

(2013) 08 DEL CK 0200

In the Delhi High Court

Case No : Criminal Appeal No. 876 of 2012

Jagmohini

APPELLANT

Vs

State (GNCT of Delhi) and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 133, 151, 164, 313
Penal Code, 1860 (IPC) — Section 323, 325, 34, 341, 342
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2013) 5 ILR Delhi 3433 : (2013) 3 JCC 2155

Hon'ble Judges : G.S. Sistani, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Lokesh Upadhyay and Mr. Manish Kumar, for the Appellant; Rajdipa Behura, APP for the State and Respondents No. 2 and 3 (Party-in-Person), for the Respondent

Judgement

G.P. Mittal, J.—This appeal u/s 372 of the Code of Criminal Procedure against an order of acquittal for offences under Sections 452 /342 /376(2) (g) /377 /511 /506 /34 IPC by a victim brings to the fore a classic case where false allegations of rape and attempt to carnal intercourse against the order of nature have been levelled by a lady to settle a personal score with her neighbour without caring for the disrepute it brings to a lady and the harassment a person is put to because of all such serious allegations. Such case when is included in the rapes allegedly committed in this capital brings shame to the city as also to the residents who have to hear of this city being termed as the rape capital of the country. There are numerous cases filed in this Court for quashing the FIRs for an offence u/s 376 IPC; the story put forth in some of these cases is so illogical and a blatant lie that the society will have to ponder as to what should be the moral punishment to the lady indulging in a false accusation of this nature. Respondent Puran Chand Kaushal who is alleged to have caught hold of the hands of the prosecutrix (a young lady of 38 years weighing about 100 kg.)

to facilitate his co-accused in raping her, was aged 62 years at the time of alleged incident (and over 68 years now). He had happily retired from his service with the Govt. of India. Respondent Onkar Nath Tiwari was working as a Customs Officers in Government of India and was in mid 50s. Both of them remained in prison; Onkar Nath Tiwari for 27 months and Puran Chand Kaushal for almost 2 months before their applications for grant of bail were allowed by this court.

2. Facts of the case as noted by the trial court are extracted from Para 2 of the impugned judgment hereunder:-

2. In brief the case of the prosecution is that on 16-06-07 three calls were received in the PCR within a period of about 12 minutes. PCR van reached the spot where the complainant was found who alleged that their neighbour O.L. Tiwari came there along with two other boys and ran away after beating her. PCR van took her for her medical examination. FIR was registered on 18-06-07 on her statement wherein the complainant alleged that on 16-06-07 her children had gone to their grandmother's house and her husband had gone to Gurgaon. At around 1.30 pm when she was alone at home both accused who were also her neighbours entered her house and bolted the door from inside. They both pushed her to the ground, while accused Puran Chand Kaushal caught hold, of her hands, the other accused Onkar Nath Tiwari raped her against her wishes. They also tore her clothes and threatened to eliminate her and her family. FIR u/s. 376/506/34 IPC was registered. The torn clothes of the victim worn at the time of the incident were seized. Site plan was prepared. Accused Puran Chand was arrested. Proceedings u/s. 82 Cr.PC were initiated against Onkar Nath Tiwari. Statement of the complaint u/s. 164 Cr.PC was recorded wherein she had given the details of the manner in which she was raped by the accused persons, in her statement she made further allegations of attempt of sodomy (which was not stated by her before the doctor who examined her on 16-06-07 and she was not examined for the act of sodomy on her), sections 377 /511, 342, 452 IPC were also added.

3. In order to establish its case the prosecution examined 16 witnesses. The prosecutrix (PW-2) is the star witness of the prosecution as in such cases the fate of the case hinges upon her credibility and trustworthiness. She deposed about the manner of assault committed on her.

4. In order to afford an opportunity to the respondents to explain the incriminating evidence produced by the prosecution they were examined u/s 313 Cr.P.C. Respondent Puran Chand stated that he was innocent and was falsely implicated in the case by the prosecutrix and her husband as he was a stumbling block to the illegal land grabbing committed by the prosecutrix and her husband. He stated that on 29th October, 2006, the prosecutrix and her husband had encroached the public passage as a result of which people were aggrieved as their right of way was totally blocked. After his arrest a complaint was made by his family to the Police commissioner who ordered a vigilance inquiry against the police officials. The IO of the case, Achla Ram Pal was suspended. The inquiry

report revealed that a false case was lodged by the prosecutrix against him and his co-accused, similarly, respondent Onkar Nath Tiwari also claimed that he was falsely implicated in the case. He informed the court that on the fateful day he and his co-accused were in the Police Station from 1:10 P.M. He (Onkar Nath Tiwari) had gone to the PS to check on his earlier complaint against prosecutrix's husband. His co-accused Puran Chand Kaushal had gone to the Police Station to lodge a complaint under the SC/ST Act against the prosecutrix's husband. W/ASI Asha Rani was present in the Police station as duty officer which was known to the prosecutrix. She (duty officer) had informed the prosecutrix that the accused persons were in the PS to lodge a complaint against her and her husband. The duty officer was trying to pass the time while not recording their complaint. In the meantime, the prosecutrix made calls to the PCR at 2:05 P.M., 2:14 P.M. and 2:19 P.M. in the information given to the control room the prosecutrix gave Respondent O.N. Tiwari's name as he had left the PS by that time. The prosecutrix did not give the name of his co-accused Puran Chand as he was still in the PS and this fact was known to her. Respondent O.N. Tiwari stated that in the year 1997 he was General Secretary of Naroda Welfare Association. The prosecutrix and her husband had encroached upon public land while raising construction. He made a complaint in respect of same which was against the liking of the prosecutrix and her husband. In the year 2006 the prosecutrix again encroached on public land from either side of the road with a gate to encompass the land into her school. He and his co-accused Puran Chand Kaushal had played an active role in opposing the said construction as a result the prosecutrix and her husband were nursing a grudge against them. He and his co-accused (Puran Chand Kaushal) were aggrieved by the encroachment as they had also jointly purchased a plot adjoining to her plot. On 28.05.2007 Puran Chand Kaushal went to the plot to erect a boundary wall. The prosecutrix and her husband along with their associate had beaten him badly. They lodged a complaint with the police as a result of which prosecutrix's husband was arrested and his bail was rejected, when prosecutrix's husband was released from jail on 02.06.2007 he threatened to falsely implicate him (P.N. Tiwari). He stated that he (O.N. Tiwari) lodged a complaint with the police against the prosecutrix and her husband apprehending false implication.

5. Respondents examined three witnesses in their defence. DW-1 HC Hari Kishan testified that on 16.06.2007 at 2:10 P.M. he received a call regarding a quarrel. He went to school at LB Block. A lady whose name was disclosed as Jagmohini was sitting outside. She informed him that 2/3 persons had left after giving beatings to her. He testified that there was no visible injury on the person of the said Jagmohini. She went inside for 3-4 minutes while they were informing the control room about the situation. At about 2:19 P.M. they again received a call from the control room. They informed the control room that they were already at the spot. The said lady (Jagmohini) wanted her medical examination to be conducted. They took her to Safdarjung hospital. On the way they also took a lady Constable from the PS Vasant Kunj.

6. Similarly, DW-2 Constable Ravinder Singh deposed that on 16.06.2007 he was posted as Constable at PCR South-west zone. At 2:05 P.M. he received a call regarding a quarrel at RJ school, Mahipalpur. They reached there in about ten minutes. He was the driver of the PCR. A lady namely Jagmohini told the staff that her neighbour O.N. Tiwari along with 2-3 unknown persons had given beatings to her and had ran away. They First took the earlier said lady to the PS, one lady Constable and a Head Constable accompanied them from PS to Safdarjung hospital.

7. DW-3 Vinay Kumar deposed about the presence of the two respondents in PS Vasant Kunj from 12:30 -1:00 P.M. to 2:30 P.M., as he had gone to the PS to lodge his report which was recorded vide DD No. 36-B.

8. The offence of rape is usually committed in close doors hence there is hardly any eye witness to support the prosecutrix or the prosecution version. This is the reason that the courts do not insist on corroboration to the testimony of the prosecutrix who is treated like a witness injured in the incident. The Supreme Court has consistently held that a prosecutrix complaining of rape is the victim of a sexual assault and not an accomplice to the crime. Her evidence if found to be reliable and trustworthy is by itself sufficient to base conviction of an accused without any corroboration.

9. On analysis of the evidence led by the prosecution and the defence produced by the respondents the learned ASJ opined that the prosecutrix made improvements in her case right from the first call made to the PCR upto her deposition in the court. The learned ASJ held that in the three complaints lodged with the PCR at 2:08, 2:15 and 2:19 P.M. on 16.06.2007 there was not even a whisper of the offence of rape committed upon her. The learned ASJ observed that the prosecutrix changed her stand even after her statement Ex. PW-2/A was recorded by W/ASI Saroj on the basis of which the instant case was registered, in as much as allegations of carnal intercourse against the order of nature were neither made in the statement Ex. PW-6/DA recorded on 16.06.2007 or even in the MLC Ex. PW-1/A of the prosecutrix prepared on 16.06.2007. It was for the first time on 28.06.2007 that the allegations of attempt to commit carnal intercourse against the order of nature were levelled when prosecutrix's statement u/s 164 Cr.P.C. Ex. PW-12/A was recorded by the learned Metropolitan Magistrate after 12 days of the alleged incident. The learned ASJ concluded that the incident as alleged could not have taken place thus the respondents were acquitted of the charge framed against them.

10. We have heard Mr. Lokesh Upadhyay learned counsel for the appellant and the respondents who have addressed arguments in person.

11. Referring to the judgment of the Supreme Court in State of A.P. Vs. V.V. Panduranga Rao, learned counsel for the appellant urges that the learned ASJ was swayed by information recorded by the PCR at the instance of the prosecutrix who held that the prosecutrix did not disclose the offence of rape in

the first report made to the police. The learned counsel argues that a telephonic information given to the police regarding commission of an offence cannot take the place of an FIR and thus the prosecutrix was unnecessarily criticized for making improvements in her version.

12. The learned counsel for the appellant heavily relies on the Supreme Court judgment in Mohd. Imran Khan Vs. State (Govt. of NCT of Delhi), and (2011) 10 SCC 192 to canvass that sole testimony of the prosecutrix is sufficient to base Conviction of the accused. The learned counsel argues that thus the learned ASJ erred in disbelieving the prosecutrix simply on the ground that her testimony was not corroborated from any evidence. While submitting that absence of injury on the person of the prosecutrix will not negate the offence of rape, the learned counsel draws support from the judgment of the Supreme Court in Ram Singh @ Chhaju Vs. State of Himachal Pradesh, .

13. The learned counsel contends that the police was hand in glove with the accused persons (the respondents herein) and therefore defect in the investigation will not enure for the benefit of the accused. He submits that the prosecutrix's testimony was convincing and reliable and the trial court erred in disbelieving her and acquitting the respondents. On the other hand, the respondents arguing their case in person submit that a false charge of rape and attempt to sodomy was levelled against them as they were a hindrance in the land grabbing indulged by the prosecutrix and her husband. Supporting the trial court judgment the respondents urge that the order of acquittal is based on the sound legal principles as conviction can be based on the sole testimony of the prosecutrix when the same is free of any blemishes and is worthy of reliance. They argue that the prosecutrix testimony is full of contradictions, improvements and improbabilities which clearly depict that a false case was got registered by the prosecutrix.

14. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. 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 of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. (See. (supra)).

15. Similarly, absence of injuries either as a mark of resistance to the advances allegedly made by the accused or as internal injuries by itself would not be sufficient to discard the testimony of prosecutrix. Each case shall have to be examined on its own facts to find out whether there should have been some injuries on the person of the prosecutrix in view of the manner the offence is alleged against the accused persons.

16. The prosecutrix who appeared as PW-2 is the most crucial witness in this case, we would like to extract some portions of her testimony herein to analyze whether the learned ASJ was justified in returning the finding that the incident did not take place as claimed by the prosecutrix, in cross-examination the prosecutrix stated:-

It is incorrect to suggest that I had placed barricades on both sides of my plot, which was objected by neighbours, who then lodged a complaint with the SDM on which a kalandra u/s. 133 CrPC was framed against me, vol. The Kalandra u/s. 133 CrPC was framed upon me on the complaint of Mahender and not of any neighbour, it is correct that the SDM has padded an order for removing encroachment from the road in those proceedings.. (Page 14 of compilation).

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Q. You did not remove the encroachment after that order.

A. There was no encroachment before the said proceedings or even thereafter. I do not know if accused O.N. Tiwari , had lodged a complaint dated 22.06.1997 against my alleged encroachment, being the secretary of Narmada welfare association, L-Block, Mahipal Pur Extension, New Delhi, it is incorrect to suggest that the Hon'ble High Court had passed any directions for removing the encroachment, vol. I did not receive any such order. I had lodged a complaint against Mahender and others u/s. 341/354/323/325/506/34 IPC in the court regarding the incident dated 10.06.1997, on whose directions the FIR was registered against them, it is incorrect to suggest that I had lodged complaint against Mahender and Ors on similar lines as in the present case. (Page 14 & 15 of compilation).

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....I do not know if both the accused present in court had purchased the land in that Khasra from Mahender. It is incorrect to suggest that I and my husband used to quarrel with the accused persons whenever they tried to raise the boundary wall. It is incorrect to suggest that I had quarrel with the accused persons on 31.05.2007, it is correct that a case was registered against my husband alleging that he had broken the arm of accused Puran Chand. Vol. It was a false case, it is incorrect to suggest that we had started nursing further grudge against the accused persons as they had both appeared in the court to oppose the bail of my husband in that case, it is incorrect to suggest that my husband has threatened accused O.N. Tiwari after being released from the Jail. I do not know if O.N. Tiwari had lodged complaint in this respect vide DD No. 38-B, dated 03.06.2007, PS Vasant Kunj. It is incorrect to suggest that I and my husband used to address accused Puran Chand abusively on his caste. It is correct that FIR No. 451/07 dated 25.06.2007 u/s. 3 SC/ST Act was registered against me and my husband on these allegations, it is incorrect to suggest that my husband had also threatened accused Puran Chand who had gone to the Police Station alongwith O.N. Tiwari on 16.06.2007 at 01:00 pm. (Page 15 of

compilation).

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I had called the police after the rape was committed on me. I do not remember if I had given the name of the person who committed the rape on me, or the fact of the rape having been committed on me to the PCR at No. 100. Vol. I was not in a fit state at that time. I do not remember at what time I had first called the police at No. 100 as I was not in a proper mental state. I do not know what time the police reached the spot. Police did not make any inquiries from me at the spot. Vol. They took me to the PS from there and after taking a lady police official with them, they took me to hospital. There are no security guard in the school. There are CCTV cameras in my school, Vol. These are to check the cheating instances and other activities of the children. I do not remember how many calls I made to the police from my landline number on that day. I had also intimated my husband about this incident from the said landline number, but I do not remember the time. I had given him the names of both the accused having committed rape on me. I do not recall if HC Hari Krishan and Ct. Rabinder Singh had first come to the spot. I had not told them about the rape having been committed on me, but only of the molested, Vol. I could not give the details to an unknown persons as they were only from the PCR and not from the PS. There was no one else in toy house/school at that time, when I called the police. I cannot admit or deny if I had made three calls to the police that time. (Page 16 of compilation).

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I cannot admit or deny that I made the first complaint to the police at No. 100 at 02:08 pm or that I had stated therein at one person was misbehaving with a lady near R.J. Public School. I do not remember if police had reached there at 02:15 pm. It is incorrect to suggest that I had informed the police that O.N. Tiwari had come there with two u/k (un-known) persons and had beaten her and had run away. I may have made a second call to the PCR at No. 100 at 02:14 pm from the same telephone no. I cannot say if I had stated that a person had come our house and was quarrelling and abusing me. I cannot say if the third call was made by me to the police at No. 100 at 14:19 pm by the same telephone no. I do not remember if I stated in that call that three persons had forcibly entered my house abusing and quarrelling with me and had also torn my clothes. I do not know if my husband made call to the police at No. 100. (Page 17 of compilation).

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I did not disclose the names of all the accused to the doctor in the hospital Vol. as no one asked me for the same. Then said, I had given the names in the gynae department when I was referred there from the general OPD. The doctor did not seize my torn clothes as I did not have any alternatives set of clothes to wear. (Page 18 of compilation).

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It is correct that I had disclosed the alleged history to the doctors in the hospital on my own free will and that I was not under pressure at that time. I had not disclosed about the carnal intercourse to the doctors as I thought that they would be able to check the same while conducting my gynaecological examination. (page 18-19 of compilation).

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It is incorrect to suggest that I knew both the accused present in court today, even before the incident, it is correct that I had made a complaint against accused Puran Chand Kaushal and one Jai Bhagwan Bhardwaj prior to this incident. That way, I knew accused Puran Chand before the incident as he was residing in the same gali... (Page 19 of compilation).

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I had not disclosed the name of Puran Chand to the doctor in the hospital as I was not in a fit state of mind. I had disclosed the name of Puran Chand in my complaint to the police after I returned to the police station from the hospital. (Page 20 of compilation).

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It is correct that a quarrel had taken place between my husband and Puran Chand on 28.05.2007. However I do not know if accused Puran Chand had sustained fracture on his fingers in the said quarrel. (Page 20 of compilation).

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I cannot say who was that lady, then said I was referring about myself when I informed the PCR that a lady was being mishandled, it is correct that I had made this call to PCR while I was trying to save myself. The incident of misbehaviour, molestation and rape was continuing with me for all this while, while I made these calls only the two accused present in court were misbehaving with me and the other two or three boys were standing outside. I did not mention the presence of two-three boys outside, either to the police or to the doctor in the hospital or to the Ld. MM Vol. as I could not complain about passersby in the gali. (Page 20 & 21 of compilation).

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I was thrown on the ground at point A of Ex. PW 2/DC-2. I do not know if the crime team had lifted any semen stains or had found any semen stains at the spot. Vol. as we had come subsequently, it is incorrect to suggest that no semen stains were found at the spot as no such incident took place. It is incorrect to suggest that I refused to undergo the poly graphic test as I had made out a false case against the accused persons, it is incorrect to suggest that the police had wanted to get my poly graphic test done as I was giving a different statement on

each occasion Vol. I refused as I was under depression for which I am taking treatment even now. It is correct that police had asked me to undergo poly graphic test much after the incident and it may be about 10 months from the incident. I have done a diploma in sanitation health and technology. I understand the meaning of penetration and ejaculation. I did not notice if there were semen stains in my salwar after the incident. (Page 22 & 23 of compilation).

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It is correct that I had earlier stated that I did not know the accused persons, Vol. that is because I did not know them personally but knew that they were there in the neighbourhood. I knew the accused as Tiwari and did not know his full name. Vol. Everyone used to address him as Tiwari... (Page 24 of compilation).

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... it is correct that my husband was arrested u/s 107 /151 Cr.P.C. vide DD 33 A dated 9.03.2002 PS vasant Kunj. I do not know if wife of O.N. Tiwari had stood surety for my husband in that case, vol. accused forced us to accept the surety of his wife though I kept saying that there were number of persons who wanted to give surety for my husband... (Page 24 & 25 of compilation).

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....It is correct that I had two pet dogs during the year 2007... (Page 29 of compilation).

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... I cannot say that more than 2 people had attacked me at the time of incident. Only these two accused persons had attacked me on that day. It is correct that the accused had ran away when the PCR reached at the spot. I cannot tell the duration between the running away of the accused and arrival of the PCR at the spot. I could not gain my full consciousness till the police arrived at spot and even I do not remember what I had told to the police at first instance, it is correct that police had asked me on arrival about what had happened to me. When the police came and inquired from me at the spot, I informed that there was a quarrel... (Page 29 of compilation).

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..... It is correct that the SDM of the area had given directions on 1.05.99 to remove the encroachment, Vol. we had filed an appeal against the said order. But the matter was compromised between the parties and we had removed the stairs (encroachment) in view of the said compromise.

I do not know till date that the wife of accused Puran Chand had filed any writ against me alleging that I had not removed the encroachment despite the orders of SDM. Then said, I had received some papers from the Hon"ble High Court

from the wife of accused Puran Chand in which several departments were arrayed as party. My lawyer had attended those proceedings. It is correct that I had received the papers from the Hon''ble High Court in WP(C) 6129/2008. I had not given any undertaking to the SDM that I shall remove the encroachment. I cannot say whether the Mark PW-2/DX is the true certified copy of the order passed by Hon''ble High Court in the aforesaid writ petition..... (Page 31 & 32 of compilation).

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... it is correct that a vigilance inquiry was initiated with respect to this incident in which I had appeared before the ACP vigilance as a witness. I do not know about the findings of the said vigilance inquiry. My lawyer may have the order about the same. I cannot say whether mark "Y" (colly) shown to me today is the copy of the findings of the vigilance inquiry. I cannot admit or deny if it has been held in the said vigilance inquiry that my case was full of contradictions and apparently seems to be false, it is incorrect to suggest that after receipt of this report of the vigilance inquiry, the police had called me for a Polygraph test but I refused, Vol. my husband had told the police that I could undergo the said test if they were willing to risk the consequences in case of any eventuality to me during the said test due to my mental state. I do not know if my husband had also given this fact in writing....(page 36 of compilation).

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.... I cannot say if I also named Puran Chand in the call made to the police on 100 number. I do not remember if I had informed the police that O.N. Tiwari and 2-3 other persons had assaulted me. It is incorrect to suggest that I had not named Puran Chand as one of the assailants to the police or the doctor or any other authority that I met relating to this incident. I do not know if Puran Chand had given the complaint in the PS vasant Kunj vide DD No. 36B on 16.06.2007. It is incorrect to suggest that I had cooked up this incident falsely after I received the information from the PS about this FIR under SC/ST Act against me and my husband..(Page 37 of compilation).

17. Admittedly, the first information regarding the incident was given to the PCR on 16.06.2007 at 2:08 P.M. The same was to the effect that a person was misbehaving with a lady. The second information was given to the control room at 2:14 P.M. which was to the effect that one person had entered her (Jagmohini) house and was hurling abuses. The third information was given just after five minutes at 2:19 P.M., wherein it was stated that three persons had entered house No. 489, Street No. 15 in N block and were misbehaving with her and her clothes had been torn. The name of the informant in the first and the third report is Jagmohini whereas the name of the informant in the second report is Mohini; it is possible that there could be some error in recording the name as Mohini instead of Jagmohini in the second report made to the PCR.

18. The learned counsel for the appellant submits that the prosecution had not

led any evidence as to who had given these information to the PCR. The learned ASJ ought not to have ascribed the same to the prosecutrix. He states that these three reports even if accepted as it is, do not belly the case of the prosecution. The contention raised is fallacious. The prosecutrix was cross-examined in respect of these three information sent to the PCR. Initially, she feigned her ignorance about the contents of the information lodged by her in spite of the fact that contents were specifically put to her. At no stage she came forward with the plea that these three information were not got recorded by her. In the end (at page 21-22 of the compilation) she admitted the three DDS. She stated, "I cannot say who was that lady, then said I was referring about myself when I informed the PCR that a lady was being mishandled. It is correct that I had made this call to PCR while I was trying to save myself. The incident of misbehaviour, molestation and rape was continuing with me for all this while, while I made these calls. Only the two accused present in court were misbehaving with me and the other two or three boys were standing outside. I did not mention the presence of two-three boys outside, either to the police or to the doctor in the hospital or to the Ld. MM Vol. As I could not complaint about passersby in the gali." (Page 20-21 of the compilation).

19. It is important to note that the names of PCR officials who visited the spot and met her were confronted to her in cross-examination. Not only that two PCR officials Head Constable Hari Kishan (DW-1) and Constable Ravinder Singh (DW-2) were examined in defence by the respondents. The version as given by the prosecution and as deposed by these two witnesses was not challenged by the prosecutrix in cross-examination of PWs 1 and 2. It is very intriguing to note that in order to justify the three telephonic calls to the PCR made by the prosecutrix from her landline No. 26781755, the prosecutrix stated that calls were being made while the incident of misbehaviour, molestation and rape was continuing with her. Thus, the prosecutrix wanted the court to believe that initially there was misbehaviour and she lodged information in this regard, when the molestation started she again lodged a report regarding molestation and thereafter she was raped. As per the information given to the control room at 2:19 P.M. there were three persons who were misbehaving with the prosecutrix. Even if, that is left apart, as per the prosecutrix rape was committed upon her by respondent O.N. Tiwari whereas respondent Puran Chand held her by her hands, it is humanly impossible that two persons who are misbehaving, molesting or one of them is committing rape while the other holds her, would allow the victim to telephone the PCR. First thing a culprit would do is to snatch the telephone (in this case a landline apparatus) from the lady and then continue with the act of sexual assault. The prosecutrix's statement that the incident of misbehaviour, molestation and rape was continuing while she made these three calls to the control room defies all logic and human conduct. Moreover, if any act of rape had been committed by the respondent O.N. Tiwari the prosecutrix would have definitely mentioned his name in the calls to the PCR. Not only this, the name of the associate respondent Puran Chand Kaushal who allegedly helped O.N. Tiwari

to commit rape would have also been mentioned in the information sent to the PCR particularly when both the respondents were admittedly well known to the prosecutrix.

20. It is true that information to the PCR is not a substitute to the FIR and defence cannot be permitted to attack the prosecution version because of some contradictions in the information given to the PCR yet, where the information to the control room is given by the victim herself about the offence and name of the culprit if known to her it is bound to be disclosed, which was not done by the prosecutrix in this case which belies the case of the prosecution.

21. All the more as per PCR form ASI Mahender Singh had reached the spot in pursuance of the first call made to the control room at 2:18 P.M., that is, immediately after the incident. The prosecutrix informed the ASI that her neighbour O.N. Tiwari had visited her house along with two unknown boys, had given her beatings while her husband was away and she had suffered some injury, it is also mentioned in the PCR form that there was quarrel between them regarding the matter of raising a wall on 31st May.

22. The learned counsel for the appellant urges that the defence cannot take advantage of the PCR forms as the same were not legally proved, we do not agree with the learned counsel for the appellant because the defence can always rely upon the documents filed with the charge sheet by the prosecution. All the more, the factum of making three reports was specifically put to the prosecutrix, who in spite of her initial reluctance not only admitted the same but tried to explain the improvements in the versions since the first information to the control room. The three reports were recorded in the control room at a time when there could not be any allegation of any manipulation at the behest of the respondents. It is thus evident that although the prosecutrix alleged that she was raped at about 1:30 P.M. but there was no mention thereof not only in the three reports made to the control room but also to ASI Mahender who had reached the spot to attend to the information given to the control room. This by itself is sufficient to demolish the prosecutrix's case that she was raped by respondent O.N. Tiwari while respondent Puran Chand Kaushal held her. Apart from this, we have earlier extracted the excerpts of prosecutrix's cross-examination. Admittedly, she is Principal of RJ School, independently run and owned by her and her husband. She did not make a mention of respondent Puran Chand Kaushal as an accomplice in the rape committed by respondent O.N. Tiwari while her history was being recorded on the MLC. Her statement Ex. PW-6/DA was recorded by the police in the evening of 16.06.2007 itself wherein she did not level any allegation of carnal intercourse or attempt to carnal intercourse against respondent O.N. Tiwari. These allegations were made for the first time only on 28.06.2007 without any explanation being offered by the prosecutrix, who as stated above, was a well educated lady aged 37-38 years running a school.

23. Various portions of prosecutrix's cross-examination extracted earlier reveals that she gave evasive answers, contradicted her statement and consistently

made improvements. This was obviously to cover up false accusation of rape levelled against the respondents. In view of her vacillating stand the prosecutrix was required to undergo a poly graphic test which she declined on medical grounds without producing any document in support of her illness. It has to be borne in mind that rape is the most heinous crime and the culprit must be given the severest punishment. Law provides for imprisonment for life or imprisonment which may extend to ten years as punishment for the offence of rape, in case of gang rape as in the instant case the minimum punishment provided is imprisonment for ten years and fine. But, of late registration of false cases of rape is on the rise. The cross-examination of the prosecutrix is the only weapon with a person accused of false charge of rape to defend himself. It is true that sole testimony of prosecutrix is sufficient to base conviction of an accused but the prosecution is under obligation to prove the offence of rape like any other offence.

24. In *Abbas Ahmad Choudhary Vs. State of Assam*, , the Hon''ble supreme Court has held that:

Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully. In the instant case, not only the testimony of the victim woman is highly disputed and unreliable, her testimony has been thoroughly demolished by the deposition of DW-1.

25. In *Raju v. State of Madhya Pradesh* (2008) 15 SCC 133, 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.

26. A report Ex. PW-3/DA was lodged by respondent Puran Chand Kaushal against the prosecutrix and her husband on 16.06.2007 at 2:30 P.M. DD No. 36-B (Ex. PZ-1) was recorded in the PS at 2:30 P.M. W/ASI Asha Rani admitted that the report Ex. PW-3/DA was received vide DD entry 36-B (Ex. PZ. 1) by her in

the PS. The distance between the PS and the house of the prosecutrix as mentioned in the FIR is 2.5 kms. It is highly improbable that respondent Puran Chand Kaushal will indulge in the offence as alleged, will leave the spot after 2:19 P.M. and would promptly reach the PS to create a plea of alibi by presenting a complaint which was admittedly received in the PS at 2:30 P.M. This sufficiently proves the defence version that the accused persons were present in the PS since at least 1:00/1:15 P.M. and their report was entertained only at 2:30 P.M.

27. Plea of alibi is otherwise of no importance as on the basis of evidence produced by the prosecution and on analysis of the prosecutrix's testimony which is full of improvements and contradictions it cannot be said that the offence as alleged against the respondents was committed by them.

28. It is well settled that absence of injury on the person of the prosecutrix by itself will not negate the offence of rape on her yet the facts and circumstances of each case have to be considered individually. In the instant case as per the prosecution version the prosecutrix was thrown on the ground (in the room), i.e., a hard surface. She was held by respondent Puran Chand while respondent Onkar Nath Tiwari committed rape on her. The prosecutrix who was a grown up lady aged 38 years and weighing about 100 kg. put up immense resistance to the alleged offence. Not only this, as per the allegations of the prosecution, after committing rape respondent Onkar Nath Tiwari attempted to sodomize her. In the process the prosecutrix must have received injuries while she was thrown on the ground and while she offered resistance. In the OPD card Ex. PW-2/D1 there was no external or internal injury on her except scratch marks over both her arms. It may be noted that as per the prosecutrix the respondents had bitten the prosecutrix on her upper left arm. PW-1 Dr. Richa Arora, when she was cross examined stated that the injury marks at "B" were not possible by any teeth bites. She also stated that if a well build lady resists sexual assault, there would be external marks of injury on her body as well as on the body of the assailant, in the instant case, the alleged teeth bites on the upper left arm of the prosecutrix (as claimed by her) were missing. Moreover, there was no external injury which should have been normally present taking into consideration the manner in which the rape was allegedly committed.

29. Moreover, as per prosecution version (statement of the prosecutrix recorded by the IO) there was penetration and ejaculation. The prosecutrix was medically examined immediately after the incident but no semen stains were found either on the vaginal swab or on the clothes of the prosecutrix. We are conscious of the fact that absence of semen by itself will not negate the offence of rape but in view of the specific statement of ejaculation and immediate medical examination, absence of semen strengthens our view of false allegation of rape levelled by the prosecutrix.

30. The learned ASJ rightly concluded that the incident as alleged could not have taken place and thus acquitted the respondents of the charges levelled against them.

31. The appeal preferred is groundless; the same is accordingly dismissed with costs of Rs. 10,000/- to be deposited with Delhi High Court Legal Services Committee within eight weeks. The appeal is dismissed in above terms.