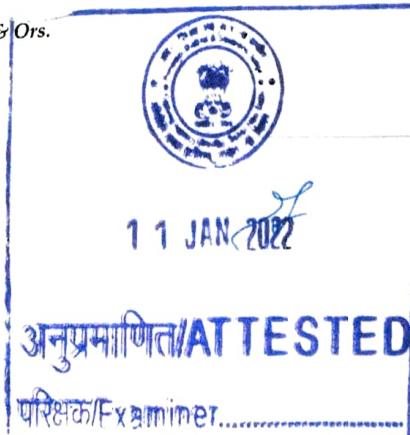
37. It transpires from record that there is also a history of filing of complaints after the relationship became non-cordial. The mother of the husband of the prosecutrix filed a police complaint dated 11.05.2018 Mark PW2/DX with police station Hauz Qazi after marriage of the sons stating that her two daughter-in-laws are creating family dispute on account of property distribution, there are threatening of consequences, their brothers are strong men and they also threatened their family members. The said complaint was filed by mother-in-law of the prosecutrix after marriage of the sons including husband of the prosecutrix. It is also evident that FIR no.316/2016 dated 20.05.2016 u/s 498A/406/506/34 IPC was filed by the prosecutrix against her husband, Manoj, Birju, Asha and other family members. In this FIR, the prosecutrix has levelled serious charges against the entire family. It is to



be noted that another incident of alleged fight/ meeting of the husband of the prosecutrix by the brothers 'S' and 'K' of the prosecutrix on 19.09.2016 culminated into registration of FIR 185/2016 dated 22.09.2016 u/s 323/341/34 IPC P.S. Hauz Qazi.

38. It is also a matter of record and also evident from Ex.PW2/DC (colly) that prosecutrix for the incident of rape filed police complaint on 26.09.2016. Thereafter, in November 2016 she filed a complaint u/s 200 CrPC with the Court of Ld. MM-08, Central, Tis Hazari. The complaint was acted upon by the Id. Court and ATR dated 30.11.2016 was filed by the police on 03.12.2016 in which it was reported that during the course of enquiry, it is revealed that complainant (prosecutrix herein) does not know / identify the place of occurrence in Chandni Chowk area. Neither any PCR call nor any complaint was filed by complainant since date of occurrence i.e. 05.06.2016 except this complaint was filed on 29.05.2016 by post. It was further reported wherein that no cognizable offence was found to be committed in the area of PS Hauz Qazi and jurisdiction was found to be of PS Ambedkar Nagar South District. Thereafter, the prosecutrix on 16.01.2017 withdrew the complaint stating that she does not want to pursue the matter.

39. It is also not disputed that prosecutrix made a complaint before CAW Cell and multiple litigations are pending between prosecutrix and her husband. It is also matter of record put forth by DW1, husband of prosecutrix appearing as witness that matrimonial dispute between him and his wife (prosecutrix) has resulted into filing of divorce by mutual consent after the settlement arrived at. The prosecutrix has also admitted in her cross examination dated 18.08.2018 that she had received Rs.1.5



lakhs towards her stridhan, permanent alimony and maintenance at the time of recording of their evidence for the first motion petition for divorce by mutual consent.

40. With the above background, reverting back to the present incident of rape of 05.06.2016 which allegedly reported through complaint dated 22.06.2016 but subsequently a written complaint dated 22.12.2016 Ex.PW2/A which culminated into FIR Ex.PW1/A. The prosecutrix was subjected to medical examination Ex.PW3/B and her statement was recorded u/s 164 CrPC Ex.PW2/C.

41. The thrust of the argument of defence is that apart from the delay in reporting the matter to police authorities, there are material discrepancies in the various statements of the prosecutrix recorded at different stages which erodes the credibility of prosecutrix. It is evident from record that the first discrepancy was that in the police complaint dated 26.06.2016, the prosecutrix mentions about two unknown boys also having arrived at the place of incident who brought samosa and pepsi but a careful scrutiny of record shows that all these details are missing from the further statement u/s 164 CrPC Ex. PW2/C and examination-in-chief of the prosecutrix on oath as PW2. In her examination-in-chief dated 06.01.2018, she categorically states that there was no one else in the said flat except them. Besides this discrepancy, there is also discrepancy about the fact that after the incident dated 05.06.2016 as to who has shown her the obscene photographs.

- In her police complaint dated 26.09.2016 on this aspect, she states that Asha, Manoj had shown her some photographs on their mobile phone.

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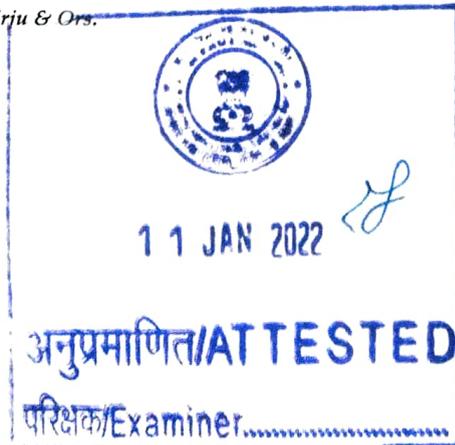


- In complaint u/s 200 CrPC, she mentions in para no. 5 that accused no. 2 (Birju) has also shown her photographs from his mobile phone.
- In the evidence by way of affidavit Ex.PW2/DD, she mentions in para no. 14 that they also made the film of the deponent.
- In the complaint dated 22.12.2016 Ex.PW2/A, she states that Birju had shown her photographs.
- In statement u/s 164 CrPC Ex. PW2/C, she did not mention that photograph was shown to her but merely it was stated that she was told that accused had photographs.
- In her examination-in-chief as PW2, she states that Nandoi Birju had shown her photographs.

42. It is evident from the above that stance of the prosecutrix has been changing as to who has shown her photographs and also whether she was shown or merely told, and in the affidavit she stated it as film. It is significant to mention here that further no obscene photographs of the prosecutrix could be found from mobile phone of the accused Birju and during her statement in the court, when the prosecutrix was shown the mobile, she stated that the mobile shown was not the phone on which here photograph was taken because that phone was white in colour. In summation of evidence on record there is complete absence of existence of compromising photographs of the prosecutrix acting as threatening material for her. If such material was non-existent then the prosecutrix cannot be said to be under threat for not reporting the matter timely to the police.

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43. Further, it can be gathered from record and is reflective of the fact that the background of the animosity between the prosecutrix and her in-laws appears to be the main reason for filing of present complaint on 26.09.2016 just before when the court was hearing the bail application of the family of in-laws in FIR no. 316/2016 on 30.09.2016. The order of Ld. ASJ-02 South dated 30.09.2016 Ex.PW2/B is on record granting bail to the in-laws of the prosecutrix including the accused persons herein wherein the contention of cases and counter cases between the parties stands recorded. It is common practice that such allegations are levelled to forestall relief being granted in other criminal proceedings.

44. This court is conscious of the legal proposition that conviction in the rape cases can be made on the sole testimony of the prosecutrix even without medical corroboration and the version of the victim in rape commands great respect and acceptability but where there are some circumstances which cast doubt in the mind of court of the veracity of the victim's evidence then it is not safe to rely on the uncorroborated version of victim of rape. It is worthwhile to mention here that by appreciating the evidence of the prosecutrix in cases involving matrimonial disputes and various litigations, the Court has to be on its guards and not to be swayed by the allegations of such a nature which are bound to emanate from the mouth of the woman and her relatives after the relationship between the two sides became sour without It is for this reason, strict analysis of allegations leveled by the prosecutrix should be done.

45. Surprisingly, the prosecutrix has not been able to identify the place of incident which appears unbelievable because as per her own version

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as PW2 after the incident she was made to sit in an auto by her jeth and sent to her parent's house which means that she was at her home. After getting out of the clutches of accused persons while going back to her place, she would have identified the place from where she was going towards her house. Moreover, it is also not convincing and understandable that on 20.05.2016 the prosecutrix has initiated criminal proceedings against all family members of her in-laws by filing FIR no. 316/2016 alleging serious allegations within 15 days (on 05.06.2016) and what persuaded her to believe that same very persons would now assist her in settling her dispute which was going on for years.

46. Here, it is also relevant to discuss the evidence of mother of prosecutrix PW8, who in her examination-in-chief dated 07.02.2019 has stated that one day accused Manoj, Birju and sister of Manoj came to their house and took the prosecutrix with them and committed wrongful act which stands contradicted to the statement of the prosecutrix PW2 who only stated that accused persons Manoj and Birju met her outside her house and the other accused Anita met her on the way. A combine reading of statement of prosecutrix and her mother shows that facts put forth by prosecution regarding visit of Manoj and Birju is doubtful.

47. In the present case, the delay in filing FIR / complaint is also not fully explained because there is serious doubt about the existence of obscene material as discussed above and much so, there is a doubt about the fact that prosecutrix has seen photographs which would have hanged over her mind creating threat of the nature that she would not disclose ordeal happened to her even to her mother. It is not unusual that she

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would get threatened by such verbal hurls to her particularly when she was already fighting legal battle against her in-laws. There is no cogent and convincing evidence on record that on 23.09.2016 accused Birju met the prosecutrix at Saket Court and again threatened her not to disclose the incident to anyone otherwise he would defame her by showing her photographs to her relatives and family members. On the contrary, it was expected from her that she would have immediately informed this incident of 05.06.2016 which would have facilitated in picking up of forensic material against the accused persons with whom she was contesting cases. This is a case where the delay is fatal because there exists fertile grounds and background giving reasons to the prosecutrix to get influenced to frame the accused persons. The courts have always raised a caution that delay must be carefully examined and there should not exist any room for exaggeration or filing of false complaint. Silence in not reporting the incidents for three months as alleged against the accused persons by the prosecutrix erodes the credibility of the testimony of the prosecutrix. Furthermore, there is no medical evidence on record and there is no recovery of any stupefying substance alleged to have been administered to the prosecutrix.

48. Looking into all the facts and the circumstances apart from the delay in reporting the matter, the prosecution case does not appear to be free from suspicion. The material contradictions and discrepancies coming in the testimony of the prosecution witnesses also make the testimony of prosecutrix unworthy of credence as to base the conviction of accused persons. The prosecution has failed to prove its case beyond

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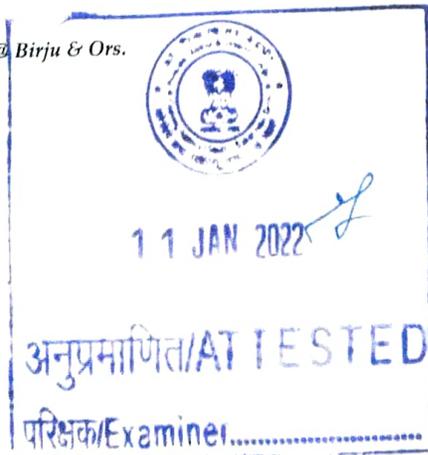
reasonable doubt that accused persons Brij Mohan and Manoj after abducting the prosecutrix administered her intoxicating substance, committed gang rape with her and threatened her and further that accused Asha helped co-accused persons to commit rape upon the prosecutrix.

49. In case of *Raju & Ors. vs. State of Madhya Pradesh* (2008) 15 SCC 133, it has been observed by Hon'ble Apex Court in paragraphs 11 and 12, as under

It cannot be lost sight 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.

50. It has been cautioned time and again by the Hon'ble Supreme Court that when appreciating evidence in criminal cases, the court has to keep in mind that the graver the charge is, the greater should be the standard of proof required, also the court should bear in mind the fine distinction between 'may be true' and 'must be true'. In *Ashish Batham v. State of MP*, (2002) 7 SCC 317, it was held :

"8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to



substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

51. In the case in hand, in the light of above observations and findings as discussed above, the present case is not free from suspicion and it is difficult to dis-engage truth from the falsehood. As such it does not warrant recording conviction of the accused persons, so, as a matter of utmost caution, the benefit of doubt, which has become the privilege of the accused persons, is given to them, and accused Brij Mohan @ Birju and Manoj are thus, acquitted of the charge for the offences punishable under Section 365/328/376D/506/34 IPC and accused Asha is acquitted of the charge for the offence punishable u/s 109 read with Section 376 IPC. They are directed to furnish bail bond u/s 437A Cr.P.C in the sum of Rs. 30,000/- with one surety of the like amount which shall remain in force for a period of six months. File be consigned to Record Room after due compliance.

**Pronounced in the open court
today on 29th October, 2021**


(Vineeta Goyal)
Additional Sessions Judge
Spl. Fast Track Court, South District
Saket Court, New Delhi

जिला एवं सत्र न्यायाधीश के कार्यालय में प्रमाणित किया गया
 Office of the District & Sessions Judge, Saket Courts, New Delhi
 प्रमाणित किया गया
 CERTIFICATE OF AUTHENTICATION

दिनांक / Date: _____
 न्यायाधीश / Judge: _____
 प्रमाणित करने वाला / Section 74 of the Indian Evidence Act, 1977


 Examiner

11/10/21