

(2015) 06 SHI CK 0059

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 113 and 177 of 2013

Vijay Kumar and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 109, 296, 313, 41(2)
Penal Code, 1860 (IPC) — Section 34, 376, 376 (2)(g), 376(2), 376(2)(g)

Citation : (2015) 06 SHI CK 0059

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Anoop Chitkara, for the Appellant; Ashok Chaudhary, V.S. Chauhan, A.A.Gs and Vikram Thakur, Dy. Advocate General, Advocates for the Respondent

Judgement

Piar Singh Rana, J.—Both appeals filed against same judgment and sentence passed by learned Additional Sessions Judge, Fast Track Court Solan in Session trial No. 18FTC/7 of 2009 decided on dated 12.3.2013 titled State of HP v. Vijay Kumar and another. Hence both appeals are consolidated and disposed of vide same judgment in order to avoid conflict judgment.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that on intervening night dated 30.11.2008 and 1.12.2008 at about 1.30 mid night accused persons have committed gang rape upon prosecutrix in Krishna hotel in room No. 27. It is further alleged by prosecution that on intervening night of 30.11.2008 to 1.12.2008 dated 30.11.2008 prosecutrix had stayed in room No. 28 with her boy friend PW12 Rajesh in Krishna hotel. It is further alleged by prosecution that co-accused Naresh Kumar who was manager of Krishna hotel entered into room where prosecutrix was staying during the night and thereafter gagged mouth of prosecutrix. It is further alleged by prosecution that thereafter co-accused Naresh Kumar called co-accused Vijay Kumar @ Tantu on mobile phone and thereafter co-accused Vijay Kumar @ Tantu came in the room of Krishna hotel

where prosecutrix was staying and lifted prosecutrix forcibly from room No. 28 and took prosecutrix to adjoining room No. 27. It is further alleged by prosecution that thereafter both accused persons undressed prosecutrix and thereafter co-accused Vijay Kumar @ Tantu committed sexual intercourse with prosecutrix without her consent. It is further alleged by prosecution that co-accused Naresh Kumar manager of Krishna hotel kept watching so that no one could enter inside room No. 27. It is further alleged by prosecution that cell phone of prosecutrix was broken by co-accused Naresh Kumar who was manager of hotel. It is further alleged by prosecution that after committing sexual intercourse upon prosecutrix by co-accused Vijay Kumar @ Tantu both accused persons left the room of Krishna hotel. It is further alleged by prosecution that thereafter prosecutrix came back from room No. 27 to room No. 28 where her boy friend Rajesh was sleeping unconsciously due to effect of intoxication. It is further alleged by prosecution that thereafter prosecutrix threw water upon PW12 Rajesh with bucket and thereafter PW12 Rajesh regained senses and thereafter prosecutrix narrated entire incident to her boy friend PW12 Rajesh. It is further alleged by prosecution that thereafter prosecutrix along with PW12 Rajesh came at reception room where co-accused Naresh Kumar was sitting as manager. It is further alleged by prosecution that thereafter application Ext PW10/A was filed in police station Sadar Solan and FIR Ext PW10/B was registered. It is further alleged by prosecution that thereafter prosecutrix was medically examined and medical examination of prosecutrix was conducted by medical board comprising PW18 Dr. Anju Madan and PW20 Dr. Amrish Kapoor. It is further alleged by prosecution that thereafter MLC of prosecutrix Ext PW18/B was obtained. It is further alleged by prosecution that underwear Ext P8, bra Ext P9, top Ext P10 and Jeans Ext P11 and sanitary pad Ext P12 of prosecutrix took into possession and same were sent for chemical examination to FSL Junga. It is further alleged by prosecution that prosecutrix located room No. 27 and 28 of Krishna hotel and site plan was prepared. It is further alleged by prosecution that bed sheets of room No. 27 and 28 also took into possession by investigating agency. It is further alleged by prosecution that MLC of co-accused Naresh Kumar also obtained. It is further alleged by prosecution that co-accused Naresh Kumar had entered into room No. 28 through window of bath room. It is further alleged by prosecution that parcel containing bed sheets, pieces of broken glass, clothes of prosecutrix, blood sample of prosecutrix, vaginal swab and pubic hairs of prosecutrix were deposited in malkhana. It is further alleged by prosecution that thereafter report of Scientific officer FSL Junga Ext PW7/A was obtained. It is further alleged by prosecution that underwear of accused persons also took into possession and blood sample and semen were sent for chemical examination to FSL Junga. It is further alleged by prosecution that photographs of rooms were also obtained. Charge was framed against accused persons on dated 15th July 2010 under Section 376 (2)(G) IPC by learned Presiding Officer Fast Track Court Solan. Accused persons did not plead guilty and claimed trial.

3. Prosecution examined following oral witness and accused adduced following

defence witness in support of defence.

4. Prosecution also produced following documentary evidence in support of its case:--

5. Statements of accused persons were also recorded under Section 313 Cr PC. Accused persons have stated that they are innocent and they have been falsely implicated in the present case. Learned trial Court convicted both appellants under Section 376(2)(g) IPC and sentenced both accused persons to rigorous imprisonment for a period of ten years and to pay fine to the tune of Rs. 10,000/- (Ten thousand) each. Learned trial Court further directed that in default of payment of fine appellants shall further undergo rigorous imprisonment for one year. Learned trial Court further directed that if fine amount realized same would be paid to prosecutrix as compensation.

6. Feeling aggrieved against the judgment and sentence passed by learned Additional Sessions Judge Fast Track Court Solan appellants filed present both appeals.

7. We have heard learned Advocate appearing on behalf of the appellants and learned Additional Advocate General appearing on behalf of respondent and also gone through the entire record carefully.

8. Point for determination before us is whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had committed miscarriage of justice to appellants.

9. ORAL EVIDENCE ADDUCED BY PROSECUTION:

9.1 PW1 Rakesh Kohli has stated that he is owner of Krishna guest house situated near vegetable market Solan. He has stated that he remained associated in the investigation of case. He has stated that on dated 1.12.2008 he handed over one register of his guest house to Investigating Officer in the presence of witness Anu and Rajesh. He has stated that Ext PW1/A was prepared by police officials. He has stated that register is Ext P1. He has stated that entry regarding stay of Rajesh and prosecutrix in Krishna hotel on dated 30.11.2008 is Ext PW1/B which was filled by Rajesh. He has stated that on dated 30.11.2008 no other persons stayed in his hotel except Rajesh and prosecutrix. He has stated that co-accused Naresh Kumar was care taker of the hotel and at the time of incident co-accused Naresh Kumar was working in hotel. He has stated that thereafter co-accused Naresh Kumar left the job from hotel. He has stated that he issued certificate Ext PW1/C which bears his signature in red circle at point "A". He has stated that police officials also took into possession bed sheets from room Nos. 27 and 28 and sealed the same in two different parcels. He has denied suggestion that memo Ext. PW1/B was not prepared at the spot. He has stated that total rooms in the guest house are 15. He has stated that he was not present in the night in hotel and he had no personal knowledge about case.

9.2 PW2 Sushil Bansal has stated that he was posted as HHG in police station

Sadar Solan since 2008. He has stated that he remained associated in the investigation of present case. He has stated that on dated 1.12.2008 he along with police officials was present at Krishna hotel bypass Solan. He has stated that police officials took one bed sheet from room No. 28 and pieces of broken glass in his presence and in the presence of witness. He has stated that bed sheet and pieces of glass were put in separate cloth parcel and sealed with seal impression "B" having seven seal impressions on each parcel. He has stated that memo Ext PW2/A was prepared. He has stated that owner of guest house was also present. He has stated that police officials also took into possession one bed sheet Ext. P3 from room No. 27 of the guest house. He has stated that bed sheet was wrapped in white clothes and sealed with seal impression "B". He has stated that entry register of the guest house was also taken into possession by police officials. He has stated that register is Ext P1. He has denied suggestion that no pieces of glass were present in the room of hotel. He has denied suggestion that no pieces of glass were taken into possession by police officials. He has stated that he does not know that prosecutrix had informed police officials that nothing was happened with her.

9.3. PW3 Pawan Kumar has stated that he is owner of hotel situated at Sadhupul. He has stated that Rajesh is his younger brother. He has stated that on dated 3.12.2008 he was called at police station Sadar Solan. He has stated that his brother Rajesh was under the influence of liquor. He has stated that prosecutrix was also present there. He has stated that Rajesh and prosecutrix went to the office of Tehsildar Solan and their statements were recorded by Tehsildar at Solan. He has stated that nothing was taken into possession by police officials in his presence. Witness was declared hostile. He has admitted that on dated 31.12.2010 Rajesh stayed with prosecutrix in Krishna hotel near bypass road Solan. He has stated that he had not filed any complaint to SP Solan. He has stated that no force was used by police officials to obtain signature of prosecutrix and Rajesh. He has denied suggestion that affidavits of Rajesh and prosecutrix were obtained by force and by way of exercising the influence by accused persons. He has denied suggestion that family of accused persons are influential persons and they have pressurized the prosecutrix and Rajesh to give affidavit to hush up the matter. He has stated that he did not enter in the office of Tehsildar Solan. He has stated that no FIR was registered against police officials. He has denied suggestion that he is deposing falsely at the instance of accused persons.

9.4 PW4 Gulab Singh has stated that he remained posted as Constable at police station Sadar Solan from 2007 to 2010. He has stated that on dated 23.3.2009 he remained associated in the investigation of present case. He has stated that he went through bypass road Solan to Krishna guest house situated near vegetable market Solan. He has stated that PW1 Rakesh Kohli had produced one certificate Ext PW1/C which was taken into possession by Investigating Officer vide memo Ext PW1/D.

9.5 PW5 Ram Lal has stated that in the year 2008 he was posted as HHC at police station Sadar Solan. He has stated that on dated 30.11.2008 he was working in police station as MHC and also used to attend telephone calls. He has stated that on dated 1.12.2008 at about 4 AM one Alto car bearing registration No. HP 64-1311 came at police station and one boy and one girl alighted from the car and came to information room police station Sadar Solan. He has stated that he inquired from them about the reason for coming to police station and they disclosed that last night they stayed in Krishna hotel near bypass road Solan and during night time manager of Krishna hotel and another person had given beatings and misbehaved with them. He has stated that he provided pen and white paper to them. He has stated that girl filed written complaint on paper and produced before him. He has stated that prosecutrix had written in her complaint that she was raped in Krishna hotel. He has stated that he immediately informed Station House Officer and thereafter lady constable was called to police station Sadar Solan. He has denied suggestion that prosecutrix was forced by police officials to file complaint against her wishes. He has denied suggestion that prosecutrix did not intent to file any complaint against accused persons.

9.6 PW6 Muna has stated that he is driver by profession. He has stated that he was driver of truck having registration No. HP-13B-0424. He has stated that Pawan was owner of the truck. He has stated that he along with Raju @ Rajesh were sitting in Tipper and were going to collect bricks to Surajpur. He has stated that Rajesh deboarded truck near Koti and went in Alto car and came towards Solan side. He has stated that he went to Krishna hotel and saw that Rajesh and prosecutrix was sitting in the room. He has stated that he inquired from Rajesh and prosecutrix whether they want to go to home but they refused. He has stated that thereafter he went towards Sadhupul and reached at Solan at 10.30 PM. He has stated that Alto car was parked near Krishna hotel.

9.7. PW7 Ajay Sehgal has stated that he was posted as Scientific Officer Biology and Serology Division State FSL Junga HP Shimla since 12.6.2008. He has stated that he is M.Sc in Botany. He has stated that 15 sealed parcels were received through Constable Dinesh Kumar. He has stated that seals on the parcel were intact and tallied with specimen seals. He has stated that he examined exhibits found in the parcels. He has stated that as per biological and serological examination in the laboratory the result of examination was as under. (1) Blood and semen was not detected on exhibit-1 (Pubic hair Anu Kumari), exhibit 5e (Brassiere Anu Kumari), Exhibit-7(Pubic hair Vijay Kumar), exhibit-11a (Vest Naresh Kumar) exhibit-12 (Pubic hair Naresh Kumar), exhibit-15 (Slides Naresh Kumar) and exhibit-16 (Slides, Vijay Kumar.) (2) Human blood was found in exhibit-2 (Blood sample Anu Kumari) exhibit-3 (Blood sample Anu Kumari), exhibit-10 (Blood sample Vijay Kumar) and exhibit-14 (Blood sample Naresh Kumar). (3) Blood was detected in traces on exhibit-4 (Vaginal smear slides Anu Kumari) but it was insufficient for further examination human semen was found on the exhibit. (4) Blood was not detected on exhibit-5a (Pants Anu kumari),

exhibit-8a (Underwear of Vijay kumar), exhibit 8b (T-shirt Vijay Kumar), exhibit 11-b (Underwear Naresh Kumar) and exhibit-19 (Bed Sheet) but human semen was not found on the exhibits. (5) Human blood was found on exhibit-5b (Upper/hood Anu Kumari) and exhibit-5c (Underwear Anu Kumari) but semen was not detected on the exhibits. (6) Blood was detected in traces on exhibit-5d (Pad Anu Kumari and exhibit-20 (Bed sheet) but it was insufficient for further examination. Semen was not detected on the exhibits. The report Ex. PW7/A (Two leaves) bear his signature in red circle A with stamp of scientific officer. He has stated that blood was detected in traces upon pad and vaginal smear slide which was not sufficient for further examination. He has stated that he could not state definitely whether human blood which was detected was blood of menstruation period or not.

9.8. PW8 Dr. Subhash Thakur has stated that he was posted as Medical Officer Regional Hospital Solan in the year 2008. He has stated that on the request of police officials he examined co-accused Vijay Kumar @ Tantu and co-accused Naresh Kumar. He has stated that co-accused Vijay Kumar @ Tantu was normal built male. He has stated that on examination of external genitalia pubic hairs were present and scrotum and penis were well developed. He has stated that he handed over MLC, two sealed sample of pubic hair and samples obtained upon slides to police officials. He has stated that co-accused Vijay Kumar @ Tantu was normal built male and he was capable of performing sexual intercourse. He has stated that MLC Ext PW8/B was issued by him. He has stated that he also examined co-accused Naresh Kumar and he was capable of performing sexual intercourse. He has stated that MLC Ext. PW8/B bears his signature. He has admitted that no human blood or semen was detected on pubic hair examined by them. He has admitted that in young age generally boys have night falls and semen comes out.

9.9. PW9 HC Hardev has stated that in the year 2008 he remained posted as MHC Police Station Solan. He has stated that on the direction of Station House Officer he recorded FIR in the computer and also issued CIPA certificate regarding functioning of computer. He has stated that certificate Ext PW9/A bears his signature in red circle "A". He has stated that application was not given in writing to SHO in his presence. He has stated that SHO had given him one application to fill it in the computer.

9.10 PW10 Inspector Govind Ram has stated that he remained posted as SHO police station Sadar Solan. He has stated that HHC Ram Lal informed him telephonically to come to police station and thereafter he came to police station Solan. He has stated that one girl and one boy were present at police station. He has stated that prosecutrix handed over complaint Ext PW10/A and on the basis of complaint FIR Ext. PW10/B was recorded in the computer at police station Solan by MHC Hardev Singh. He has stated that after registration of FIR investigation was handed over to ASI Santosh Kumar. He has denied suggestion that prosecutrix requested him not to lodge complaint against accused persons.

He has denied suggestion that prosecutrix was forced to sign complaint without her consent.

9.11. PW11 Jagdish Chand has stated that he remained posted as SHO police station Sadar Solan. He has stated that after completion of investigation he prepared challan.

9.12. PW12 Rajesh Thakur has stated that he is owner of guest house at Sadhupul and he was also owner and driver of truck bearing registration No. HP-13-0403. He has stated that prosecutrix is known to him because prosecutrix used to visit to his guest house along with her family members. He has stated that he also used to visit at the house of prosecutrix at Kandaghat. He has stated that prosecutrix was working at Chandigarh and he also used to visit at the house of prosecutrix at Chandigarh. He has stated that he wanted to marry with prosecutrix. He has stated that he along with prosecutrix proceeded to Solan from Parwanoo. He has stated that prosecutrix met him in the evening at Parwanoo. He has stated that number of car of the prosecutrix was HP-64-1311. He has stated that he and prosecutrix consumed meal and wine at Dharampur. He has stated that in the way his driver Manish @ Munna met him. He has stated that prosecutrix was not feeling well and she was vomiting and thereafter he took a room in Krishna hotel. He has stated that thereafter they slept in the night in the room of Krishna hotel. He has stated that police officials came in the night at about 2.30 and inquired about him and thereafter police officials started beatings him. He has stated that he was kept in separate room by police officials. He has stated that he tried to talk with prosecutrix but police officials did not allow him to talk with prosecutrix. He has stated that co-accused Vijay Kumar @ Tantu and co-accused Naresh Kumar have not committed anything with prosecutrix and accused persons have been falsely implicated in the present case. Witness was declared hostile. He has admitted that he waited prosecutrix at Parwanoo. He has stated that prosecutrix came to Parwanoo in the evening in Alto car and thereafter he and prosecutrix proceeded to Solan in a car having registration No. HP-64-1311. He has stated that he had not married with prosecutrix till date. He has stated that prosecutrix is not his girl friend as of today. He has admitted that he and prosecutrix asked manager of Krishna hotel at Solan about dinner and manager of Krishna hotel told him that dinner would not be prepared in hotel. He has denied suggestion that co-accused Vijay Kumar @ Tantu came to Krishna hotel in his room with dinner and one bottle of liquor. He has denied suggestion that he consumed dinner in hotel. He has denied suggestion that he had taken many pegs of liquor. He has admitted that he along with prosecutrix slept in the room of Krishna hotel. He has denied suggestion that at about 2 PM prosecutrix had thrown water upon him to wake him. He has denied suggestion that co-accused Naresh Kumar had tried to rape prosecutrix. He has denied suggestion that co-accused Vijay Kumar @ Tantu took prosecutrix in the adjoining room of hotel and committed rape with prosecutrix without her consent. He has denied suggestion that prosecutrix had filed written complaint to police. He has stated that he did not file any complaint regarding beatings to him

against police officials. He has stated that he did not receive any injury. He has stated that he does not know whether medical examination of prosecutrix was conducted or not. He has denied suggestion that prosecutrix was working as receptionist in Indian Palace Hotel Mani Mazra since 2/3 years. He has denied suggestion that at about 11 PM after consuming dinner he went to sleep in the room of Krishna hotel. He has denied suggestion that at about 1.30 AM co-accused Naresh Kumar manager of Krishna hotel entered into the room through window of bathroom. He has denied suggestion that co-accused Naresh Kumar gagged mouth of prosecutrix. He has denied suggestion that prosecutrix also told him that she took glass of water from the table and tried to save her but co-accused Naresh Kumar had snatched the glass and thrown on the floor of hotel. He has denied suggestion that he was under the influence of liquor and he did not wake up. He has denied suggestion that co-accused Naresh Kumar contacted another co-accused Vijay Kumar @ Tantu on mobile phone. He has denied suggestion that thereafter after 4/5 minutes co-accused Vijay Kumar @ Tantu came in the room of hotel. He has denied suggestion that prosecutrix told him that co-accused Vijay Kumar @ Tantu immediately lifted the prosecutrix and took her to adjoining room. He has denied suggestion that prosecutrix told him that thereafter co-accused Vijay Kumar @ Tantu removed Jeen of prosecutrix immediately after putting her on bed. He has denied suggestion that prosecutrix told him that accused persons gagged her mouth when prosecutrix tried to raise hue and cry and when accused persons raped her. He has denied suggestion that co-accused Vijay Kumar @ Tantu committed rape with prosecutrix and after committing rape co-accused Vijay Kumar fled from the spot. He has denied suggestion that he resiled from his earlier statement in order to save accused persons.

9.13. PW13 Chander Mohan has stated that he remained posted as MHC Malkhana Incharge. He has stated that on dated 1.12.2008 ASI Santosh Kumar deposited three cloth parcels sealed with seal impression "B". He has stated that he recorded entry in malkhana register and was kept in safe custody. He has stated that malkhana register is Ext. PW13/A. He has stated that sealing and recovery of articles were not effected in his presence.

9.14. PW14 Constable Sita Ram has stated that in the year 2008 he was posted as Constable at police station Sadar Solan. He has stated that on dated 1.12.2008 Medical officer Civil Hospital Solan handed over him 12 parcels along with sample of seal. He has stated that on the same day he handed over case property to MHC malkhana Incharge. He has stated that case property remained intact in his possession. He has denied suggestion that no parcel was handed over to him. He has stated that in his presence no sealing was done and no recovery was effected.

9.15. PW15 LC Upasana has stated that in the year 2008 he remained posted as LC at police post City Solan. He has stated that on dated 1.12.2008 he was deputed to collect the samples. He has stated that medical examination of

prosecutrix was conducted at Civil Hospital Solan. He has stated that he deposited case property with MHC police station Sadar Solan. He has stated that case property remained intact in his custody. He has denied suggestion that no sealing was done in his presence. He has stated that parcels were not prepared and recovered in his presence. He has denied suggestion that no parcels were handed over to him.

9.16. PW16 HC Dinesh Kumar has stated that in the year 2008 he was posted as Constable at police station Sadar Solan. He has stated that on dated 3.12.2008 MHC handed over him case property 20 parcels in a sealed condition along with sample of seal "B". He has stated that he deposited case property in the office FSL Junga. He has stated that case property remained intact in his custody.

9.17. PW17 prosecutrix has stated that she was working as receptionist in Indian Palace Hotel at Panchkula. She has stated that on dated 1.12.2008 she had travelled by car having registration No. HP-64-1311 which belongs to her mother and proceeded towards Kandaghat where her mother was residing. She has stated that car was driven by Rajesh who was her friend at the relevant time. She has stated that she reached at Krishna resort at about 9.30 PM. She has stated that Rajesh her boy friend had booked room in the resort and entry to this effect was recorded in resort register. She has stated that she had stayed with her boy friend Rajesh in night in the room of resort. She has stated that driver of Rajesh namely Munna who was truck driver came to her room and he stayed in the room for about 10 minutes. She has stated that thereafter she consumed dinner which was procured from outside as dinner was not available in the resort. She has stated that after consuming dinner Munna left the room. She has stated that she slept in the room of resort. She has stated that room was bolted from inside and window of bath room was kept open. She has stated that co-accused Naresh Kumar entered inside the room of resort from window of bath room. She has stated that after entering into room co-accused Naresh Kumar gagged her mouth and asked her to move to next room. She has stated that she refused to do so. She has stated that thereafter co-accused Naresh Kumar called another co-accused Vijay Kumar @ Tantu. She has stated that co-accused Vijay Kumar came in the room after 20/25 minutes and thereafter co-accused Vijay Kumar lifted her in his lap and took her into next adjoining room. She has stated that she was wearing Jeans and Top at the relevant time. She has stated that despite of her protest both accused un-dressed her clothes. She has stated that thereafter rape was committed by co-accused Vijay Kumar @ Tantu and another co-accused Naresh Kumar had gone outside the room. She has stated that co-accused Vijay Kumar @ Tantu told to co-accused Naresh Kumar that no one should come inside room. She has stated that her cell phone was broken by co-accused Naresh Kumar. She has stated that incident took place at about 2 PM and thereafter both accused persons left and thereafter she came back in previous room where her boy friend Rajesh was sleeping in unconscious condition. She has stated that she threw water upon her boy friend Rajesh and he came to senses and thereafter she narrated entire incident to him. She has stated that thereafter she along with

her boy friend Rajesh went to reception room where co-accused Naresh Kumar manager of the hotel was sitting. She has stated that thereafter she along with her boy friend Rajesh went to police station Sadar Solan and FIR Ext PW10/B was registered. She has stated that thereafter police officials took her to RH Solan where she was medically examined by Medical Officer. She has stated that she handed over her Jeans, Top, underwear and Bra to Medical officer which were sealed. She has stated that thereafter she was took to resort by police officials and thereafter bed sheet and broken pieces of glass were took into possession by police officials vide seizure memo Ext PW2/A. She has admitted that Rajesh was her boy friend. She has admitted that her boy friend Rajesh had physical relations with her. She has stated that she had performed sexual intercourse with her boy friend Rajesh for 2/3 times. She has admitted that her boy friend Rajesh also visited at her residential house at Chandigarh. She has admitted that she was arrested along with other girls namely Pooja Baghele, Harwinder Gill, Sapna, Lucky Thakur, Priyanka, Mamta and Rajeev in a case under Section 41(2) and 109 Cr.P.C. She has admitted that above named girls were dancing in the hotel out of which one was her sister. She has stated that the name of her sister is Priya @ Anju. She has stated that she was arrested by police officials and thereafter she was released on bail. She has admitted that she was undergoing menstruation period when alleged incident took place. She has stated that she does not know whether she was wearing sanitary napkin pad at the time of menstruation period or not. She has denied suggestion that she had sexual intercourse with her boy friend Rajesh on the alleged date of incident. She has denied suggestion that her boy friend Rajesh had consumed only two pegs and he was in senses. She has denied suggestion that on the alleged date of incident police officials took her and her boy friend Rajesh to police Station. She has denied suggestion that she has falsely implicated accused persons in present case. She has stated that she was not married. She has stated that co-accused Naresh Kumar did not commit rape with her. She has stated that she was asked to enter into compromise with accused persons subject to payment of Rs. 1,00,000/- (One lac). She has stated that money was not paid to her. She has denied suggestion that just to grab money from accused persons false case was instituted by her.

9.18. PW18 Dr. Anju Madan has stated that PW18 was posted as Medical Officer in Regional Hospital Solan in the year 2008. Medical officer has stated that police filed application Ext PW18/A for conducting medical examination of prosecutrix who was brought by police of alleged history of sexual assault in Krishna hotel by a manager of Krishna hotel where she was staying with her boy friend Rajesh who was unconscious at that time. Medical officer has stated that board of two members of doctors was formed. Medical officer has stated that patient was found normal. Medical officer has stated that the height of patient was 5 feet. Medical officer has stated that pulse rate of the prosecutrix was 80 minutes and BP 100/80 mm. Medical officer has stated that breast of the prosecutrix was well developed. Medical officer has stated that pubic hairs were present. Medical

officer has stated that there was no mark of injury in the form of abrasion or contusion on the part of body including external genitalia. Medical officer has stated that there was no bleeding from the valva. Medical officer has stated that there was smelling of discharge with white colour. Medical officer has stated that there was no injury or bleeding in the vagina of prosecutrix. Medical Officer has stated that hymen was torn at 3 O'clock position. Medical officer has stated that there was no stains of semen or blood on the Jeans. Medical officer has stated that prosecutrix has menstruation four days ago. Medical officer has stated that there was no semen stains on the external genitalia. Medical officer has stated that MLC Ext PW18/B was issued. Medical officer has stated that after receiving FSL report blood was detected in traces and human semen was also detected upon vaginal slides of prosecutrix. Medical officer has stated that underwear Ext P8, bra Ext P9, top Ext P10, Jeans Ext P11 and Sanitary Pad Ext P12 are the same which were took into possession at the time of examination of prosecutrix. Medical officer has stated that victim was habitual of sexual intercourse. Medical officer has stated that no semen stain was found on the external genital part of the victim. Medical Officer has stated that there was no mark of violence on victim body and there was no injury on the person of victim. He has stated that only by DNA test it could be found that semen were of any particular person.

9.19. PW19 ASI Santosh Kumar has stated that he remained posted as Investigating Officer in police station Solan w.e.f. 2007 to 2009. He has stated that on dated 1.12.2008 after registration of FIR investigation of present case was handed over to him by SHO Police Station Solan and he along with police officials went to Krishna hotel. He has stated that manager of the hotel took him to the room in which prosecutrix had stayed. He has stated that manager of the hotel also took him to the room where rape was committed by co-accused Vijay Kumar @ Tantu upon the prosecutrix. He has stated that both rooms were checked and locked and key was took into possession. He has stated that manager of Krishna hotel had joined investigation and search of co-accused Vijay Kumar @ Tantu was carried out and he was spotted at village Kuthar. He has stated that he could identify manager of the hotel and co-accused Vijay Kumar @ Tantu. He has stated that both accused persons were brought to police station and application was filed for medical examination of prosecutrix and accused persons and thereafter MLC was obtained. He has stated that thereafter prosecutrix was brought to the spot and spot was inspected in the presence of prosecutrix and spot map Ext PW19/A was prepared at the instance of prosecutrix. He has stated that photographs Ext PW19/B1 to Ext PW19/B5 were snapped by him. He has stated that negatives are Ext PW19/B6 to Ext PW19/B10. He has stated that thereafter bed sheet of room No. 28 and broken pieces of glass were took into possession and the same were sealed in parcel. He has stated that bed sheet of room No. 27 also obtained and sealed in a parcel. He has stated that underwear Ext P8, bra Ext P9, Top Ext P10 and sanitary pad Ext P12 are the same which were took into possession by medical officer at the time of medical examination of prosecutrix. He has stated that bed sheet Ext P5 is the

same which was taken into possession by him from room No. 28. He has denied suggestion that he visited Krishna hotel in connection with raid after receiving information that immoral trafficking was going in Krishna hotel. He has denied suggestion that prosecutrix and her boy friend Rajesh were apprehended and they were brought to police station. He has denied suggestion that under the direction of politician accused persons were falsely implicated in the present case. He has denied suggestion that despite affidavit given by prosecutrix and her boy friend Rajesh accused persons were falsely implicated in the present case. He has stated that broken glasses were not sent to FSL Junga for obtaining finger print. He has admitted that prosecutrix was staying in the room of Krishna hotel with her boy friend Rajesh. He has stated that no semen of accused persons were taken into possession by Medical officer for comparison with recovered semen. He has stated that co-accused Naresh Kumar was care taker of hotel. He has stated that there was no evidence that co-accused Naresh Kumar had given beatings to prosecutrix and there was no evidence of pulling hairs of prosecutrix. He has stated that allegation of rape was not levelled by the prosecutrix against co-accused Naresh Kumar. He has stated that affidavits were produced before him by prosecutrix and Rajesh. He has stated that it did not come in his investigation that prosecutrix was offered Rs. 1,00,000/- (One lac). He has stated that prosecutrix and her boy friend were not available after handing over of affidavits and both had gone missing thereafter. He has denied suggestion that false case was filed against accused persons.

9.20. PW20 Dr. Amrish Kapoor has stated that in the year 2009 he was posted as Gynecologist in Zonal Hospital Solan. He has stated that he found blood traces and also found human semen in the vaginal slide of prosecutrix. He has stated that definite opinion was not given because DNA test of semen and DNA test of blood of accused persons was not supplied for comparison. He has stated that intercourse was committed upon prosecutrix on the basis of traces of human semen in the vaginal slide of prosecutrix. He has stated that there was no mark of injury on the body of prosecutrix. He has stated that there was no injury upon genital area of prosecutrix or upon other parts of prosecutrix body. He has stated that there was no resistance on the part of prosecutrix while performing sexual intercourse.

9.21. DW1 Narain Singh has stated that he was posted as Naib Tehsildar-cum-Executive Magistrate Solan w.e.f. June 2008 to April 2011. He has stated that prosecutrix came to him for attestation of affidavit executed by prosecutrix in connection with false implication of co-accused Vijay Kumar @ Tantu and co-accused Naresh Kumar. He has stated that he asked prosecutrix specifically before attestation of affidavit Ext D2 whether she had executed and signed the affidavit without any threat, coercion or pressure. He has stated that prosecutrix was identified by local Advocate Sh. Manoj Verma. He has stated that after fully satisfying himself he attested affidavit Ext D2 as Executive Magistrate. He has stated that similarly Rajesh also appeared before him and he verified the contents mentioned in the affidavit by explaining the statement made in affidavit

Ext D1. He has stated that Rajesh appeared before him and he was identified by local Advocate Sh. Manoj Verma. He has stated that after fully satisfying himself he attested affidavit which bears his signature. He has stated that prosecutrix and Rajesh have orally stated that wrong FIR under Section 376 IPC was registered.

9.22. DW2 Manoj Verma has stated that he is practicing as Advocate at District Court Solan since September 2002. He has stated that prosecutrix met him on 1.12.2008 in the premises of Tehsildar at Solan. He has stated that mother of prosecutrix was his client and he was familiar with the prosecutrix. He has stated that prosecutrix had executed affidavit Ext D2 and signed the same at point A to D in his presence. He has stated that prosecutrix also signed in the register. He has stated that he also signed as identifier. He has stated that he inquired from prosecutrix whether she had executed the affidavit without any coercion, pressure or threat from any person. He has stated that thereafter prosecutrix told him that she had executed affidavit without any threat, coercion or pressure. He has stated that similarly Rajesh had also executed affidavit Ext D1. He has stated that thereafter prosecutrix and Rajesh appeared before Executive Magistrate for attestation of affidavit. He has stated that thereafter Executive Magistrate before attesting the affidavit asked the prosecutrix and Rajesh whether they have executed the affidavit without any coercion, force, threat or pressure. He has stated that after questioning deponent and satisfying himself Executive Magistrate attested the affidavit.

9.23. DW3 Raman Kumar MHC police station Dharampur District Solan HP has stated that he has brought document Ext D3 comprising three pages and the same is true as per original record.

9.24. DW4 Jai Gopal Sub Inspector CID Unit Solan HP has stated that he remained posted as Investigating Officer at Dharampur w.e.f. 2008 to May 2010. He has stated that he had visited Pine View Hotel Dharampur from where accused No. 1 to 7 mentioned in Ext D3 were recovered and they were booked under Section 41(2) and 109 Cr.P.C. He has stated that he had investigated the case. He has stated that girls were in semi nude condition at the time of recovery from hotel. He has stated that girls were six in number. He has stated that one Rajiv Kumar was also found in the hotel where 30/35 persons were sitting in hotel who were watching girls in half naked condition at about 9.45 PM. He has stated that girls were called by some gang leader and they were directed to expose themselves in semi nude condition. He has stated that SIU officials disclosed to him that gang leader had already absconded from the hotel in a vehicle having registration No. PB-30-B-0027. He has stated that prosecutrix was impleaded as co-accused No. 4 in document Ext D3. He has stated that after investigation accused persons were produced before Executive Magistrate Solan.

(A). Affidavit given by major prosecutrix on dated 1.12.2008 Ext D2 before Executive Magistrate District Solan placed on record is fatal to prosecution

10. It is the case of prosecution that on intervening night of 30.11.2008 and 1.12.2008 prosecutrix along with her boy friend Rajesh came in vehicle having registration No. HP-64-1311 and stayed in room No. 28 of Krishna hotel situated at bypass road vegetable market Solan HP. It is further case of prosecution that on intervening night of 30.11.2008 and 1.12.2008 between 1.30 AM to 2.30 AM co-accused Naresh Kumar who was officiating manager of Krishna hotel entered into room No. 28 through window of bath room and thereafter co-accused Naresh Kumar gagged mouth of prosecutrix due to which prosecutrix got up and tried to save her life and she lifted glass lying on the table but the same was snatched by co-accused Naresh Kumar forcibly and thrown on the floor of hotel. It is further case of prosecution that Rajesh boy friend of prosecutrix was under intoxication. It is further case of prosecution that thereafter co-accused Naresh Kumar telephonically called co-accused Vijay Kumar @ Tantu who reached in the room in short time and thereafter he lifted prosecutrix and took her to adjoining room No. 27 and thereafter committed rape upon prosecutrix. It is also proved on record that thereafter at 5.30 AM on dated 1.12.2008 prosecutrix filed FIR No. 255 of 2008 against accused persons under Section 376(2) read with Section 34 IPC. It is also proved on record that thereafter prosecutrix on dated 1.12.2008 had given affidavit Ext D2 before Executive Magistrate Solan. There is recital in affidavit Ext D2 placed on record that on dated 30.11.2008 prosecutrix along with her boy friend Rajesh came from Chandigarh to Solan and stayed at Krishna hotel Solan. There is further recital in affidavit that Rajesh boy friend of prosecutrix telephoned Vijay Kumar who brought dinner and thereafter he left the hotel. There is recital in affidavit that in the morning police officials came in the hotel and forcibly obtained signature of prosecutrix upon papers. There is further recital in affidavit that prosecutrix was pressurized by police officials to file complaint against accused persons. There is further recital in affidavit Ext D2 placed on record given by prosecutrix that medical examination of prosecutrix was got conducted forcibly. There is further recital in affidavit that no incident of rape took place. There is further recital in affidavit that accused persons did not commit any rape with prosecutrix. Affidavit is duly verified by prosecutrix and duly attested by Executive Magistrate Solan HP. Executive Magistrate Solan HP has also given certificate in the reverse page of affidavit Ext D2 that contents of affidavit were explained to prosecutrix and she had admitted the contents of the affidavit as correct. Prosecutrix has admitted when she appeared in witness box that affidavit Ext D2 bears her signature and admitted that she had signed the affidavit. Prosecutrix has specifically stated that she entered into compromise with accused persons subject to payment of Rs. 1,00,000/- (One lac). Prosecutrix has stated that money was not paid to her. It is well settled law that in rape cases direct evidence is not available and testimony of the victim in the case of sexual assault is vital. It is well settled law that sole testimony of prosecutrix is sufficient to convict the accused if same is trustworthy, reliable and inspires confidence of Court. It is well settled law that for compelling reason the Court can look corroborative evidence. It is well settled law that prosecutrix in rape case is not accomplish and therefore rule requiring corroboration of

accomplish evidence does not apply to the testimony of prosecutrix. It is well settled law that corroboration of evidence of an adult prosecutrix in sex offence case would be insisted only if the evidence of prosecutrix is seen infirmed and not trustworthy and rendered the testimony of prosecution un-worthy of credit. It is well settled law that rule requiring corroboration is not rule of law but rule of prudence. It is well settled law that when the evidence of prosecutrix is self contradictory Courts are under legal obligation to see corroborative evidence. It is proved on record in present case that affidavit Ext D2 was relied by prosecution and when the challan was filed before trial Court then prosecution in the list of documentary evidence had also relied upon affidavit Ext D2 given by prosecutrix before Executive Magistrate Solan (HP). Even affidavit Ext D2 was took into possession by prosecution during investigation stage vide seizure memo Ext PW3/B placed on record. Affidavit Ext D2 given by prosecutrix before Executive Magistrate was part of challan filed by prosecution against accused persons. It is well settled law that affidavit means a statement sworn before a person having authority to administer on oath. Under Section 296 Cr.P.C. affidavit can be given relating to proof of fact. It is well settled law that affidavit can be attested by (1) Judge (2) Judicial Magistrate (3) Executive Magistrate (4) Oath Commissioner (5) Notary appointed under Notary Act 1952. It is held that in view of contradictory facts given by prosecutrix on the same date i.e. 1.12.2008 in FIR and in affidavit Ext D2 placed on record it is not expedient in the ends of justice to rely upon contradictory testimony of prosecutrix. Hence it is held that contradictory testimony of prosecutrix is fatal to the prosecution.

(B). Testimony of boy friend of prosecutrix namely PW12 Rajesh is also fatal to prosecution _____.

11. It is the case of prosecution that during intervening night of 30.11.2008 and 1.12.2008 prosecutrix and her boy friend Rajesh stayed in Krishna hotel and thereafter between 1.30 AM and 2 AM co-accused Naresh Kumar entered into room of prosecutrix and thereafter co-accused Naresh Kumar called co-accused Vijay Kumar @ Tantu and thereafter co-accused Vijay Kumar lifted prosecutrix from room No. 28 and took prosecutrix to room No. 27 and committed offence of rape. PW12 Rajesh when he appeared in witness box has specifically stated that co-accused Naresh Kumar and co-accused Vijay Kumar @ Tantu did not commit any criminal offence of rape with prosecutrix. PW12 Rajesh boy friend of prosecutrix has specifically stated that both accused persons have been falsely implicated in the present case by police officials. PW12 Rajesh has specifically stated in positive manner that during the night period at about 2.30 PM police officials came in hotel and beaten him and kept him in a separate room. PW12 Rajesh has specifically stated in positive manner that he tried to talk with prosecutrix but police officials did not allow him to talk with prosecutrix. PW12 Rajesh boy friend of prosecutrix who was present in room No. 28 of Krishna hotel during night period did not support the prosecution story as alleged by prosecution. PW12 Rajesh boy friend of prosecutrix has specifically stated in positive manner that he was not in intoxicated condition on intervening night of

30.11.2008 and 1.12.2008. Hence it is held that testimony of PW12 Rajesh is fatal to the prosecution.

(C). Affidavit Ext D1 given by PW12 Rajesh boy friend of prosecutrix is also fatal to prosecution _____.

12. We have carefully perused affidavit Ext D1 given by Rajesh Thakur placed on record. Affidavit Ext D1 is also relied by the prosecution because prosecution took into possession affidavit Ext D1 during investigation process vide seizure memo Ext PW3/A placed on record. Even prosecution has also relied upon affidavit Ext D1 when prosecution filed challan and in the list of documents filed along with challan prosecution had relied upon affidavit Ext D1 placed on record given by Rajesh Thakur. We have carefully perused the contents of affidavit Ext D1 placed on record. There is recital in affidavit Ext D1 placed on record that police officials have beaten deponent and also broken mobile phone of the deponent. There is further recital in affidavit that accused persons have not committed any sexual offence with prosecutrix. Affidavit Ext D1 placed on record is duly verified in accordance with law and duly attested by Executive Magistrate Solan. A certificate has also been given by Executive Magistrate Solan that contents of affidavit were read over and explained to deponent and deponent had admitted the contents of the affidavit as correct. Hence it is held that affidavit Ext D1 given by Rajesh boy friend of prosecutrix placed on record is also fatal to the prosecution.

(D). Testimony of DW1 Narayan Singh Tehsildar is also fatal to prosecution _____.

13. We have carefully perused the testimony of DW1 Narayan Singh Tehsildar. DW1 Narayan Singh has specifically stated in positive manner that prosecutrix and her boy friend Rajesh personally appeared before him and filed affidavits Ext D1 and D2. DW1 Narayan Singh has specifically stated that he explained the contents of affidavit Ext D1 and D2 to the deponents and thereafter deponents have admitted the contents of the affidavit as correct before him and thereafter he attested the affidavit. Testimony of DW1 Narayan Singh Tehsildar is also trustworthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of DW1 Narayan Singh. There is no evidence on record that DW1 Narayan Singh Tehsildar has hostile animus against prosecutrix prior to the incident. Hence it is held that testimony of DW1 Narayan Singh Tehsildar Nagrota Bagwan is fatal to prosecution.

(E). Non-resistance on the part of prosecutrix is also fatal to the prosecution _____.

14. It is the case of prosecution that prosecutrix was major at the time of incident. PW18 Dr. Anju Madan has specifically stated that there was no abrasion or contusion upon the body of prosecutrix including external genitalia. PW18 Dr. Anju Madan has specifically stated that there was no bleeding from valva and Medical Officer has specifically stated in positive manner that she did not observe

any injury or bleeding in the vagina of prosecutrix. PW18 Dr. Anju Madan has specifically stated that hymen was torn at 3 O'clock position. PW18 Dr. Anju Madan has specifically stated that she did not observe any semen stains on external genitalia of prosecutrix. Hence it is held that above stated testimony of Medical Officer is fatal to prosecution.

(F). Testimony of PW20 Dr. Amrish Kapoor is also fatal to prosecution

15. PW20 Dr. Amrish Kapoor has specifically stated when he appeared in witness box that DNA test of semen of accused persons and DNA test of blood of accused persons were not supplied by investigating agency for comparison and for connection of accused persons in criminal offence. There is no evidence on record in order to prove that DNA test of semen and DNA test of blood of accused persons were found upon vagina of prosecutrix or upon any other part of prosecutrix or upon the clothes of prosecutrix in order to connect accused persons with the commission of criminal offence of sexual assault. It is held that testimony of PW20 Dr. Amrish Kapoor is also fatal to prosecution.

(G). Report of FSL Junga Ext PW7/A is not helpful to the prosecution

16. We have carefully perused the report of FSL Junga Ext PW7/A placed on record. As per chemical analyst report Ext PW7/A placed on record blood and semen was not detected upon pubic hair and bra of prosecutrix and upon pubic hair, vest and slides of accused persons. As per chemical analyst report blood was detected in traces of vaginal smear slides of prosecutrix but same was insufficient for further examination. As per chemical analyst report human semen was found on vaginal slides of prosecutrix but prosecution did not obtain semen of accused persons and did not sent semen of accused persons to chemical examiner for comparison in order to connect accused persons with human semen found upon vaginal slides of prosecutrix. Even blood found upon pad and bed sheet was insufficient for further examination and semen was not detected on the pad and bed sheet. In the absence of comparison of semen of accused persons with human semen found in vaginal smear slides of prosecutrix it is not expedient in the ends of justice to convict accused persons.

(H) Earlier case filed against prosecutrix under Section 41(2) and 109 Cr.P.C. is also fatal to prosecution.

17. It is proved on record that case under Section 41(2) and 109 Cr.P.C. was filed against prosecutrix in the Court of Sub Divisional Magistrate Solan HP prior to incident and same has created doubt in the mind of Court qua testimony of prosecutrix. It was held in case reported in Anjlus Dungdung Vs. State of Jharkhand, (2004) 8 JT 583 : (2004) 8 SCALE 452 : (2005) 9 SCC 765 that suspicion however strong cannot take place of proof. It was held in case reported in Nanhar and Others Vs. State of Haryana, (2010) CriLJ 3450 : (2010) 6 JT 196 : (2010) 6 SCALE 178 : (2010) 11 SCC 423 : (2011) 1 SCC(Cri) 175 :

(2010) AIRSCW 3730 : (2010) 4 Supreme 662 that prosecution must stand or fall on its own leg and it cannot derive any strength from the weakness of the defence. It was held in case reported in State (Delhi Administration) Vs. Shri Gulzari Lal Tandon, AIR 1979 SC 1382 : (1979) CriLJ 1057 : (1979) 3 SCC 316 : (1979) SCC(Cri) 526 that moral conviction however strong or genuine cannot amount to legal conviction sustainable in law. Also See: Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 , See Bhugdomal Gangaram and Others Vs. State of Gujarat, AIR 1983 SC 906 : (1983) CriLJ 1276 : (1983) 1 Crimes 1070 : (1983) 1 SCALE 411 : (1984) 1 SCC 319 , See State of U.P. Vs. Sukhbasi and Others, AIR 1985 SC 1224 : (1985) CriLJ 1479 : (1985) 2 Crimes 465 : (1985) 1 SCALE 1120 : (1985) SCC 79 Supp . It is well settled law that testimony of prosecutrix must be appreciated in the back ground of entire case and trial Court must be alive to its responsibility and should be sensitive while dealing with cases involving sexual molestation. See State of Punjab Vs. Gurmit Singh and Others, (1996) 1 AD 492 : AIR 1996 SC 1393 : (1996) CriLJ 1728 : (1996) 1 Crimes 37 : (1996) 1 JT 298 : (1996) 1 SCALE 309 : (1996) 2 SCC 384 : (1996) 1 SCR 532 , See State of Rajasthan Vs. N.K.-The Accused, (2000) CriLJ 2205 : (2000) 3 JT 643 : (2000) 2 SCALE 652 : (2000) 5 SCC 30 : (2000) 2 SCR 818 : (2000) 1 UJ 762 : (2000) AIRSCW 1407 : (2000) 3 Supreme 70 ., See State of Himachal Pradesh Vs. Lekh Raj and Another, AIR 1999 SC 3916 : (2000) CriLJ 44 : (1999) 4 Crimes 337 : (1999) 9 JT 43 : (1999) 7 SCALE 86 : (2000) 1 SCC 247 : (1999) 4 SCR 286 Supp : (1999) AIRSCW 4008 : (1999) 9 Supreme 155 , See Madan Gopal Kakkad Vs. Naval Dubey and Another, (1992) 2 Crimes 168 : (1992) 3 JT 270 : (1992) 1 SCALE 957 : (1992) 3 SCC 204 : (1992) 2 SCR 921 .

18. In view of above stated facts it is held that learned trial Court had not properly appreciated oral as well as documentary evidence placed on record. Criminal Appeal No. 113 of 2013 titled Vijay Kumar v. State of HP and Criminal Appeal No. 177 of 2013 titled Naresh Thakur v. State of HP are accepted and judgment and sentence passed by learned trial Court are set aside. Both appellants namely Vijay Kumar @ Tantu and Naresh Thakur are acquitted qua criminal offence punishable under Section 376 (2)(g) IPC by way of giving them benefit of doubt. Certified copy of judgment be placed in Criminal Appeal No. 177 of 2013 titled Naresh Thakur v. State of HP. Record of learned trial Court along with certified copy of judgment be sent back forthwith. Registrar Judicial will issue release warrant in favour of appellants forthwith in accordance with law if appellants are not required in any other criminal case. Criminal Appeal No. 113 of 2013 titled Vijay Kumar @ Tantu v. State of HP and Criminal Appeal No. 177 of 2013 titled Naresh Thakur v. State of HP are disposed of. Pending application if any also stands disposed of.