

(2014) 10 DEL CK 0232

In the Delhi High Court

Case No : Criminal Appeal No. 775, 777, 827 and 945 of 2010 and Crl. M.B. 1539 of 2011 and 1463 of 2013 and 1261 of 2014

Sonu

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 428
Penal Code, 1860 (IPC) — Section 366, 376(2)(g)

Citation : (2014) 4 JCC 2785

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : S.B. Dandapani, Advocates for the Appellant; Neeraj Kumar Singh, APP and Deepak, SI, Advocates for the Respondent

Judgement

Pratibha Rani, J.—By filing these four Criminal Appeals bearing Nos. 745/2010, 777/2010, 827/2010 & 945/2010, convicts/Appellants, Sonu, Vinod, Babloo & Satbir are impugning the judgment and order on sentence dated 1.04.2010 & 3.04.2010 respectively passed by learned Addl. Session Judge in Session Case No. 72/2009 in FIR No. 353/2008 under Sections 366/376(2)(g) IPC, PS Narela. The Learned Additional Sessions Judge vide impugned judgment and order on sentence has convicted the four Appellants for committing the offence punishable under Section 376(2)(g)/366 IPC and sentenced them to undergo RI for a period of 10 years with fine of Rs. 5,000/- each and in default to undergo RI for six months for the offence punishable under Section 376(2)(g) IPC and further to undergo RI for a period of five years with fine of Rs. 5,000/- each and in default to undergo RI for a period of six months for the offence under Section 366 IPC. Both the sentences were ordered to be run concurrently with benefit of provisions of Section 428 Cr.P.C.

2. In brief the case of the prosecution is that on the night intervening 4th/5th, August, 2008 at 12.53 a.m., an information was received from mobile No. 9268161129 about rape being committed by some boys on the daughter of the

informant. The PCR information was recorded vide DD No. 5A Ex. PW 3/D and the said DD was assigned to SI M.P. Singh who along with Constable Yashwant left for the spot. W/ASI Raj Bala was informed about the call

3. The endorsement Ex. PW-3/B over the rukka Ex. PW8/A record that the Prosecutrix informed the police that she would make the statement only after arrival of her father. Thereafter, the Prosecutrix "P" (name of the Prosecutrix withheld to conceal her identity) along with her father reached the police station and made statement Ex. PW-4/A to the effect that her parents have separated and with the consent of her father she has been staying with her "Moohboli Bua" at Sector A-6, Narela. "P" was doing the work of cleaning in various houses in Green Park, Delhi. On 4.08.2008, after finishing her work she boarded the bus and reached Sector A-5 Bus Stand at about 8 p.m. After getting down from the bus when she proceeded towards her house, Appellant Satbir S/o Jagdish, who is her neighbour, enquired from her as to whether she had come alone to which she replied in affirmative. In the meantime, Vinod S/o Amar Singh, Babloo & Sonu S/o Mahavir, who also reside in her neighbourhood, also reached there. Vinod pressed her mouth. Babloo & Sonu caught her from feet and made her to sit on the motorcycle of Vinod and took her to a jungle. After reaching there all the four committed rape on her. Thereafter Vinod brought her on his motorcycle and left her in Pocket 4, Narela. Thereafter, all of them fled away from there. She further stated that on arrival of her father who lived in Green Park, she came to the police station to report the matter.

4. The Prosecutrix was taken to Maharishi Balmiki Hospital, Pooth Khurd, Delhi where she was got medically examined vide MLC No. 1846/08 Ex. PW-2/A. Thereafter, rukka was sent for registration of the case through constable Yashwant. During investigation all the four appellants were arrested and medically examined. Exhibits were sent to FSL and after completion of investigation charge-sheet was filed.

5. After committal of the case to the Court of Session, all the appellants were charged for the offence punishable under Sections 366/376(2)(g) IPC to which they pleaded not guilty and claimed trial.

6. Prosecution examined 10 witnesses in support of its case. The plea of the appellants before the trial Court was that of total denial and their false implication in the case due to previous enmity between Vinod and father of the Prosecutrix and with a view to extort money from them.

7. While recording conviction, the learned trial Court was swayed by the reason that no girl or her family members can stake her reputation or would like to be dragged into such kind of situation merely to take revenge or to settle score on account of some previous dispute. The discrepancy pointed out in the testimony of "P" (PW-4) and her father (PW-6) were considered insignificant and not a ground to throw otherwise reliable prosecution case. While forming an opinion that there was no requirement of any corroboration to the testimony of the

prosecutrix which is corroborated from medical evidence, all the four appellants were convicted for committing the offence punishable under Sections 366/376(2) (g) IPC and sentenced in the manner as described aforesaid.

8. I have heard learned counsel for the Appellants as well as learned APP for the State.

9. On behalf of the appellants, their counsel have submitted that despite the fact of previous enmity emerging on record and duly admitted by Sh. Chander Pal (PW-6), their testimonies (Prosecutrix & her father) have been believed by the learned trial Court though neither the medical nor the scientific evidence corroborated the version of the Prosecutrix. While referring to the MLC it was submitted that there was no injury on her person except some abrasion on the left hand elbow and not on any other part of the body. It is further submitted that despite the case of the prosecution that Prosecutrix was raped by four grown up persons, she had no injury mark on any part of her body. Even there is no evidence that hymen rupture was fresh. Rather the statement of Dr. Sameer L. Panade (PW-2) is to the effect that it is difficult to tell as to how old the tear in the hymen was. Learned counsel for the Appellants have further referred to the FSL result (EX. PW-10/A) which shows that semen could not be detected on exhibits 1 (underwear of the Prosecutrix), 3(Vaginal Swab), 4 (Nail Clippings), 5 (Hymen Swab), 6 (Labial Sample) and 14 (one pant).

10. It has been vehemently argued by the learned counsel for the Appellants that the Prosecutrix has been medically examined within hours of the alleged commission of rape by four adults. In that circumstance absence of semen on exhibits 1 (underwear of the Prosecutrix), 3(Vaginal Swab), 4 (Nail Clippings), 5 (Hymen Swab), 6 (Labial Sample) and 14 (one pant) falsify the entire prosecution case. Learned counsel for the Appellants have further submitted that semen was detected on Exhibits 8, 10 and 12 which are underwear of the Appellants and detection of the semen on their respective underwear is not an incriminating circumstances for convicting them for any offence. Learned counsel for the Appellants have also referred to the material discrepancies and improvements made by the Prosecutrix in her statement before the police (Ex. PW-4/A), statement under Section 164 Cr.P.C. and her deposition before the Court which falsify the entire prosecution case. It is further submitted on behalf of the Appellants that Prosecutrix was stated to have been taken away from near the bus stand A-5 Narela by four persons but only one motorcycle was initially described and it is difficult for five persons to ride on one motorcycle on a busy road with, the Prosecutrix being made to sit with her mouth gagged. It is further submitted that site plan shows that for going to jungle area, they have to cross many crossings and Mansa Devi Mandir. In view of the climatic conditions in the first week of August when most of the people remain outdoor, it was not possible to take her in that manner and again to bring her back and leave her near A-4 Pocket Narela. It has been submitted that entire case of the prosecution is based on testimony of the Prosecutrix which suffer from improbabilities and there are

inherent infirmities in her testimony. Thus, all the Appellants who are in custody for more than six years in this case, deserve to be acquitted.

11. On behalf of the State, Mr. Neeraj Kumar Singh, APP submitted that the Prosecutrix in this case is a young girl who was on the verge of the attaining majority when she was taken away on a motorcycle to jungle and raped by the four appellants. Her testimony throughout have remained consistent on the issue of identity of the four Appellants as well the act of rape being committed by all four of them by turn. Mr. Neeraj Kumar Singh, APP for the State has also stated that legal position is well settled in a rape case that the testimony of the Prosecutrix is sufficient to form basis of conviction if it is creditworthy and inspiring confidence. He has further submitted that previous enmity between the appellant Vinod and her father (PW-6) is of no consequence as the dispute was already settled and just because there may be some hidden ill will in the mind of PW-6, he would not put the reputation of her daughter at stake. Thus, the testimony of the Prosecutrix have been rightly appreciated by the learned trial Court to convict the Appellants and the impugned judgment and order on sentence may not be interfered with.

12. I have considered the rival contentions and also carefully perused the Trial Court Record.

13. It becomes to necessary to note the testimony of PW-4 "P" - the Prosecutrix, PW-6 Chander Pal - father of the Prosecutrix and PW-8 W/ASI Rajbala - the investigating officer to ascertain about the circumstances in which the statement of the Prosecutrix was not recorded immediately when the police visited the spot. It may be noted here that different versions are coming on record on this aspect. Statement of PW-8 10 W/ASI Rajbala is also material for the reason that she has directly reached the police station on getting the information about DD No. 5-A. SI M.P. Singh to whom the DD was marked is neither cited nor examined as a witness. Whatever he might have reported about the DD No. 5-A at the police station, the concerned DD has not been placed on record. When PW-6 Chander Pal, father of the Prosecutrix is the informant and as per his version, on getting the information (here we are not entering into the controversy whether he was informed by the victim or her Bua), he reached the house of his neighbour treated as sister (Moohboli Bua of the Prosecutrix), he saw his daughter in bad condition. Then he informed the police from his mobile phone. In that circumstance, when the police party arrived at their house pursuant to DD No. 5-A, there was no question of father being not present at the house alongwith the Prosecutrix at that time. The Prosecutrix had no reason for not making any statement to the police at that time. It is also necessary to record here that all the Appellants are well known to the informant and the Prosecutrix but neither in the DD their identity or names were revealed nor on the MLC the Prosecutrix had given the name or number of the persons who committed the gang rape. It may be noted here that as per the MLC, she was conscious and well oriented at that time. The MLC does not record any wet clothes or mud on her person or clothes

despite the fact that she claimed to have been raped on water logged grass in bushes.

14. First of all, it is necessary to refer to the endorsement Ex. PW8/A made by W/ASI Rajbala on the rukka Ex. PW4/A, which is as under :

"Shriman D.O. Sahib, Thana Narela, Delhi ASI Rajbala bahaal sarkaar nivedan hai ki DD No. 5-A, PS Narela, Milne par man ASI haazir thana aayi va dtd. 5.8.08 shikaayatकर्ता jisne pehle kaha tha ki merapitaji aanepar bayaan doongi, apnepitaji ke saath hazir thana aayi. Jisne apna bayaan uprokt pust haza tehrir karaya....."

15. As per statement of PW-8 W/ASI Rajbala, on receipt of DD No. 5-A Ex. PW3/D, she reached the police station and Prosecutrix alongwith her father Chander Pal came to the police station. She recorded the statement Ex. PW4/A of the Prosecutrix and thereafter she alongwith other staff took the Prosecutrix to Maharishi Balmiki Hospital for medical examination. PW-8 W/ASI Rajbala also stated that Bua of the Prosecutrix also came to the Police Station but she did not accompany them to the hospital for medical examination of the Prosecutrix. It shows that W/ASI Rajbala had not initially visited the spot. From the record, it cannot be ascertained as to when SI M.P. Singh visited the spot and what action was taken in the matter by him as no such DD entry is placed on record nor SI M.P. Singh has been cited and examined as a witness in this case. However, from the above endorsement, it can be gathered that when the police visited the Prosecutrix on receipt of DD No. 5-A, the Prosecutrix did not make any statement to the police. Rather, it shows that her father was also not present with her at that time and subsequently, they have reached the police station. It becomes necessary to note the above facts as the version of PW-4 "P" and her father PW-6 Chander Pal in this regard is at variance and creates serious doubt.

As per Statement Ex. PW4/A made by the Prosecutrix before the police :

"In her statement Ex. W4/A, the Prosecutrix has given her address to be that of A-6, Narela, aged 18 years and has also given her mobile number, (complete address and mobile number of the Prosecutrix withheld). She stated that:

(i) On the date of occurrence, when she reached Sector-5A Bus Stand at 8.00 pm, the Appellant Satbir came to her and asked whether she had come alone.

(ii) In the meantime, Appellants Vinod, Babloo and Sony also came near her and while Appellant Vinod pressed her mouth, Appellants Babloo and Sony lifted her from her feet and made her to sit on the motorcycle of Appellant Vinod.

(iii) She was taken to jungalat where she was gang raped by all the four Appellants.

(iv) Appellant Vinod brought her back on his motorcycle and dropped her at Pocket-4 and thereafter all the four ran away.

(v) All the four persons had forcible committed rape on her and she had come to

the police station to report the matter after arrival of her father who live in Green Park.

History given by the Prosecutrix before the Doctor and recorded on her MLC Ex. PW2/A which was prepared on 05.08.2008 at 5.15 am :

- (i) Alleged history of rape (without disclosing the names or number of persons who committed rape or the place where the offence was committed).
- (ii) On examination, she was found conscious, cooperative and well oriented.
- (iii) No external injury or bite marks except minor scratches on left elbow.

Statement Ex. PW4/K of the Prosecutrix recorded under Section 164 CrPC before the Magistrate:

- (i) On the date of incident, when she returned from work and got down at Sector-5, Bus Stand, Appellant Satbir met her and asked whether she was alone. Then Appellant Vinod came and pressed her mouth and made her to sit on motorcycle.
- (ii) She was taken to jungle and Appellants Babloo and Sonu were also with them.
- (iii) Appellant Vinod forced himself on her in the jungle and when she resisted, he slapped her twice/thrice. Vinod caught her shirt.
- (iv) Someone caught her by hand, someone pressed her mouth, then Appellant Vinod removed her salwar and all of them raped her by turn.

Deposition of the Prosecutrix (PW-4) before the Court:

- (i) On 04.08.2008 at about 8.00 pm when she got down at Bus Stand Sector-5, Narela, it was raining at that time.
- (ii) Appellant Satbir came to her and asked whether she was alone.
- (iii) In the meantime, Appellants Sonu and Babloo also came. While Appellant Sonu pressed her mouth, Appellant Babloo caught her legs and made her to sit on the motorcycle of Appellant Vinod who was also present there with his motorcycle.
- (iv) The Appellants were having one more motorcycle with them and she was taken to some jungle.
- (v) Appellant Vinod tried to take off her clothes and her shirt was torn from the front and her all clothes were removed. When she started raising hue and cry, then he (Vinod) gave beatings to her.
- (vi) Thereafter Appellant Vinod was followed by Appellants Sonu, Babloo and in the last Appellant Satbir had sexual intercourse with her.
- (vii) Thereafter she put on her clothes and Appellant Vinod took her back on his motorcycle and left her near the house of her Bua.

- (viii) She narrated the incident to her Bua who then rang up her father.
- (ix) Her father came there and after seeing her, made call to PCR.
- (x) Police took her to the hospital where the Doctor seized her undergarments which she was wearing at the time of incident.
- (xi) Lady police official namely ASI Rajbala accompanied her to the hospital besides her Bua.
- (xii) At the time of kidnapping, she was sitting behind Appellant Vinod and Appellant Sonu sat behind her and pressed her mouth.
- (xiii) She could not pin point said place to the police as the incident had taken place in the night.

Statement made by PW-6 Chander Pal, father of the Prosecutrix before the Court:

- (i) On 04.08.2008 at about 10.00 pm, she received a call from his daughter "P" to come home immediately as something had happened to her.
- (ii) When he reached Narela, he found his daughter "P" with his neighbour sister and her daughter was in bad condition.
- (iii) Her clothes were also in bad condition i.e. stained with mud and she was having scratches on her hands and arms.
- (iv) Her daughter narrated the incident to her that Appellant Satbir and three other boys namely Vinod, Babloo and Sonu had taken her to jungle at Mansi Devi Road where they raped her.
- (v) Thereafter he informed PCR and police came and necessary investigation was conducted.

As per the Statement made by PW-8 W/ASI Rajbala :

- (i) On 05.08.2008, on receipt of DD No. 5-A regarding rape, she reached the police station.
- (ii) Prosecutrix "P" alongwith her father came to the police station and she made statement Ex. PW4/A.
- (iii) She alongwith Lady Ct. Sudesh and Ct. Yashwant took her for medical examination, collected her MLC and prepared rukka Ex. PW8/A.
- (iv) Exhibits prepared by the doctor were seized.
- (v) She alongwith the Prosecutrix and Lady Constable reached the spot from where the Prosecutrix was lifted and taken to jungle.
- (vi) She prepared the site plan on the pointing out of the Prosecutrix.
- (vii) On 05.08.2008 in the evening, all the accused persons were arrested.

(viii) Prosecutrix was produced before the Court on 06.08.2008 for getting her statement recorded under Section 164 CrPC Ex. PW4/K.

(ix) Exhibits were sent to FSL and results Ex. PWIO/A and B were obtained.

During cross examination, PW-8 W/ASI Rajbala stated :

(i) She reached the spot at about 7.00 am, which was kaccha with bushes and trees at the spot and some bushes were thorny.

(ii) Statement of the Prosecutrix was recorded at 5.35 am.

(iii) From then hospital, she had directly gone to the place of incident and it took about 1 hour or 1 hour 15 minutes to reach the spot from the hospital.

(iv) Father of the Prosecutrix accompanied them to the spot.

(v) The Prosecutrix had told only about one motorcycle and had not told that Satbir was drunk.

(vi) Prosecutrix had not told that Sonu had pressed her mouth. She had told that accused Vinod had pressed her mouth.

(vii) Prosecutrix had not informed about any injury on her person during the incident and there was no injury. mark on her person.

(viii) Prosecutrix had stated about her Bua in her complaint and her Bua had come to the Police Station but not visited the hospital.

(ix) Statement of Bua of the Prosecutrix was not recorded by her.

(x) Road lights were there at the Bus Stand of Sector-A5.

(xi) Prosecutrix had not told that her clothes were torn at the time of incident.

16. From the bare reading of the testimony of PW-3-"P" the Prosecutrix, PW-6 Chander Pal-father of the Prosecutrix and PW-8 W/ASI Rajbala, it is established that there are material improvements and embellishments in their version on almost all vital aspects of the case. It is necessary to note here that neither the Investigating Officer nor PW-3 "P" and Pw-6 Chander Pal have initially stated that on that day, it was raining heavily. Further when PW-3 had stated that her clothes were torn and removed at the time of commission of offence, it was necessary to seize those clothes. Though the Prosecutrix had claimed that she was raped on a water logged grass with thorny bushes around, except some minor scratched on her left elbow, which is not even described as fresh injury on the MLC, she had no injury or bite marks on her body. Despite being claimed that she was raped by four Appellants, FSL result shows that semen could not be detected on exhibit-1, 3, 4, 5, 6 and 14 i.e. underwear, vaginal swab, nail clippings, hymen swab, labial sample and pant respectively. It may be noted here that during her examination before the Court, she has specifically stated that the Doctor had seized her undergarments which she was wearing at the time of

incident.

17. Now it is time to discuss the legal principles laid down by the Supreme Court in the case of Pratap Misra and Others Vs. State of Orissa, and apply them to the testimony of the Prosecutrix to ascertain the creditworthiness of the same. In Pratap Misra's case (Supra), it was held as under:

"Unless under the influence of drink or drugs or asleep or ill, a fully grown girl or adult woman should be able to resist a sex assault.

We should expect to find evidence of a struggle to avoid sexual contact or penetration, and may well feel uncertainty about the real nature of an alleged assault in its absence....

A false accusation of rape may some times be exposed by marks of violence being wholly inadequate or absent. Bruises upon the arms or the neck may be considered to constitute some evidence of a struggle; and impressions of finger nails are also significant. Bruises or scratches about the inner side of the thighs and knees may be inflicted during., attempts to abduct the legs forcibly, and care must also be taken to examine the back, for the victim may have been pinned against the wall or floor. It is important to record these in detail, and to say, if possible, how fresh they are. The ageing of bruises is, as was indicated in Volume I, a matter of some uncertainty in the absence of microscopy.

Strong corroborative evidence of a struggle might be obtained from an examination of the accused for similar marks of bruises or scratches about the arms or face, and possibly even about his penis, though this is less likely.

Though injury is most unlikely to the penis, a man may have had his face scratched or have been bitten during a sex assault. The clothing may bear some contact traces of the woman-hairs, vaginal secretion or blood, and, though of less significance, seminal stains.

The medical evidence, therefore, clearly discloses that the prosecutrix does not appear to have put up any resistance to the alleged onslaught committed on her by the appellants. From this the only irresistible inference can be that the prosecutrix was a consenting party which would be reinforced by other circumstances to which we shall refer hereafter.

9. Another aspect of the matter is that where there has been any real resistance there is bound to be local injury and marks of violence on the body and the limbs of the victim. Taylor in his book Principles and Practice of Medical Jurisprudence, Vol. II, observes thus at p. 64:

Nevertheless, it is most likely that when there has been some real resistance, local injury will be apparent and probably also marks of violence on the body and limbs.

Although according to the prosecutrix, three persons raped her with great force and violence resulting in great pain to her and her breasts becoming swollen and

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

I examined her (P. W. 1) at 5-15 p.m. on 20-4-1972. There was no injury or bruise mark on the breasts or chest There was no injury mark on the face, thighs and over the whole body.

If the story of the prosecutrix was true, then we should have expected an injury or bruise-mark on the breasts or chest or on the thighs or other part of the body. The learned Sessions Judge, with whom the High Court has agreed, seems to have brushed aside this important circumstance on the ground that as the prosecutrix was examined by the Doctor on April 20, 1972, at about 5 P. M about 17 hours after the occurrence injuries may have disappeared and has relied on an observation of Taylor at p. 66 of his book which runs as follows:

Injuries from rape may soon disappear or become obscure, especially in women who have been used to sexual intercourse.

The Sessions Judge explained that as the prosecutrix was habituated to sexual intercourse injuries may have disappeared. While referring to one part of the observation of Taylor, the learned Sessions Judge has completely lost sight of the other part which explains the real issue and which runs thus:

After 3 or 4 days, unless there has been unusual degree of violence, no traces may be found. Where there has been much violence, the signs may of course persist longer.

Thus, if such a serious violence was caused to the prosecutrix by the appellants, the injuries are not likely to have disappeared before 2 or 3 days and the signs were bound to persist at least when she was examined by the Doctor. The absence of injuries on the person of the appellants as also on the person of the prosecutrix is yet another factor to negative the allegation of rape and to show that the appellants had sexual intercourse with the prosecutrix with her tacit consent."

18. PW-4 "P" stated before the Court that:

".....over there I narrated about the incident to my Bua and who then rang up my father. My father thus came over there and upon seeking me made a call to the police at number 100. Police then took me to MB hospital and got me medically examined. Police also recorded my statement and the same is Ex. PW4/ A and it bears my signatures at point-A. The doctor had seized my undergarments which I was wearing at the time of incident....."

".....It was raining heavily at that time. Traffic does flow on the road. We travelled for about ten minutes on the motorcycle for reaching the said jungle. Later on I had come to know that the said place where they had taken me was near Singhu Border. The place where I was raped was a grassy ground but water

was logged over there on account of rain. There were bushes around the place. At the time of incident, I was wearing a pink colour suit. My underwear was of black colour. I do not remember as to what was the colour of the clothes of accused Vinod or that of Sonu, Babloo or Satbir. It is wrong to suggest that at the time of rape I did not raise any hue and cry. It is wrong to suggest that no such incident of rape took place with me. As the incident had taken place in the night, so I could not pinpoint the said place to the police again when they asked me to do so. I never told to the police that besides residing with my Bua I was also residing with my father. The lady police official namely ASI Raj Bala had accompanied me to the hospital besides my bua. I stayed at the hospital for about 10 minutes. As it was night time, so I could not see as to what was the colour of the motorcycles. It is wrong to suggest that at the time of my kidnapping there was sufficient lights on the account of electric polls. Vol. I did not notice them. At the time of recording my statement Ex. PW4/A my father was also present....."

19. When the testimony of the Prosecutrix is examined on the anvil of above principles, it is difficult to term her as "sterling witness".

20. It is surprising that Bua of the Prosecutrix has not been cited as a witness though she was the first person who met the Prosecutrix when she returned home and as per the complaint, she informed the father of the Prosecutrix. There is also material discrepancy in the version of PW-4 "P" -the Prosecutrix, PW-6 Chander Pal and PW-8 W/ASI Rajbala as to who informed PW-6 Chander Pal-father of the Prosecutrix about the incident, whether Bua of the Prosecutrix had accompanied the Prosecutrix to the police station and if so, why her statement was not recorded though she was the first person to see the Prosecutrix after being gang raped. The clothes of the Prosecutrix have not been seized. Neither the Investigating Officer nor the father of the Prosecutrix had stated about heavy rainfall on that evening. The MLC of the Prosecutrix does not record that on any part of the body of the Prosecutrix or her clothes, any mud was found. It is also not the case of the Prosecutrix that she had taken bath and washed her clothes after returning home. 10 had not conducted any investigation by collecting soil sample from the place of occurrence and getting it compared with any mud found on the clothes or body of the Prosecutrix as well on the bike of the accused persons. It may be noted that soil sample of the bike of the accused persons, if matched with the soil sample on the body and clothes of the Prosecutrix, would have been a clinching evidence to nail them. It appears that to evade the question as to why she did not raise any alarm while being taken on motorcycle, she had given this version and then to probablise as to how four persons could take her to jungle on one motorcycle, she introduced another story of there being two motorcycles and not being able to catch the public attention because of heavy rainfall at that time.

21. Two different mobile numbers, one of the Prosecutrix and another of her father have surfaced on record. Since the informant was father and information

to PCR was given after midnight after arrival of PW-6 Chander Pal to the house of his Moohboli sister and seeing the condition of the Complainant, it is not understandable as to how there could be an endorsement by the IO that DD No. 5-A was kept pending as the girl stated that she would make the statement only after arrival of her father. It is not the case of PW-4 "P" - the Prosecutrix and PW-6 Chander Pal that when the police visited the spot, PW-6 Chander Pal father of the Prosecutrix was not present at the house. IO stated that the Prosecutrix came along with her father to the police station. IO is silent over the issue as to what happened when SI M.P. Singh and Ct. Yashwant visited the spot as recorded in endorsement on the rukka. SI M.P. Singh has not been cited and examined as a witness in this case.

22. With all these infirmities in her evidence, no implicit reliance could have been placed upon her evidence. The trial Court having failed to consider all the above improvements on material aspects, erroneously to the conclusion that her evidence was reliable.

23. It is true that gang rape is one of the most heinous crime that can be committed on a woman. It is one of the reason that Courts have leaned heavily in favour of the Prosecutrix. In the case of Abbas Ahmad Choudhary Vs. State of Assam, it was held as under:--

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

24. In the FIR, the Prosecutrix has named all the four appellants as having committed rape on her, who were well known to her being her neighbours. Still she had made material improvements in naming the person who was sitting behind her on the motorcycle and gagging her mouth while taking her to the jungle and bringing her back. She had named different person at different stages.

25. It is no doubt true that in law, in a case of rape, the conviction can be based on the solitary statement of the Prosecutrix but that is only when the evidence of the Prosecutrix is inspiring confidence and is natural and truthful. The evidence of the Prosecutrix in this case is not of sterling quality so as to form basis of conviction of the Appellants. There is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful account of the occurrence.

26. In view of the above discussion, all the four appeals are allowed and all the four Appellants are acquitted of the charges framed against them. Their bail bonds stand cancelled and sureties discharged. All the four Appellants be set at liberty forthwith, if not wanted in any other case.

27. TCR be sent back along with copy of this order. Copy of this order be also sent

to the concerned Jail Superintendent for necessary information and compliance.