

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 28th July, 2022
Pronounced on 30th September, 2022**

CRA-D-653-DB-2017 (O&M)

KaranAppellant

Versus

State of Haryana ...Respondent

CRA-D-662-DB-2017 (O&M)

HardikAppellant

Versus

State of Haryana ...Respondent

CRA-S-2396-SB-2017 (O&M)

Vikas GargAppellant

Versus

State of Haryana ...Respondent

CRR-3142-2017 (O&M)

XPetitioner

Versus

State of Haryana and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. A.P.S. Deol, Senior Advocate assisted by
Mr. Vishal Rattan Lamba, Advocate
Mr. Abhimanyu Tewari, Advocate,
Ms. Sanya Kaushal, Advocate and
Mr. Aditya Singla, Advocate
for the appellant (in CRA-D-653-DB-2017).

Mr. S.S. Narula, Advocate
for the appellant (in CRA-D-662-DB-2017).

Mr. R.S. Cheema, Senior Advocate assisted by
Mr. Arshdeep S. Cheema, Advocate and
Mr. Satish Sharma, Advocate
for the appellant (in CRA-S-2396-SB-2017).

Mr. Preetinder S. Ahluwalia, Advocate
for the complainant/petitioner (in CRR-3142-2017).

Mr. Randhir Singh, Addl. Advocate General, Haryana.

PANKAJ JAIN, J.

These three appeals and the revision are directed against the judgment arising out of FIR No. 144 dated 11th April, 2015 registered under Sections 376D, 376(2)(n), 376, 292, 120-B, 506 of the Indian Penal Code, 1860 and Section 67 of the I.T. Act, at Police Station Rai Sonapat.

2. Details of conviction and sentence awarded to the appellants are tabulated hereunder :-

Name of the convict	Offender u/s	Period of sentence (RI)	Fine Imposed	Period of sentence in default of payment of fine (RI)
Hardik	376(D) IPC	Twenty years	Rs.20,000/-	One year
	376(2)(n) IPC	Ten years	Rs.10,000/-	Ten months
	120-B IPC	Seven years	Rs.10,000/-	Ten months
	292 r/w 34 IPC	Two years	Rs.2,000/-	Two months
	506 IPC	Two years	Rs.2,000/-	Two months
	67-A of Information Technology Act, 2000	Five years	Rs.50,000/-	Five months

Name of the convict	Offender u/s	Period of sentence (RI)	Fine Imposed	Period of sentence in default of payment of fine (RI)
Karan	376(D) IPC	Twenty years	Rs.20,000/-	One year
	376(2)(n) r/w 120-B	Ten years	Rs.10,000/-	Ten months
	292 r/w 34 IPC	Two years	Rs.2,000/-	Two months
	67-A Information Technology Act, 2000	Five years	Rs.50,000/-	Five months
Vikas	376 IPC r/w 120-B IPC	Seven years	Rs.10,000/-	Ten months
	292 r/w 34 IPC	Two years	Rs.2,000/-	Two months
	67-A of Information Technology Act, 2000	Five years	Rs.50,000/-	Five months

3. Revision is at the hands of the victim 'x' (name withheld) who prays for award of compensation and further submits that the identity of the victim be not disclosed in the records.

4. Victim moved an application before the Police Authorities stating that :-

“I am pursuing my studies of BBA - MBA in Jindal University for the last two years. I had taken admission on 12 August 2013 and I had met with Hardik Sikri on 14 November 2013. We both had remained fast friends for one month and during this he had forced me and he had pressurised me to have sex. Hardik had forcible sex with me. Thereafter, we had broken up ties but he kept on forcing me and he forced me to send my naked photograph which was sent by me on number of Hardik, his number is 09253007007. Through these

photographs. Hardik kept me threatening me and black mailed me and threatened me that if I did not have sex with him, he will mail my photographs to his friends and my friends. During this I was compelled to have sex with friends of Hardik namely Vikas and Karan. Karan Chhabra had forcible sex with me two times and Vikas had done forcible sex with me one time. These all works were done in the lawns of University campus after 10 O'clock in the night. All these three boys used to say to me that you keep on have sex with us and if you told to anyone, we will show your pictures in the university. Stern legal action be taken against these three boys. Hardik and Karan had forcible sexual intercourse with me after 10 O'clock in the same night.”

5. On her statement, FIR was registered on 11th of April, 2015. On same day, her statement was recorded under Section 164 Cr.P.C. While the matter was under investigation, victim approached Apex Court by way of Writ Petition (Criminal) No.85 of 2015 filed under Article 32 of the Constitution of India wherein she prayed for transferring/handing-over the investigation to CBI. SIT was constituted under the orders of the Supreme Court. After investigation, report under Section 173 Cr.P.C. was filed. Appellant-Hardik was charged for the offences punishable under Sections 376(D) IPC, 376(2)(n) IPC, 120-B IPC, 292 r/w 34 IPC, 506 IPC and Section 67-A of Information Technology Act, 2000. Appellant- Karan was charged for the offences punishable under Sections 376(D) IPC, 376(2)(n) r/w 120-B IPC, 292 r/w 34 IPC and Section 67-A Information Technology

Act, 2000. Appellant-Vikas was charged for the offences punishable under Sections 376 IPC r/w 120-B IPC, 292 r/w 34 IPC and Section 67-A of Information Technology Act, 2000.

6. As per record, prior to moving application before the police on 11th of April, 2015 the prosecutrix along with her parents visited office of Registrar, O.P. Jindal Global University. She complained of sexual harassment, intimidation, black-mailing, tricks to share her private pictures at the hands of Hardik Sikri. Chief Warden and Manager Security were called by the Registrar. On the asking of the Registrar, Security Incharge brought Hardik Sikri to his office. On searching the mobile phone of Hardik Sikri private pictures of prosecutrix were found. Thereafter, the parents of the prosecutrix proceeded to the police station and lodged the complaint. Prosecution examined the Registrar as PW-12, Surender Kaur Assistant Director and Chief Warden appeared as PW-11. Assistant Professor Severyna Magill was examined as PW-13. They all proved incidents of 11th of April, 2015 prior to filing of complaint with police authorities.

Arguments on behalf of Counsel for the appellants

7. Opening the charge on behalf of the appellants, Mr. APS Deol, Senior Advocate appearing for the appellant-Karan in CRA-D-653-DB-2017 submits that the judgment convicting the appellants is based upon mere testimony of the victim. The prosecutrix having suppressed material

facts from this Court, cannot be treated as trustworthy. The Victim was selective in producing the WhatsApp chats and opted to withhold majority of the same. This calls for drawing adverse inference against her under Section 114 of the Evidence Act. He further submits that the material discrepancies in her statements under Section 164 and that before the Court during trial as PW1 are sufficient to demolish the case of the prosecution. He refers to last two lines of Ex.P-1/A to contend that bare perusal of the same would show that the lines have been squeezed into the complaint after the complainant had signed the same. This shows that it was an afterthought. In the original version there was no allegation of gang rape. Mr. Deol also refers to WhatsApp chats on record especially that on 27th of February, at 9.08 PM where the prosecutrix admits that she never had any relation with anyone else except Hardik. Mr. Deol further refers to various instances recorded in the WhatsApp chat to show that in fact the victim was more than a willing partner in the intimate encounters which she now claims to be without her consent. He relies upon Narender Kumar vs. State (NCT of Delhi), 2012(7) SCC 171 to contend that victim at no point of time conveyed her mental condition from where it could be gauged that the accused was conscious of her being a non-consenting party. Mr. Deol has invited attention of this Court to the chat of the victim with various other boys to contend that the victim was an outgoing person and to say that she was being forced into physical relation owing to blackmailing, is

beyond comprehension. He, thus, contends that the Trial Court erred in convicting the appellant solely on the basis of the statement of the prosecutrix. He further relies upon Tameezuddin @ Tammu vs. State (NCT Delhi), 2009(15) SCC 566, Uday vs. State of Karnataka, 2003(4) SCC 46, Pramod Suryabhan Pawar vs. The State of Maharashtra & Anr., 2019(9) SCC 608.

8. Mr. R.S. Cheema, Senior Advocate appearing for appellant-Vikas Garg in CRA-S No.2396-SB of 2017 at the outset objects to Vikas having been prosecuted along with the other two accused. Mr. Cheema submits that so far as allegations levelled against Vikas are concerned the same do not constitute offence of rape as defined under Section 375 of the IPC. He further submits that the Trial Court erred in relying solely upon the statement suffered by the prosecutrix. He claims that the WhatsApp chats show that the statement suffered by prosecutrix before the Trial Court was not true and, in these circumstances, statement of prosecutrix being not an evidence of sterling quality ought not have been made sole basis to convict the accused. It has been argued that first application made to the University Authorities which eventually will be the first version has been deliberately withheld which dents the whole case put-forward by the prosecution. He further refers to the cross-examination of prosecutrix to contend that in fact Vikas was being forced to become a witness in this case. After he refused he was implicated falsely at the instance of police. It has been further

submitted that Ex.D1 which is one of the first versions, shows that there is no allegation against Vikas and the improvements made by PW1-the prosecutrix, PW6-the mother, PW7-the father ought not have been relied upon. He refers to the statement of Registrar (PW12) and submits that the said statement of PW12 in fact demolishes the whole case of the prosecution. He further submits that there is no allegation that the appellant-Vikas was member of the alleged WhatsApp Group and there being no chat with him, he deserves acquittal. Mr. Cheema has drawn attention of this Court to the order dated 1st of August, 2015 whereby accused were charge-sheeted and submits that Vikas Garg has been charge-sheeted for offences punishable under Section 376/292/120-B IPC read with Section 67-A of the I.T. Act. He claims that neither the Court nor the prosecution was sure of the role assigned to appellant-Vikas Garg. There is no evidence to prove meeting of minds of Hardik and Vikas Garg that could drive-home offence punishable under Section 120-B IPC against Vikas. He refers to **Kehar Singh vs. State (Delhi Admn.), (1988)3 SCC 609** to submit that there has to be an evidence as to transmission of thoughts sharing unlawful design and there has to be some kind of physical manifestation of agreement to hold the accused guilty which is absent in the present case. He further relies upon **State of Kerala vs. P. Sugathan and another, (2000)8 SCC 203** to submit that a few bits here and a few bits there cannot be held to be adequate for connecting the accused with the

commission of crime and that there must be circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. Similarly, he relies upon **Esher Singh vs. State of Andhra Pradesh, (2004)11 SCC 585** and **P.K. Narayanan vs. State of Kerala, (1995)1 SCC 142**. He further relies upon **Vadivelu Thevar and another vs. State of Madras, AIR 1957 SC 614** to contend that the well established rule that the Court is concerned with the quality and not with the quantity of the evidence is not without exception. Where the oral testimony is, by its very nature suspect, it is duty of the Court to weigh carefully as to whether such testimony is reliable and free from all taints. Mr. Cheema asserts that there is nothing on record to establish charge framed against the appellant-Vikas as required under the law. Fact that the prosecutrix never raised her voice rather razes the whole case put-forth by the prosecution. It has been asserted that the statement of prosecutrix recorded by the police cannot be treated as a substantive piece of evidence and, thus, in fact there is no allegation against the appellant-Vikas Garg. Similarly, he relies upon the law laid down in **Chanan Singh vs. State of Haryana, 1971(3) SCC 466** and **Joseph vs. State of Kerala 2003(1) SCC 465** to assert that while appreciating the evidence of an injured witness, the Court is duty bound to ascertain that the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. When such evidence is in conflict with

other evidence, it would be unsafe to convict the accused on the sole testimony of the injured witness.

9. Mr. Sartej S. Narula, Advocate while appearing for appellant-Hardik in CRA-D-662-DB of 2017 would submit that the question that will arise before this Court is as to whether at all offence under Section 376 (1) of the IPC is made out. He claims that consensual relations will not fall within the definition of Section 375 IPC. It is not a case of repeated rape/gang-rap as enumerated in Section 376(2)(n) IPC and/or Section 376-D IPC. Even if the the version of prosecutrix is believed to be gospel truth frequency was just twice in 1 year which won't fall within the definitions of 'repeated rape/gang rape'. He reiterates that a solitary statement of the prosecutrix without any corroboration can not be believed. Reliance is being placed upon **Rajoo and others vs. State of M.P., 2009(1) R.C.R. (CrL.) 310, Tameezuddin @ Tammu vs. State of (NCT) of Delhi, 2009 (4) RCR (CrL.) 345 and Santosh Prasad @ Santosh Kumar vs. State of Bihar, 2020(2) RCR (CrL.) 58.** He claims that the prosecutrix has been proved to be an unreliable witness after it came on record that relevant evidence has been withheld by her intentionally. It has been asserted that the rule that 'generally a woman would not stake her chastity' is not absolute. He relies upon **Pandurang Sitaram Bhagwat vs. State of Maharashtra, 2005(1) RCR (CrL.) 858 and Dinesh Jaiswal vs. State of M.P., 2010(2) RCR(CrL.) 139** and submits that its not a universal rule. He

further claims that there was no circulation of any objectionable photograph which would attract offences punishable under Sections 292 IPC and Section 67-A of the I.T. Act. He claims that, prosecution having failed to prove that the three appellants ever were present together at the time of any incident, its not the case of 376D. He further argues that on bare reading of Section 90 with Section 375 IPC, it is clear that Section 375 IPC being a specific provision dealing with the rape would have overriding effect on the provision of Section 90 IPC. Thus, prosecutrix has to show that her consent has been obtained by putting her or any person in whom she is interested in fear of 'death' or of 'hurt' to hold the appellant guilty for offence punishable under Section 376 IPC. He submits that the allegations levelled by the prosecutrix do not satisfy the ingredients of Section 375 IPC. As per the provision contained in Section 375 IPC, in a consensual encounter the prosecutrix has to show that her consent has been obtained by putting her under fear of death or of hurt to make out a case of rape. He contends that mere blackmailing on the strength of objectionable/obscene material would not fall within the definition of 'death' or 'hurt'. Heavy reliance is being placed on **Tukaram vs. State of Maharashtra, 1979 AIR (SC) 185, Indore Dev. Authority vs. Shailendra, 2018(2) RCR (Civil) 455, J.K. Cotton Spinning and Weaving Mills vs. State of UP, 1961 AIR(SC) 1170.** Mr. Narula further argues that the questions pertaining to offence of gang rape/repeated rape were not even put to the accused while recording

his statement under Section 313 Cr.P.C. Referring to the law laid down in **Raj Kumar Singh vs. State of Rajasthan, 2014(6) R.C.R.(CrI.) 107, Inspector of Customs vs. Yashpal and another, 2009(2) R.C.R.(CrI.) 514**, he contends that the the whole trial stands vitiated on account of said lapse. Mr. Narula reiterates the argument raised by Mr. Deol and Mr. Cheema and submits that there was no instance of rape mentioned in the original complaint Exhibit PW1/A and the statement made under Section 164 Cr.P.C. First time the prosecutrix makes detailed allegation w.r.t. the incidents of rape specifically is in her statement under Section 161 Cr.P.C. before the police authorities. He claims that it has come on record that the said statement was prepared in the chamber of lawyer representing the prosecutrix before the Apex Court. Mr. Narula as well as Mr. Deol both have argued that the allegations w.r.t. gang-rape for the first time were unearthed in this statement of the prosecutrix. So much as so even before Apex Court no such allegation was levelled. A bare perusal of the statement reveals that it is a typed statement which cannot be treated as statement under Section 161 Cr.P.C. He claims that in fact the evidence on the basis of which Trial Court has convicted the appellants is a tampered evidence. He asserts that from record it is clear that the victim was using two mobile phones. The Apple iPhone has not been produced by the prosecutrix. The other mobile phone which is a Sony Xperia phone was initially withheld by her and she refused to hand-over her mobile phone to

the Investigating Agency claiming that the screen had broken. The same was handed-over only after material data has been deleted and possibility of tampering with the WhatsApp chats also cannot be ruled out. He further claims that the case projected *vis-a-vis* blackmailing and the prosecutrix being under continuous threat also can't be believed. During the period the incidents complained of occurred, the prosecutrix repeatedly visited her family. Had it been a case of blackmailing there was no reason for the prosecutrix not to confide in her parents or her teachers/fellow students/friends. In support of his arguments, Mr. Narula relies upon the law laid by Supreme Court in **Kaini Rajan vs. State of Kerala, 2013(4) R.C.R.(Crl.) 365, Vijayan vs. State of Kerala, 2008(14) SCC 763.** Lastly, he asserts that prosecution has to stand on its legs to prove its case beyond doubt against the accused and the accused has a right to remain silent. Accused is not yoked with the burden to prove facts *qua* his false implication. He relies upon **Narender Kumar vs. State (NCT of Delhi), 2012(3) R.C.R. (Crl.) 66.** Mr. Narula relies upon the judgment of Delhi High Court rendered in **Mahmood Farooqui vs. State (Govt. of NCT of Delhi), 2017(4) R.C.R.(Crimnal) 491** to submit that a feeble hesitation cannot be understood as a possible negation of any advance. There has to be a communication by the prosecutrix that conveys that she is not a consenting party. If at all the prosecutrix was raped without her consent, she would have immediately confided in her near ones. He further brought

to the notice of the Court that said judgment in Mahmood Farooqui's case *ibid* has attained finality and has been upheld by the Supreme Court as the Special Leave Petition against the same stands dismissed vide order dated 19th January, 2018.

10. Mr. Narula places reliance upon **Mr. Virendra Khanna vs. State of Karnataka, 2021(3) AIR Kar R 455** and submits that accused has a right to remain silent and the Investigating Agency could have well issued direction to the accused to furnish password/passcode in order to open the smart phone of the appellant or he could have approached the Magistrate concerned for such directions. Since no effort was made by the Investigating Agency to open the phone of the accused which is in custody of the Investigating Agency, WhatsApp chats produced by the prosecution cannot be held to be proved. The crux of the contentions raised by Mr. Narula is that in fact it was a consensual act between the prosecutrix and the appellant-Hardik. Conduct of the prosecutrix can be well inferred from the evidence on record in form of Whatsapp chats. The intimate encounters between the accused and the prosecutrix being act of her own volition can not be termed as act of violating her. She was never under any coercion or threat as is being posed and held by the Trial Court.

Arguments advanced by Prosecution:

11. Per contra, State Counsel along with Counsel for the complainant/victim have submitted that it is a settled law that sole

testimony of a prosecutrix is enough to prove the guilt of the accused. It has been further submitted that not only the testimony of the prosecutrix is of sterling quality but the same stands fully corroborated by overwhelming evidence on record in the shape of WhatsApp chats and the oral testimonies of the other witnesses. Mr. Randhir Singh, Ld. State Counsel submits that helplessness of the prosecutrix is evident from the record and in fact the treatment meted out to her by the accused is akin to declaration of “open season” on the native women by the whites in the American history. Mr. Ahluwalia, Advocate for the complainant submits that it is not a case where the prosecutrix 'consented' but it is a case where she was left with no other choice but to 'submit'. Mr. Ahluwalia has extensively read from the Law Commission's Report on Offence of a Rape and 84th Law Commission Report on Rape and Allied Offences dated 25th of April, 1980 to contend that the intent of the legislature is to make the definition of rape as comprehensive as possible and not to restrict the same. He further relies upon **Deelip Singh vs. State of Bihar (2005) 1 SCC 88** to submit that while unveiling the dimensions of 'consent' in the context of Section 375 IPC, the Courts have not merely gone by language of Section 90 but have travelled a wider field guided by etymology of the word 'consent'.

12. We have heard Ld. Counsel for the parties and have gone through the records of the case.

Primary Issue : 'Consent'

13. The parties to the *lis* are at issue w.r.t. 'consent' of the prosecutrix. Prosecution claims that the alleged act was without consent and, thus, will fall within Section 375, whereas it is a case of the appellants that the consent of the prosecutrix is evident on record. In order to constitute offence under Section 375 IPC, the prosecution is required to bring the case within the *circumstances as described under Section 375*.

14. Thus, the primary question that will arise for adjudication is '*whether the act alleged in the present case can be said to be with consent of the prosecutrix or was without consent ?*' Before adverting to the facts of the instant case, it will be apposite to peruse the relevant provisions of law :-

“S. 375. Rape.—*A man is said to commit “rape” if he —*

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

person, under the circumstances falling under any of the following seven descriptions:—

First.— Against her will.

Secondly.— Without her consent.

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

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

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

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

Seventhly.— When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

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

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

Exception 1.—A medical procedure or intervention

shall not constitute rape.

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

“S. 90. Consent known to be given under fear or misconception.—*A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or*

Consent of insane person.—*if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*

Consent of child.—*unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*

“S. 376. Punishment for rape.—(1) *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].*

(2) *Whoever,—*

(a) *being a police officer, commits rape—*

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in

- the custody of a police officer subordinate to such police officer; or*
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*
 - (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*
 - (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
 - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
 - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
 - (g) commits rape during communal or sectarian violence; or*
 - (h) commits rape on a woman knowing her to be pregnant; or*
 - (j) commits rape, on a woman incapable of giving consent; or*
 - (k) being in a position of control or dominance over a woman, commits rape on such woman; or*
 - (l) commits rape on a woman suffering from mental or physical disability; or*
 - (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*

- (n) *commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

Explanation.—For the purposes of this sub-section,—

- (a) *“armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;*
- (b) *“hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;*
- (c) *“police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);*
- (d) *“women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.”*

[(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which

may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim.]

“S. 376D. Gang rape.—*Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

15. It needs to be noticed that Criminal Law (Amendment) Act, 2013 was enacted by the Parliament to amend the Indian Penal Code; the Code of Criminal Procedure, 1973; the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences. It was declared in the Statement of objects and reasons of the 2013 Act that the Amending Act sought to amend the Indian Evidence Act, 1872 to protect the dignity of women.

16. In the present case, we are concerned with the amended provisions of Section 114A and 146 of the Indian Evidence Act, which read as under :-

Section 114A. Presumption as to absence of consent in certain prosecution for rape. — *In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.*

Explanation.— In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

Section 146. Questions lawful in cross-examination. — *When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—*

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

[Provided that in a prosecution for an offence under section 376, [section 376A, section 376AB, section 376B,

section 376C, section 376D, section 376 DA, section 376 DB] or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.]

17. Ld. Counsel for the appellants have heavily relied upon judgment of Apex Court in **Tukaram's case** (supra). In Tukaram's case, a young girl went to local police station along with her brother to record their statements in respect of a complaint lodged by her brother. While at police station she was raped by Head Constable Tukaram and Constable Ganpat. She reported it to a crowd gathered outside the police station. After being examined by the doctor she filed police complaint. The complaint was registered by the police. After the Trial Court acquitted the accused, the findings were reversed by the High Court. Ganpat was convicted and sentenced to 5 years rigorous imprisonment whereas Tukaram was convicted and sentenced to 1 year rigorous imprisonment. Apex Court reversed the judgment of the High Court holding that there were no injuries shown by the medical report and, thus, the story of 'stiff resistance having been put by the girl is all false'. The Court held that under Section 375 only the 'fear of death or hurt' could vitiate consent for sexual intercourse. It was held that -

“The section itself states in clauses Thirdly and Fourthly as to when a consent would not be a consent within the meaning of clause Secondly. For the proposition that the requisite consent was lacking in the present case, reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. To this aspect of the matter the High Court was perhaps alive when it talked of “passive submission” but then in holding that the circumstances available in the present case make out a case of fear on the part of the girl, it did not give a finding that such fear was shown to be that of death or hurt, and in the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. We have already pointed out that the fear which clause Thirdly of section 375 speaks of is negated by the circumstance that the girl is said to have been taken away by Ganpat right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate to emerge out of it. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.”

18. To reiterate the age-old adage “The essence of the rape is absence of consent” - the expression 'consent' has repeatedly cropped up before the Courts in matters involving allegations of rape.

19. In State of U.P. vs. Chottey Lal, (2011)2 SCC 550, Apex

Court held that -

“.....In the facts of the case what is crucial to be considered is whether clause First or clause Secondly of Section 375 IPC is attracted. The expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions in clause First and clause Secondly have different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation. The concept of 'consent' in the context of Section 375 IPC has come up for consideration before this Court on more than one occasion. Before we deal with some of these decisions, reference to Section 90 of the IPC may be relevant which reads as under :

“S. 90. Consent known to be given under fear or misconception.--A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.--if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.--unless the contrary appears from the context, if the consent is given by a person who is under twelve

years of age."

14. This Court in a long line of cases has given wider meaning to the word 'consent' in the context of sexual offences as explained in various judicial dictionaries. In Jowitt's Dictionary of English Law (Second Edition), Volume 1 (1977) at page 422 the word 'consent' has been explained as an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. It is further stated that consent supposes three things--a physical power, a mental power, and a free and serious use of them and if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.

15. Stroud's Judicial Dictionary (Fourth Edition), Volume 1 (1971) at page 555 explains the expression 'consent', inter alia, as under :-

*""Every 'consent' to an act, involves a submission; but it by no means follows that a mere submission involves consent," e.g. the mere submission of a girl to a carnal assault, she being in the power of a strong man, is not consent (per Coleridge J., **R.v. Day**, 9 C. & P. 724)."*

*Stroud's Judicial Dictionary also refers to decision in the case of **Holman v. The Queen** 1970 W.A.R. 2) wherein it was stated: 'But there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is "consent".'*

16. *In Words and Phrases, Permanent Edition, (Volume 8A) at pages 205-206, few American decisions wherein the word 'consent' has been considered and explained with regard to the law of rape have been referred. These are as follows :*

*“In order to constitute "rape", there need not be resistance to the utmost, and a woman who is assaulted need not resist to the point of risking being beaten into insensibility, and, if she resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent". **People v. McIlvain (55 Cal. App. 2d 322).**”*

.....
*“ “Consent,” within Penal Law, ' 2010, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. **People v. Pelvino, 214 N.Y.S. 577**”*

.....
*“ “Consenting” as used in the law of rape means consent of the will and submission under the influence of fear or terror cannot amount to real consent. **Hallmark v. State, 22 Okl. Cr. 422**”*

.....
“Will is defined as wish, desire, pleasure, inclination, choice, the faculty of conscious, and especially of deliberate, action. It is purely and solely a mental process to be ascertained, in a prosecution for rape, by what the prosecuting witness may have said or done. It being a mental process there is no other manner by which her will can be ascertained, and it must be left to

*the jury to determine that will by her acts and statements, as disclosed by the evidence. It is but natural, therefore, that in charging the jury upon the subject of rape, or assault with intent to commit rape, the courts should have almost universally, and, in many cases, exclusively, discussed "consent" and resistance. There can be no better evidence of willingness is a condition or state of mind no better evidence of unwillingness than resistance. No lexicographer recognizes "consent" as a synonym of willingness, and it is apparent that they are not synonymous. It is equally apparent, on the other hand, that the true relation between the words is that willingness is a condition or state of mind and "consent" one of the evidences of that condition. Likewise resistance is not a synonym of unwillingness, though it is an evidence thereof. In all cases, therefore, where the prosecuting witness has an intelligent will, the court should charge upon the elements of "consent" and resistance as being proper elements from which the jury may infer either a favourable or an opposing will. It must, however, be recognized in all cases that the real test is whether the assault was committed against the will of the prosecuting witness. **State v. Schwab, 143 N.E. 29"***

17. Broadly, this Court has accepted and followed the judgments referred to in the above judicial dictionaries as regards the meaning of the word 'consent' as occurring in Section 375 IPC. It is not necessary to refer to all the decisions and the reference to two decisions of this Court shall suffice. In **State of H.P. v. Mango Ram 2000(3) RCR (Criminal) 752 : (2000)7 SCC 224, a 3-Judge Bench of this**

Court while dealing with the aspect of 'consent' for the purposes of Section 375 IPC held at page 230 of the Report as under:

“Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

(emphasis supplied)

20. In **Deelip Singh's case (supra)**, Apex Court held that -

“15. The concept and dimensions of 'consent' in the context of Section 375 Indian Penal Code has been viewed from different angles. The decided cases on the issue reveal different approaches which may not necessarily be dichotomous. Of course, the ultimate conclusion depends on the facts of each case.

16. Indian Penal Code does not define 'consent' in positive terms, but what cannot be regarded as 'consent' under the Code is explained by Section 90. Section 90 reads as follows:

“ “90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a

misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or misconception; "

Consent given firstly under fear of injury and secondly under a misconception of fact is no 'consent' at all. That is what is enjoined by the first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries.

17. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the Court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.

18. Section 90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code. The normal connotation and concept of 'consent' is not

intended to be excluded. Various decisions of the High Court and of this Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word 'consent'.

19. In most of the decisions in which the meaning of the expression 'consent' under the Indian Penal Code was discussed, reference was made to the passages occurring in Stroud's Judicial Dictionary, Jowitt's Dictionary on English Law, Words & Phrases - Permanent Edition and other legal Dictionaries. Stroud defines consent as "an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side". Jowitt, while employing the same language added the following:

"...Consent supposes three things - a physical power, a mental power and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, mediated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind."

20. In Words & Phrases - Permanent Edition, Volume 8A, the following passages culled out from certain old decisions of the American Courts are found:

"...adult female's understanding of nature and consequences of sexual act must be intelligent understanding to constitute 'consent'.

Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a

choice between resistance and assent.... "

21. It was observed by B.P. Singh, J. speaking for the Court in **Uday Vs. State of Karnataka, 2003(2) RCR (Criminal) 99 (SC) : [2003(2) Scale 329]**, "the Courts in India have, by and large, adopted these tests to discover whether the consent was voluntary or whether it was vitiated so as not to be legal consent".

22. There is a good analysis of the expression 'consent' in the context of Section 375 Indian Penal Code by Tekchand, J. in **Rao Harnarain Singh Vs. State [AIR 1958 Punjab 123]**. The learned Judge had evidently drawn inspiration from the above passages in the law dictionaries. The observation of the learned Judge that " there is a difference between consent and submission and every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent", is quite apposite. The said proposition is virtually a repetition of what was said by Coleridge, J. in Regina vs Day in 1841 as quoted in Words and Phrases (Permanent Edition) at page 205. The following remarks in Harnarain's case are also pertinent:

“ “Consent is an act of reason accompanied by deliberation, a mere act of helpless resignation in the face of inevitable compulsion, non resistance and passive giving in cannot be deemed to be Consent.”

23. The passages occurring in the above decision were either verbatim quoted with approval or in condensed form in the subsequent decisions: vide In Re : Anthony [AIR 1960 Madras 308], Gopi Shankar Vs. State [AIR 1967 Raj. 159], Bhimrao Vs. State of Maharashtra [1975 Mah. L.J. 660],

*Vijayan Pillai Vs. State of Kerala [1989 (2) K.L.J. 234]. All these decisions have been considered in a recent pronouncement of this Court in Uday Vs. State of Karnataka. The enunciation of law on the meaning and content of the expression 'consent' in the context of penal law as elucidated by Tekchand, J. in Harnarain's case (which in turn was based on the above extracts from law Dictionaries) has found its echo in the three Judge Bench decision of this Court in **State of H.P. Vs. Mango Ram 2000(3) RCR (Criminal) 752 (SC) : [(2000) 7 SCC 224]**. K.G. Balakrishnan, J. speaking for the Court stated thus:*

“Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

(Emphasis supplied)

21. The argument raised by Mr. Narula w.r.t. there being a conflict between Section 90 and Section 375 and his insistence upon reading upon third circumstance as described under Section 375 over and above Section 90 is misconceived and misplaced. In fact there is no conflict between the two. Section 90 IPC does not define 'consent' but decrees that the 'consent' given under fear or misconception is in fact 'no consent'. As per Section 90,

where a person who is accused of doing the act knows, or has reason to believe, that the consent was given by the other person in consequence of fear of injury or misconception, it will not amount to consent. Thus, it will relate to the second parameter as enumerated in Section 375. The circumstances described under Section 375 IPC have been enumerated with an objective to make the definition as comprehensive as possible. As per settled law while dealing with 'consent' the Courts have travelled beyond provisions of IPC and it has also been held by Supreme Court that the circumstances so enumerated can and do overlap. Thus to say that Section 90 can't be read into while dealing with case falling under Section 375 can't be accepted.

22. From the careful analysis of the bare provisions of law and the judicial precedents referred hereinabove, the position that emerges is :

- (a) As per Section 114A of the Evidence Act in a prosecution for rape where the question is whether sexual intercourse was with or without the 'consent' of the prosecutrix and such prosecutrix states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.
- (b) As per Section 146 of the Evidence Act in a prosecution for an offence under of Section 376, [section 376-A, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB] or section 376-E of the Indian Penal Code (45 of 1860) or

for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

- (c) The Courts have not merely gone by language of Section 90 to conceptualize the dimensions of consent but have travelled a wider field.
- (d) The question of consent will arise only where the prosecutrix has an option to say 'no'. In a situation where she has no option but to submit, mere submission on her part will not constitute 'consent' and the case will fall within Section 375.
- (e) Mere absence of physical resistance to the act cannot be regarded as 'consent'.
- (f) 'Submission' does not amount to 'consent' and the same is further made clear from the reading of *Explanation 2* appended to Section 375 along with the proviso appended thereto.

FINDINGS:

23. When the facts of the present case are tested on the touchstone of the aforesaid proposition of law, it is evident that it is a case of 'submission' on the part of the prosecutrix. Her silence or her caving in to

the demands of the accused cannot be termed as consent. After going through the WhatsApp chat, which is the most material evidence on record related to the relationship between the parties, it is evident that the prosecutrix was facing abusive relationship with Hardik. It throws light on the incidents complained of.

24. As per Section 114A of the Indian Evidence Act, where the prosecutrix denies her consent, the Court shall presume that she did not consent. Counsels for the appellants submit that the statement of the prosecutrix stands rebutted by the WhatsApp Chat available on the record. Counsels for the appellants have read over selective portions of the WhatsApp Chat to show and demonstrate the consent part of the prosecutrix. Whole of the WhatsApp Chat on record needs to be read. However, entire WhatsApp Chat (Exhibit PW-1/D) cannot be reproduced in the judgment owing to the profane language used by accused Hardik. In order to comprehend the fracturable state the victim was in on account of barbarism she was facing at the hands of appellant-Hardik, some of the chats are being reproduced here below :

25. Victim is being referred to as 'A'.

“25 Jan 3:43 pm - Hardik : Kha p hai

25 Jan 3:44 pm - 'A' : M not at home

25 Jan 3:44 pm - Hardik : kuu

25 Jan 3:45 pm - Hardik : ab mujhe pics chyya

25 Jan 3:45 pm - Hardik : abhii

25 Jan 3:45 pm - 'A' : Bahar hun

25 Jan 3:45 pm - 'A' : Abhi possible nahi hai Hardik
25 Jan 3:45 pm : do din san h kuch nh kia
25 Jan 3:45 pm - Hardik : or abhi k abhi chya
25 Jan 3:45 pm - Hardik : possible jese marji kar
25 Jan 3:45 pm - 'A' : Abhi purine pics dekh ke kar lo
25 Jan 3:45 pm - Hardik : sb delete
25 Jan 3:45 pm - 'A' : I'll be bak home around 7
25 Jan 3:46 pm - Hardik : ab dubara nh boluga
25 Jan 3:46 pm - 'A' : Oho
25 Jan 3:46 pm - Hardik : mujhe abhii pics chya
25 Jan 3:46 pm - Hardik : jese marji kar
25 Jan 3:46 pm - 'A' : I'll try
25 Jan 3:46 pm - 'A' : But u will have to wait for a bit
25 Jan 3:46 pm - Hardik : naa naa
25 Jan 3:46 pm - 'A' : I'm in the car
25 Jan 3:46 pm - Hardik : do min wait kar sakta hu bas
25 Jan 3:47 pm - Hardik : only 2 mins bx
25 Jan 3:47 pm- 'A' : Half an hour pehle text kar dete
25 Jan 3:47 pm - 'A' : Abhi Thodi der pehle hi bahar nikali han
25 Jan 3:47 pm - Hardik : mene jb kia mrko ussi time kaam pura chya
25 Jan 3:48 pm - Hardik : jada bxxxxxx na maar
25 Jan 3:48 pm - 'A' : Gaadi mei hun
25 Jan 3:48 pm - 'A' : Kaise bheju
25 Jan 3:48 pm - Hardik : toh ma kyaa karu ab
25 Jan 3:48 pm - Hardik : tu dekh vo
25 Jan 3:49 pm - 'A' : Meri galti Thodi na hai
25 Jan 3:49 pm - 'A' : Pehle bolte na. Ache se karwa deti
25 Jan 3:49 pm - Hardik : o bxxxxxx jo bol dia vo jaldi kar
25 Jan 3:49 pm - 'A' : Abhi possible nahi hai
25 Jan 3:49 pm - 'A' : I'll try
25 Jan 3:49 pm - Hardik : apni mxxxxxx le tu
25 Jan 3:49 pm - Hardik : rxxxx
25 Jan 3:49 pm - Hardik : 2 min hone vale hai
25 Jan 3:49 pm - Hardik : uske baad trko ptaa hain kyaa ho sakta

hai

25 Jan 3:49 pm - 'A' : Abhi porn dekh ke kar lo

25 Jan 3:50 pm - Hardik : hungamaa

25 Jan 3:50 pm - Hardik : gxxxxx tujhe bol diaa na

25 Jan 3:51 pm - 'A' : Yaar ab Hadh kar rahe ho

25 Jan 3:51 pm - Hardik : teri cxxx duga agle 2 min mein phle info
kar rhaa hu

25 Jan 3:51 pm - 'A' : Bahar hu

25 Jan 3:52 pm - Hardik : koi nh do min khatam hote dikhaa duga

25 Jan 3:53 pm - 'A' : Yaar aise mat karo pls

25 Jan 3:53 pm - 'A' : Out wid friends. Abhi drive pe nikle hai

25 Jan 3:53 pm - Hardik : 1 min rhee gyaa bua ab

25 Jan 3:53 pm - 'A' : Don't know if vr stopping or not

25 Jan 3:54 pm - Hardik : or bola hai hungama hoga matlb hoga

25 Jan 3:54 pm - 'A' : Aise mat karo pls

25 Jan 3:54 pm - Hardik : bas last 40 sec

25 Jan 3:54 pm - Hardik : i don't care rxxxxx

25 Jan 3:54 pm - 'A' : Hadh hoti hai. Kabhi to samjha karo

25 Jan 3:54 pm - Hardik : 30 sec

25 Jan 3:54 pm - 'A' : Hamesha apni manmani karte ho

25 Jan 3:54 pm - 'A' : Age wale ka kabhi nahi Dekhte ho

25 Jan 3:55 pm - Hardik : 25 sec

25 Jan 3:55 pm - 'A' : Kya Hungama karoge

25 Jan 3:55 pm - Hardik : Oooo rxxxxx tujhe bol dia ab nh sunuga

25 Jan 3:55 pm - Hardik : jo mera man kar gyaa ab vhii karuga

25 Jan 3:55 pm - 'A' : Tum pagal ho gaye ho

25 Jan 3:55 pm - 'A' : Pls control urself

25 Jan 3:55 pm - Hardik : 15 sec left

25 Jan 3:56 pm - Hardik : apni ma xxxx tu ab ..hungama strart
karne de□□

25 Jan 3:56 pm - Hardik : 9 sec left

25 Jan 3:56 pm - 'A' : Kya karoge

25 Jan 3:56 pm - Hardik : 8

25 Jan 3:56 pm - Hardik : 7

25 Jan 3:56 pm - 'A' : Don't u dare

25 Jan 3:56 pm - Hardik : 6
25 Jan 3:56 pm - 'A' : Aunty ki kasam
25 Jan 3:56 pm - Hardik : 5
25 Jan 3:57 pm - 'A' : Uncle ki kasam
25 Jan 3:57 pm - Hardik : 4
25 Jan 3:57 pm - Hardik : 3
25 Jan 3:57 pm - 'A' : Beheno ki kasam
25 Jan 3:57 pm - Hardik : 2
25 Jan 3:57 pm - Hardik : 1
25 Jan 3:57 pm - Hardik : time over ☐☐ nw
25 Jan 3:58 pm - Hardik : time note kar le aj ka or date ki mere sath
yeah hua tha yaad kario
25 Jan 3:58 pm - Hardik : ab offline jaa ke karne start
25 Jan 3:58 pm - 'A' : Yaar pls Kuch mat kama
25 Jan 3:59 pm - 'A' : Apne aap ko kabhi maaf nahi kar paoge
25 Jan 3:59 pm - Hardik : koi nh ab mujhe disturb mat kario phlee
bol rhaa hu
25 Jan 3:59 pm - 'A' : K
25 Jan 4:00 pm - Hardik : sajal n ambika
25 Jan 4:00 pm - Hardik : give her no ??
25 Jan 4:00 pm - Hardik : jaldii
25 Jan 4:01 pm - 'A' : Hardik no pls
25 Jan 4:01 pm - 'A' : I beg u
25 Jan 4:01 pm - 'A' : Ghar ke bahar hun. Kyun wait nahi kar skte
ho
25 Jan 4:02 pm - Hardik : number kisi or sa ku kya ☐
25 Jan 4:02 pm - Hardik : lu *
25 Jan 4:02 pm - 'A' : Hardik pls don't do this ☐
25 Jan 4:02 pm - Hardik : yaa apne ap de rhii hai
25 Jan 4:03 pm - 'A' : Ambika.vef (file attached)
25 Jan 4:03 pm - 'A' : Don't do this I beg u
25 Jan 4:03 pm - Hardik : hmm good
25 Jan 4:03 pm - Hardik : fxxx u
25 Jan 4:03 pm - Hardik : bhot sun lia tera
25 Jan 4:03 pm - 'A' : Muh dikhane layak nahi chodoge”

XXXXXXX

“26 Jan 1:04 am - Hardik : Ooo

26 Jan 1:05 am - 'A' : Haanji

26 Jan 1:06 am - 'A' : Bolo

26 Jan 1:06 am - Hardik : tu layi hai. ??

26 Jan 1:06 am - 'A' : Nahi mil paya

26 Jan 1:06 am - Hardik : ab nh choduga □

26 Jan 1:06 am - Hardik : subha toh majak kar dia

26 Jan 1:06 am - 'A' : I don't want it yaar

26 Jan 1:07 am - Hardik : ab asli mei karuga

26 Jan 1:07 am - Hardik : xx had ho gyii

26 Jan 1:07 am - 'A' : Asli chees mei jab maza ata hai. duplicate
leke kya fayda

26 Jan 1:07 am - Hardik : bt i want that xx

26 Jan 1:07 am - Hardik : tu vo use kare

26 Jan 1:07 am - 'A' : Waise bhi I have that toothbrush which is
accurate for doing the job

26 Jan 1:08 am - 'A' : Tumhe chahiye tum le ao. Cus I don't want it pls

26 Jan 1:08 am - 'A' : I'm happy wid the real thing.

26 Jan 1:08 am Hardik : bxxx xx xxx sun

26 Jan 1:08 am - 'A' : Mujhe dildo ki zaroorat nahi hai

26 Jan 1:08 am - Hardik : aj oreder kar de or abhi

26 Jan 1:08 am - Hardik : phle bol rhaa hu

26 Jan 1:09 am - 'A' : I'll try

26 Jan 1:09 am - Hardik : try nh abhi order kar □ □

26 Jan 1:09 am - 'A' : College mei Kaise mangwaungi

26 Jan 1:10 am - Hardik : ab apni xxxx xxxx mujhe nh ptaa

26 Jan 1:10 am - Hardik : jese marji kar

26 Jan 1:10 am - Hardik : tune apne mu sa bola tha ghr jane do
pkaa laugi ab nh sunuga

26 Jan 1:10 am - 'A' : K

26 Jan 1:10 am - Hardik : abhi order kar

26 Jan 1:11 am - Hardik : trko bola hai kuch

26 Jan 1:11 am - Hardik : o rxxxx

26 Jan 1:12 am - 'A' : Kar hi rahi hun
26 Jan 1:12 am - Hardik : acha yeah btaa recharge ho sakta hai
26 Jan 1:12 am - 'A' : Abhi to nahi
26 Jan 1:12 am - Hardik : xx abhi msg aa gyan net ki mb 20 rhe gyi
26 Jan 1:12 am - 'A' : Then save that
26 Jan 1:13 am - 'A' : Kal karwa lena
26 Jan 1:13 am - Hardik : kar koi jugad
26 Jan 1:13 am - 'A' : Mai nahi karwa paungi
26 Jan 1:13 am - Hardik : abhi baat karni hai
26 Jan 1:13 am - 'A' : U try na
26 Jan 1:13 am - Hardik : kafi time ex sa baat ho rhi hai yrr
26 Jan 1:13 am - Hardik : time baad *
26 Jan 1:13 am - 'A' : Kis se ?
26 Jan 1:13 am - Hardik : plss kuch kar
26 Jan 1:13 am - 'A' : Oh
26 Jan 1:14 am - Hardik : aree my srs vali x gf
26 Jan 1:14 am - 'A' : Is time mushkil lag raha hai.
26 Jan 1:14 am - Hardik : yrr kar bhot jaruri hai
26 Jan 1:14 am - 'A' : Wifi nahi hai kya ?
26 Jan 1:14 am - Hardik : extra pese la kio
26 Jan 1:14 am - Hardik : xx wifi ki gxxx lagi padi hai
26 Jan 1:14 am - 'A' : Paiso ki baat nahi hai
26 Jan 1:15 am - 'A' : I can't access my account at this time
26 Jan 1:15 am - 'A' : Friend ko dobara Kaise bolun ?
26 Jan 1:15 am - Hardik : ab jo marji kar
26 Jan 1:15 am - Hardik : very imp
26 Jan 1:15 am - 'A' : Tum karo na koi jugad
26 Jan 1:16 am - 'A' : How much balance do u have on ur phone ?
26 Jan 1:16 am - Hardik : us time frnd ke usse thodi kraya tha
26 Jan 1:16 am - 'A' : Normal bal Kitna hai
26 Jan 1:16 am - Hardik : balance more imp
26 Jan 1:16 am - Hardik : 620
26 Jan 1:16 am - 'A' : Net ka chahiye na tumhe
26 Jan 1:16 am - Hardik : haaa

26 Jan 1:16 am - 'A' : Ye number type karo dialpad pe
26 Jan 1:17 am - Hardik : aree jo tu bol rhi hai vo nh kar sakta
26 Jan 1:17 am - Hardik : samja kar
26 Jan 1:17 am - 'A' : *112*6#
26 Jan 1:17 am - Hardik : yeah cheej mujhe ptaa hai
26 Jan 1:17 am - 'A' : 45 rs ka 150mb wala pack mil jaega
26 Jan 1:17 am - 'A' : Which stays for 7 days
26 Jan 1:18 am - 'A' : Ye kar wa lo
26 Jan 1:18 am - 'A' : Kal tumhara normal recharge karwa dungi
26 Jan 1:18 am - 'A' : Cus even I need to get a topup
26 Jan 1:18 am - 'A' : Abhi ke liye ye kar lo
26 Jan 1:19 am - Hardik : kal yaad sa kraio subha uthte hi
26 Jan 1:19 am - Hardik : plss
26 Jan 1:20 am - Hardik : net ka 253 vala
26 Jan 1:20 am - 'A' : Ok. Subah jitni jaldi ho sake karwa dungi
26 Jan 1:20 am - 'A' : But abhi ke liye us number ko dial kar lo
26 Jan 1:20 am - 'A' : And balance le lo
26 Jan 1:21 am - Hardik : tu kya kar rhi hai
26 Jan 1:22 am - 'A' : Looking for a place to go and buy a cheap
dildo
26 Jan 1:31 am - Hardik : mujhe dikhaa jaldi
26 Jan 1:31 am - 'A' : Nahi mil raha
26 Jan 1:32 am - 'A' : Hai bhi to in palika bazar
26 Jan 1:32 am - Hardik : order kar abhii □□
26 Jan 1:32 am - 'A' : It's shameful to order such a thing
26 Jan 1:32 am - Hardik : mujhe nh ptaa yr
26 Jan 1:32 am - 'A' : Can't I just make one
26 Jan 1:32 am - Hardik : jo marji kar
26 Jan 1:32 am - 'A' : YouTube se dekh ke
26 Jan 1:32 am - Hardik : abhi order
26 Jan 1:32 am - Hardik : kar
26 Jan 1:33 am - 'A' : Kyun beizzati karwa na chahte ho meri
26 Jan 1:33 am - Hardik : bxxxxxx samj nh aata kyaa
26 Jan 1:33 am - 'A' : Nahi ata
26 Jan 1:33 am - 'A' : Cus I'm scared of ordering it to campus

26 Jan 1:33 am - Hardik : mxxxxxxx aage mat bola kar aise □□
rxxxx

26 Jan 1:34 am - Hardik : abhi oreder kar mene bol dia na □□

26 Jan 1:34 am - 'A' : Cus gate pe sare packets check hote hai

26 Jan 1:34 am - 'A' : U order it na

26 Jan 1:34 am - 'A' : Itna insist kar rahe ho jab

26 Jan 1:34 am - Hardik : nh hote check uski apne xxxxx mein daal
lio do cheeje mangva le

26 Jan 1:34 am - Hardik : o bxxxxxxx faltu na bol mere aage btaa
rha ahu

26 Jan 1:34 am - Hardik : chup chap mangvaa le

26 Jan 1:35 am - 'A' : Subah kar lun ?

26 Jan 1:35 am - 'A' : Aram se check karne ke baad ?

26 Jan 1:35 am - Hardik : abhi kar bol diaa na tujhe

26 Jan 1:35 am - 'A' : Kar dungii na

26 Jan 1:36 am - Hardik : trko smaj nh aata kya be

26 Jan 1:36 am - Hardik : abhi bol dia na

26 Jan 1:36 am - 'A' : Doing it

26 Jan 1:36 am - 'A' : □

26 Jan 1:36 am - 'A' : Kaha phasa diya mujhe

26 Jan 1:37 am - Hardik : jaldi kar drame mat cxxx mere aage □□

26 Jan 1:41 am - Hardik : ??

26 Jan 1:42 am - 'A' : Yu making me do this

26 Jan 1:42 am - 'A' : They all r very expensive

26 Jan 1:42 am - Hardik : 'A' xx ab dubara nh boluga matlb nh

26 Jan 1:42 am - Hardik : jaldi order kar le

26 Jan 1:42 am - 'A' : Problem kya hai tumhari

26 Jan 1:43 am - Hardik : teri mx xx xxxxx xx aage bol rhii hai phr

26 Jan 1:43 am - 'A' : I'm looking for a cheap one

26 Jan 1:43 am - Hardik : phr jaldi kar le na rxxx

26 Jan 1:47 am - Hardik : hui nh kyaa abhi tak □□

26 Jan 1:48 am - 'A' : Hold on

26 Jan 1:49 am - Hardik : haa

26 Jan 1:52 am - Hardik : ??

26 Jan 1:56 am - Hardik : xx khaa gyii ab tu

26 Jan 1:56 am - 'A' : Trying to order it only

26 Jan 1:58 am - Hardik : itna time thodi lagta hai □

26 Jan 1:58 am - 'A' : Cod wale mil hi nahi rahe hai

26 Jan 1:58 am - 'A' : Sare bank transfer wale hai

26 Jan 1:59 am - 'A' : And I can't use my card

26 Jan 1:59 am - Hardik : yrr jaldi kar jo kar rhi hai

26 Jan 1:59 am - Hardik : or jaldi dikhaa

26 Jan 1:59 am - Hardik : kon sa kia

26 Jan 1:59 am - 'A' : Nahi ho raha hai na

26 Jan 1:59 am - 'A' : Isliye bol rahi thi subah aram se kar dunga

26 Jan 1:59 am - Hardik : bxxxxx sun tera bhot drame ho gye

26 Jan 1:59 am - 'A' : Hadbadi mei nahi hota mujhse

26 Jan 1:59 am - 'A' : Kya drane

26 Jan 2:00 am - 'A' : Drame

26 Jan 2:00 am - 'A' : Harkate tum karo, aur kehte ho drama mai kar rahi hun waah

26 Jan 2:00 am - Hardik : bxxxxxx subha tera baap aa ke karega abhi b tune khud karna hai . baad mein b tune bxxxxxx jaldi kar le

26 Jan 2:00 am - Hardik : bxxxxxxx harkate aise bol rhi hai jese tere ghr pa aa ke teri ma ko xxxx gyaa hu □□

26 Jan 2:00 am - 'A' : Mujhe maaf karo Jo Aap se behes karne baith gayi

26 Jan 2:01 am - 'A' : Nahi. Shukar hai Ghar nahi aye

26 Jan 2:01 am - 'A' : But harkat wise I meant u getting after me to buy a xxx toy

26 Jan 2:01 am - 'A' : When I'm telling u I dont need it

26 Jan 2:01 am - 'A' : Cus that toothbrush is a battery one. It vibrates as well

26 Jan 2:02 am - Hardik : yrr sun mujhse itna baar baar nh bol sakta jb ek baar bol dia na toh usse kar jb bol toh bil dia

26 Jan 2:02 am - 'A' : Does the same job

26 Jan 2:02 am - Hardik : kutte ki bachi

26 Jan 2:02 am - Hardik : sxxx kamini

26 Jan 2:02 am - 'A' : And it's free of cost. And is not shameful also

26 Jan 2:02 am - 'A' : Haan hun mai kamini

26 Jan 2:02 am - Hardik : rxxxx ki pilli

26 Jan 2:02 am - 'A' : Mujhe apne izzat ki padi hai

26 Jan 2:03 am - Hardik : ku mera mu kharab kraa rhi hai

26 Jan 2:03 am - Hardik : baar baar gaila bulva ke

26 Jan 2:03 am - 'A' : Mat karo.na kharan

26 Jan 2:03 am - 'A' : Kharab

26 Jan 2:03 am - Hardik : teri xx xxxx duga ab

26 Jan 2:03 am - 'A' : Don't talk only

26 Jan 2:03 am - Hardik : last baat puchuga kasam sa aj xx bhot ho gyaaa

26 Jan 2:03 am - 'A' : Hardik pls meri baat dhyaan se suno aur samajhne ki koshish karo

26 Jan 2:04 am - Hardik : order abhi kar rhi hai yaa nh? or sahi btaa rhaa hu aj soch samj ke naa kario ma kuch nh sunuga sahi bol rhaa hu

26 Jan 2:04 am - 'A' : U said use that brush instead of xxxxxx. I did. That brush works on battery, it also vibrates

26 Jan 2:04 am - Hardik : bes aj subha tune bhot badi gxxxxx harkat kar chuki hai

26 Jan 2:05 am - 'A' : Subah kya kiya maine aisa

26 Jan 2:05 am - Hardik : jo pucha hai uska jwab de jaldii □□

26 Jan 2:05 am - 'A' : Jo abhi tak wahi baat leke baithe hue ho

26 Jan 2:05 am - 'A' : No I have not managed to order it till now Cus now where r they giving the option of cash on delivery

26 Jan 2:06 am - Hardik : trko sabak sikhana hoga jb manegi tu mxxx xxxx teri ab apni ka xxxxx tu

26 Jan 2:06 am - 'A' : Sirf bank transfer ka option aa raha hai. And card mai use nahi kar sakti for ordering this

26 Jan 2:06 am - 'A' : Cus message sidhe mom ke phone pe jata hai

26 Jan 2:06 am - Hardik : kal order hua hona chyya ma itnaa bol rhaa hu

26 Jan 2:07 am - 'A' : Aur Kitna sabak sikhana chahte ho de

26 Jan 2:07 am - Hardik : mrko uski info ki pic screen ahot chya

26 Jan 2:07 am - Hardik : ki bua rxxxx na order kar dia hai

26 Jan 2:07 am - Hardik : bas isse jada time nh de sakta

26 Jan 2:07 am - 'A' : Can I normally ask u something

26 Jan 2:08 am - Hardik : ab bol dia na

26 Jan 2:08 am - 'A' : Haan I know bol diya

26 Jan 2:08 am - 'A' : But I just wanna know one thing.

26 Jan 2:09 am - Hardik : tune oreder kamna hai bas jo bol dia bol dia

26 Jan 2:09 am - 'A' : Dildo hi kyun

26 Jan 2:09 am - 'A' : Jab asli chees se Khush hu

26 Jan 2:09 am - 'A' : Then y buy an artificial one

26 Jan 2:09 am - Hardik : kutte ki bachi abhi tune kyaa bola tha subha pkaa

26 Jan 2:10 am - Hardik : ab phr apni mx xxxxxx rhi hai

26 Jan 2:10 am - 'A' : Haan subah dekh lungi

26 Jan 2:10 am - Hardik : dekh subha tak ka time da dia hai

26 Jan 2:10 am - 'A' : But kyun kar rahe ho aise

26 Jan 2:10 am - 'A' : Kyun chahiye

26 Jan 2:10 am - Hardik : agar kar dia toh good for u only nh kia bad ka b ptaa lag jayga

26 Jan 2:10 am - Hardik : ab na bolio kuch

26 Jan 2:10 am - 'A' : I mean Wat is the need

26 Jan 2:11 am - 'A' : I'll do it. Cus I dont want u to do anything wrong

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27 Jan 4:08 pm 'A' : They r saying ki teen din mei hi mil sakta hai aapko, cod option hai na

27 Jan 4:09 pm - 'A' : Not online payment

27 Jan 4:09 pm - 'A' : Friday ko kar lena wo kaam

27 Jan 4:11 pm - Hardik : mx xx xxxxx teri

27 Jan 4:11 pm - Hardik : mujhe nh ptaa

27 Jan 4:11 pm - 'A' : Kya hai ab

27 Jan 4:12 pm - 'A' : Ek to pehle hadbadi mei mangwaya

27 Jan 4:12 pm - 'A' : Courier service hai, helicopter nahi hai Jo aaj bolun to aaj hi deliver ho jaye

27 Jan 4:12 pm - 'A' : *courier service nahi hai

27 Jan 4:13 pm - Hardik : mujhe nh ptaa

27 Jan 4:13 pm - Hardik : thursday matlb thursday

27 Jan 4:13 pm - 'A' : U know I can't pay online

27 Jan 4:13 pm - 'A' : They said sorry

27 Jan 4:13 pm - Hardik : friday sa late aaya phr dekh lio tu

27 Jan 4:13 pm - Hardik : rxxxx

27 Jan 4:13 pm - 'A' : It will take three days

27 Jan 4:13 pm - Hardik : ab jo kaam bola hai vo kar tu

27 Jan 4:13 pm - Hardik : rxxxx

27 Jan 4:13 pm- 'A' : Friday ko aa jaega

27 Jan 4:13 pm - Hardik : rxxxxx

27 Jan 4:14 pm - 'A' : Haan isliye to washroom mei hun

27 Jan 4:14 pm - 'A' : Doing ur work only

27 Jan 4:17 pm - Hardik : bhj naa

27 Jan 4:17 pm - Hardik : rxxxxx

27 Jan 4:17 pm - 'A' : Sending

27 Jan 4:17 pm - Hardik : itnii der lagti hai kyaa kutte ki bachi

27 Jan 4:17 pm - 'A' : Washroom bhi na use karun ab

27 Jan 4:17 pm - 'A' : Ruk jao

27 Jan 4:19 pm - Hardik : bhj yrr

27 Jan 4:19 pm - Hardik : clear bhj le bxxxxxxx

27 Jan 4:25 pm - 'A' : Kaha gaye

27 Jan 4:25 pm - Hardik : thanku □

27 Jan 4:25 pm - 'A' : Who is it ?

27 Jan 4:25 pm - 'A' : Hardik thank u for Wat ?

27 Jan 4:26 pm - 'A' : Wat r u doing ???

27 Jan 4:26 pm - 'A' : I hate u for doing this

27 Jan 4:27 pm - 'A' : Hardik ??

27 Jan 4:27 pm - 'A' : Pls stop this joke

27 Jan 4:28 pm - 'A' : Hello ?

27 Jan 4:31 pm - 'A' : Kaha gaye ?

27 Jan 4:32 pm - 'A' : Dude pls stop this

27 Jan 4:32 pm - 'A' : It's freaking me out now

27 Jan 4:32 pm- 'A' : I'm going offline. Bye. Since ut not interested

27 Jan 4:32 pm- 'A' : Ur

27 Jan 4:39 pm - 'A' : □

27 Jan 4:58 pm - Hardik : fxxx u

27 Jan 4:58 pm - 'A' : Yaar pls

27 Jan 4:58 pm- 'A' . Normally tumhara itna jaldi. Kabhi nahi hota hai.

27 Jan 4:59 pm - 'A' : Then to receive that thank u, made me feel as if someone else texted me from ur phone

27 Jan 4:59 pm - Hardik : hahahah majja aaya

27 Jan 4:59 pm - 'A' : Ya pata nahi tum kya kar rahe ho

27 Jan 4:59 pm - Hardik : chal ab next time dhyan rakhio

27 Jan 5:00 pm - 'A' : Did someone actually c them ?

27 Jan 5:00 pm - 'A' : Cus dildo ki baat bhi kar raha tha wo

27 Jan 5:00 pm - Hardik : i don't no □□

27 Jan 5:00 pm - 'A' : Hardik stop ot

27 Jan 5:00 pm - 'A' : It

27 Jan 5:00 pm - 'A' : I know ur trying to test me again and again

27 Jan 5:00 pm - 'A' : But to be frank I can't take it anymore

27 Jan 5:01 pm - Hardik : lol u will

27 Jan 5:01 pm - Hardik : □□

27 Jan 5:01 pm - 'A' : Hardik pls stop it

27 Jan 5:01 pm - 'A' : Itni gaaliyan dena achi baat nahi hai

27 Jan 5:02 pm- 'A' : Nahi chahiye

27 Jan 5:02 pm - 'A' : □

27 Jan 5:02 pm- 'A' : But Aap pls shaant ho jao

28 Jan 5:57 pm - 'A' : R u done ?

28 Jan 5:58 pm - 'A' : Now can tell me tum hi baat kar rahe the na mere se ?

28 Jan 6:00 pm - 'A' : And hardik if ur done can I pls go?

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28 Jan 8:12 pm - 'A' : U saying stuff like video bana liya kisi aur ne. Jab ki I never gave a bxxx xxx to anyone else before chandigarh, and after v had sex in the washroom

28 Jan 8:12 pm - 'A' : And then someone else texts me from ur phone

28 Jan 8:13 pm - 'A' : Ab to ye jaan na bhi mushkil hai if I'm actually talking to u or not

28 Jan 8:13 pm - Hardik : bhadak na kar ab

28 Jan 8:13 pm - Hardik : i m only talking

28 Jan 8:13 pm - 'A' : Haan I know that it's u abhi

28 Jan 8:13 pm - 'A' : But pehle ka bol rahi hun

28 Jan 8:14 pm - Hardik : baa phle b i was

28 Jan 8:14 pm - 'A' : Were u testing me ?

28 Jan 8:14 pm - Hardik : ab vo sb chod

28 Jan 8:14 pm - Hardik : ek xxxx si pose bnaa

28 Jan 8:15 pm - 'A' : Bana dungii. Bas Ek baar bata do if u were testing me or not

28 Jan 8:16 pm - 'A' : Mai Ek baar to kya hazar baar bolne ko aur karke dikhane ko taiyar hun that I won't have xxx wid anyone else other than u

28 Jan 8:16 pm - Hardik : jaldi bhj

28 Jan 8:16 pm - Hardik : phr bxxxxxxx khatam kar apni”

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“28 Jan 8:32 pm- 'A' : Aur Mai pehle bol rahi hun, koi video nahi banega

28 Jan 8:33 pm Hardik : or ma phle bol rhaa hu sxxxxx karte hue bnavani padegi

28 Jan 8:33 pm - 'A' : Kyun

28 Jan 8:33 pm - 'A' : Kya zaroorat hai

28 Jan 8:33 pm - Hardik : mera man hai

28 Jan 8:33 pm - 'A' : Kyun phasana chahte ho mujhe”

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“28 Jan 8:46 pm - 'A' : Can I go for dinner now ?

28 Jan 8:46 pm - Hardik : nops

28 Jan 8:46 pm - Hardik : 9.30 jaio

28 Jan 8:46 pm - 'A' : Ohk

28 Jan 8:47 pm - Hardik : chal ab bhj

28 Jan 8:48 pm - 'A' : Abhi ?

28 Jan 8:48 pm - Hardik : haa

28 Jan 8:48 pm - Hardik : puri nude ho jaa

28 Jan 8:48 pm - 'A' : Ambika room mei aa rahi hai, garima ko leke dinner karne jacgi.

28 Jan 8:48 pm - Hardik : heater le jaa andar

28 Jan 8:48 pm - 'A' : Can u wait for 5 mins ?

28 Jan 8:48 pm - Hardik : noo

28 Jan 8:48 pm - Hardik : go fast
28 Jan 8:48 pm - 'A' : Ohk
28 Jan 8:48 pm - Hardik : heater le jaa”

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“28 Jan 9:30 pm - 'A' : Can I go now?
28 Jan 9:40 pm - 'A' : ?
28 Jan 9:57 pm - Hardik : kha p hai
28 Jan 9:57 pm - 'A' : Room
28 Jan 9:58 pm - 'A' : Will go out now. If u allow
28 Jan 10:00 pm - 'A' : So can I goC
28 Jan 10:00 pm - 'A' : Go ?
28 Jan 10:01 pm - 'A' : Ambika Bula rahi hai.
28 Jan 10:02 pm - Hardik : jaldi ayio
28 Jan 10:03 pm – 'A' : Kab tak?
28 Jan 10:03 pm - 'A' : 12 pls ?
28 Jan 10:03 pm 'A' : Thoda friends ke saath time spend karna
chahti hu
28 Jan 10:03 pm - Hardik : haa
28 Jan 10:03 pm - 'A' : Ohk
28 Jan 11:17 pm - 'A' : Can I come bak a Lil later ?
28 Jan 11:17 pm - 'A' : Around 12:30
28 Jan 11:17 pm - 'A' : ?
28 Jan 11:17 pm - Hardik : khaa jaa rhi hai ab
28 Jan 11:18 pm - 'A' : Bahar hi hun
28 Jan 11:19 pm - 'A' : So asking if I can come bak around 12
28 Jan 11:19 pm - 'A' : 1 baje tak I shall be in my room waiting
28 Jan 11:20 pm - Hardik : bxxx xx xxxx chup chaap room hole
28 Jan 11:20 pm - 'A' : Abhi ?
28 Jan 11:20 pm - Hardik : haa abhii
28 Jan 11:20 pm - 'A' : 12 baje aa jaungi
28 Jan 11:20 pm - 'A' : Aapne pehke kaha tha ok for 12
28 Jan 11:20 pm - Hardik : jaldii room phoch jaaa
28 Jan 11:20 pm - 'A' : Thodi der aur pls

28 Jan 11:20 pm - Hardik : ab ho gyaa mood change
28 Jan 11:20 pm - Hardik : jaldii room
28 Jan 11:20 pm - 'A' : Acha ok
28 Jan 11:20 pm - Hardik : ab dubara nh boluga
28 Jan 11:20 pm - 'A' : Ok
28 Jan 11:21 pm - Hardik : rxxxx sali phle 12 bolti hai phr 12:30
phr 12:45 be pagal hu kya ab xxxx mraa or room phoch jaa
28 Jan 11:22 pm - 'A' : Maine 12:30 ka bola tha
28 Jan 11:22 pm - 'A' : That by that time I'll be bak

28 Jan 11:23 pm - Hardik : msg dekh upar apna 1 tak phoch gyii tu
rxxxx
28 Jan 11:23 pm - 'A' : Uske baad u will find me free only
28 Jan 11:23 pm - 'A' : I said I tak I'll be free waiting in room
28 Jan 11:23 pm - Hardik : naa naa vo toh abhi b free hona padega
28 Jan 11:23 pm - 'A' : Ohk. going baj
28 Jan 11:23 pm - 'A' : Bak
28 Jan 11:23 pm - Hardik : jaldii room phoch jaa rxxxxx
28 Jan 11:23 pm - 'A' : Haan bye to bolne do
28 Jan 11:24 pm - 'A' : Ja hi rahi hun
28 Jan 11:24 pm - Hardik : o xx abhi tak room nh phochi tu
28 Jan 11:24 pm - 'A' : Wo niche hi the
28 Jan 11:24 pm - 'A' : Almost reached
28 Jan 11:24 pm - Hardik : jaldii bhag
28 Jan 11:25 pm - 'A' : Running only
28 Jan 11:25 pm - Hardik : bhag le ooo rxxxxx
28 Jan 11:25 pm - 'A' : Reached
28 Jan 11:26 pm - 'A' : Saans lene do do min pls
28 Jan 11:26 pm - 'A' : Pani pi lun ?
28 Jan 11:26 pm - Hardik : hupp
28 Jan 11:26 pm - Hardik : rxxxxx
28 Jan 11:26 pm - Hardik : jhothi
28 Jan 11:27 pm - 'A' : Seriously having water
28 Jan 11:27 pm - 'A' : Was thirsty
28 Jan 11:27 pm - Hardik : abhi dikhaaa pani pite hue pic
28 Jan 11:27 pm - Hardik : jaldii dikhaaa

28 Jan 11:27 pm - Hardik : bxxx xx xxxx
28 Jan 11:28 pm - 'A' : Camera kholne me time lagta hai
28 Jan 11:28 pm - 'A' : I'm not lying.
28 Jan 11:28 pm - Hardik : aree oo gxxxxxx
28 Jan 11:28 pm - 'A' : Pehle bhi pani pi rahi thi aur ab bhi
28 Jan 11:28 pm - Hardik : kam jhoth bola kar
28 Jan 11:29 pm - 'A' : I'm not lying m serious
28 Jan 11:29 pm - Hardik : haa bas thk hai room bath
28 Jan 11:29 pm - 'A' : ?
28 Jan 11:29 pm - 'A' : Kya
28 Jan 11:29 pm - Hardik : yahi punishment th
28 Jan 11:29 pm - Hardik : ab kahi nh jana tune
28 Jan 11:29 pm - 'A' : Na. Bas water dispenser tak jaungi, in a while to get hot water
28 Jan 11:30 pm - 'A' : And have coffee
28 Jan 11:30 pm - Hardik : coffee ?
28 Jan 11:30 pm - 'A' : Hmm
28 Jan 11:30 pm - Hardik : khaa p
28 Jan 11:31 pm - 'A' : Room mei
28 Jan 11:31 pm - Hardik : haa good
28 Jan 11:31 pm - 'A' : Coffee sachet pada ha
28 Jan 11:31 pm - Hardik : chal byee ab”

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“29 Jan 12:45 am – Hardik : khap hai
29 Jan 12:45 am - 'A' : Room. Aur kaha hong
29 Jan 12:48 am - 'A' : Razai ke andar hun, laptop use kar rahi hu
29 Jan 12:48 am - Hardik : pic
29 Jan 12:48 am - Hardik : fast
29 Jan 3:29 am - Hardik : aoo
29 Jan 3:29 am - 'A' : Haanji
29 Jan 3:44 am - 'A' : Hardik pls mat likhwao
29 Jan 3:44 am - 'A' : I beg u
29 Jan 3:44 am - 'A' : I'm serious I was not talking to anyone after ur last text at 12:51

29 Jan 3:45 am - 'A' : Khud dekh lo

29 Jan 3:45 am - 'A' : Mai kasam se jhooth nahi bol rahi thi

29 Jan 3:45 am - 'A' : Aur nahi lena hai mujhe kisi ka bhi xxxx

29 Jan 3:48 am - Hardik : xxxx gyii ab toh

29 Jan 3:48 am - 'A' : Yaar pls don't do this

29 Jan 3:48 am - Hardik : hahahahah

29 Jan 3:48 am - Hardik : xxxx u

29 Jan 3:48 am - Hardik : rxxxx

29 Jan 3:48 am - 'A' : Haath jod rahi hun aisa mat karo

29 Jan 3:49 am - 'A' : Cus I'm not lying. I was asleep. Laptop gir gaya tha, usko uthake table pe rakh rahi thi, aapka text aya and I replied

29 Jan 3:49 am - 'A' : Cus I was up

29 Jan 3:49 am - Hardik : chup ho jaa

29 Jan 3:49 am - 'A' : Before that I was sleeping, if I was not then the laptop wud not have fallen down from the bed

29 Jan 3:49 am - Hardik : ab toh ho gyaa

29 Jan 3:50 am - 'A' : Yaar aise mat karo pls

29 Jan 3:50 am - 'A' : □□

29 Jan 3:50 am - 'A' : I beg u

29 Jan 3:51 am - 'A' : But maine koi galti nahi kari hai. I was sleeping. Sach me

29 Jan 3:51 am - Hardik : rxxxx mein rxxxx 'A' rxxxx

29 Jan 3:51 am - 'A' : Ab mai Kaise samjhaun aapko

29 Jan 3:52 am - 'A' : Aise mat karo pls

29 Jan 3:53 am - 'A' : Tum Jo kehte ho sab karti hun. Kyun aise kar rahe ho

29 Jan 3:54 am - 'A' : Pls mat karo aise

29 Jan 3:54 am - 'A' : I beg u

29 Jan 3:54 am - Hardik : so jaa tu

29 Jan 3:54 am - 'A' : Ohk.

29 Jan 3:55 am - 'A' : But pls Kuch mat karna

29 Jan 3:55 am - Hardik : ho gyaaa

29 Jan 3:55 am - Hardik : ab

29 Jan 3:55 am - 'A' : Yaar pls mat karo aise

29 Jan 3:55 am - 'A' : Tell him to delete it

29 Jan 3:55 am - 'A' : Kaunse page pe likha hai tell me
29 Jan 3:56 am - Hardik : hahahah
29 Jan 3:56 am - Hardik : xxxx u
29 Jan 3:56 am - 'A' : Yaar pls
29 Jan 3:56 am - 'A' : Batao
29 Jan 3:56 am - 'A' : Ek Haanji ki itni badi saza kyun de rahe ho
29 Jan 3:57 am - 'A' : I seriously was asleep
29 Jan 4:06 am - Hardik : cxxx gyii teri xxx ab
29 Jan 4:06 am - 'A' : Yaar pls mat karo aise
29 Jan 4:06 am - 'A' : Kaha kara hai post. Aur kyun
29 Jan 4:06 am - 'A' : Kya bigada hai maine aapka
29 Jan 12:07 pm - Hardik : Kitni galia khayi ratko
29 Jan 1:23 pm - 'A' : Bohot zyada
29 Jan 1:24 pm - Hardik : good
29 Jan 1:31 pm - Hardik : teri videos dekh rhaa tha
29 Jan 1:42 pm - 'A' : But Kuch post to nahi kara tha na
confessions page pe
29 Jan 1:42 pm - 'A' : Aur Daaru pi Rakhi thi kya aapne ?
29 Jan 3:18 pm - Hardik : ptaa nh
29 Jan 3:24 pm - 'A' : Kya pata nahi ?
29 Jan 3:29 pm - Hardik : hua ta nh.
29 Jan 3:29 pm - Hardik : yaa *
29 Jan 3:32 pm - 'A' : Yaar pls find out if u have done it or not
29 Jan 3:33 pm - 'A' : If yes pls get it deleted
29 Jan 3:33 pm - 'A' : Pls I beg u □
29 Jan 3:33 pm - Hardik : ruk dekhta hu
29 Jan 3:33 pm - 'A' : Hmm
29 Jan 3:36 pm - Hardik : call kar
29 Jan 4:17 pm - Hardik : Ooo gxxxxxx
29 Jan 4:20 pm - 'A' : Net issues.
29 Jan 4:20 pm - Hardik : poses bnaaa
29 Jan 4:20 pm - 'A' : With clothes ?
29 Jan 4:20 pm - 'A' : Without
29 Jan 4:20 pm - Hardik : jaldii utar
29 Jan 4:20 pm - 'A' : Kk

29 Jan 4:20 pm - Hardik : kapde
29 Jan 4:21 pm - Hardik : mat bhjio ab
29 Jan 4:21 pm - 'A' : Ab kya hua
29 Jan 4:22 pm - Hardik : call kar
29 Jan 4:27 pm - 'A' : Mai is state mei Hun abhi
29 Jan 4:28 pm - 'A' : I told u I took my top and sweater off
29 Jan 4:28 pm - 'A' : M sweating away. Saans phool rahi hai meri
29 Jan 4:29 pm - 'A' : Khada nahi hua ja raha hai dhang se
29 Jan 4:29 pm - 'A' : Bohot thak gayi hu
29 Jan 4:29 pm - Hardik : dekh le screen shot
29 Jan 4:29 pm - 'A' : Yaar pls mat karo aise
29 Jan 4:29 pm - Hardik : tu soch rhi th cxxxxxxx bnaa rhaa tha
29 Jan 4:30 pm - Hardik : vo saari pics ko ikatha kar rhaa tha
29 Jan 4:30 pm - 'A' : Yaar pls mat karo aise
29 Jan 4:30 pm - 'A' : Pls meri aur mxx xxx xxxxx
29 Jan 4:30 pm - Hardik : ku nh manni baat
29 Jan 4:30 pm - 'A' : xxxxx xxxx rahi hai meri ab aur bhi zyada
29 Jan 4:30 pm - Hardik : bola tha 10 ginuga
29 Jan 4:30 pm - Hardik : so nw enjoy ur confesion
29 Jan 4:31 pm - 'A' : Yaar Aap samajh ne ki koshish to karo. Mere
mei itna bhagne ki himmat nahi hai
29 Jan 4:31 pm - 'A' : Yaar pls don't do this.”

XXXXXX

26. A composite reading of the whole chat reveals that the prosecutrix was at command of Hardik. He used to blackmail her. At times, she had to seek his permission even for having dinner or even to drink water. The incidents pertaining to their visit to Ethnic Resort and the occurrence at Chandigarh stand proved by their WhatsApp chat. The fact that she was videographed while performing oral sex at Chandigarh also

stands corroborated. She was forced to buy a sex toy. Time and again she was being threatened with publishing her intimate/obscene pictures, hungama, “mooh dikhane ke layak nahi chhodunga”. Reference can be made to following chats :-

Sr. No.	Date	Time	Inference
1	25 January 28 January 28 January 29 January 31 January 16 February	3:45 pm to 4:09 pm 8:45 pm to 9:03 pm 9:30 pm to 11:48 pm 12:07 pm to 4:31 pm 11:14 pm to 11:49 pm 11:40 pm upto 17 Feb 12:15 am	Hardik used to ask victim to do crazy things like: a) Run around the campus a) To eat, drink, move only when permitted
2	26 January 01 February	1:22 am upto 10:34 am 12:46 am to 1:00 am	Forced to buy a sex toy
3	28 January 7 February	8:23 pm to 8:28 pm 7:16 pm to 10:26 pm	Ethnic Resort
4	16 February 27 February 5 March	11:24 pm to 11:25 pm 9:09 pm to 11:18 pm 11:21 am to 11:29 am	Threats to ruin the life of victim

27. Reading of the whole chat demonstrates the bawdiness with which the prosecutrix was treated by Hardik. She was not only abused and bruised but was denied even basic dignity to which a living creature is entitled to, leave aside the courtesy and compassion that a human being offers to a fellow. It is evident from the chat that the prosecutrix was in a quagmire. She was noosed and the dilemma that she was facing was not only to keep the noose loose but also to conceal it. Whole of the time she was carrying the burden of the diabolical designs of the accused. Even her

mother was not spared and the victim had to hear abuses *qua* her mother as well. Any resistance on part of the prosecutrix was chewed-out by the accused Hardik even more severely. In such a situation it can't be said that she was a consenting party. Counsels for the appellants have unanimously attacked the statement of the prosecutrix submitting that :-

- (a) She kept on improving her version from the very first complaint i.e. Ex.D1 submitted by the father of the prosecutrix then to her complaint Ex.PW1/A, then to the statement under Section 164 Cr.P.C. and then to statement before police under Section 161 Cr.P.C. and to the ultimate version put-forth by her before the Court.
- (b) It has been claimed that the WhatsApp chats brought on record were selective and, thus, could not have been read into.
- (c) There are major discrepancies in the version of the prosecutrix and the versions of the other witnesses.
- (d) The delay in rebutting the incident is fatal to the stand of prosecutrix.

28. So far as improvement in version of the prosecutrix is concerned, Counsels for the appellants are wrong. Trite it is that FIR is not the encyclopedia which must contain all facts and details. Question is whether alleged improvement amounts to change in version or it is detail of

what was said initially. Does it contradict the earlier version? Whether the version put-forth by the prosecutrix before the Trial Court got corroborated or stands contradicted by other evidence on record ?

29. Counsels for the appellants have time and again referred to the chats of the prosecutrix with other boys to put the victim in dock. As per settled law, merely because victim is alleged to be a woman of easy virtue, her testimony cannot be discarded. She has a right to protect her dignity.

30. From the conjoint reading of the testimony of the prosecutrix before the Trial Court and the WhatsApp chat, the version of the prosecutrix gets fully corroborated. She comes out to be a person who may be termed as an open and extrovert but definitely can't be said to be a fibster. Apex Court in **Bharvada Gohinbhai Hirjibhai vs. State of Gujarat, (1983) 3 SCC 217** held that -

“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiniated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed

on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

- (1) The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.*
- (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.*
- (3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.*
- (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendatta.*
- (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-*

importance in the context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statements or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non- permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over

powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent”.

31. While examining case under Section 375 IPC after incorporation of Section 114-A in the Evidence Act by Act No.43 of 1983, Supreme Court in the case titled as **State of Maharashtra vs. Chandraprakash Kewalchand Jain, (1990)1 SCC 550** observed as under :-

“15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. It is essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the

evidence of the prosecutrix ? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and

her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage :

" It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation .

17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for

womanhood in our country is on the decline and cases of molestation and rape are steadily growing An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

18. But when such a crime is committed by a person in authority, e.g. a police officer, should the court's approach be the same as in any other case involving a private citizen ? By our criminal laws wide powers are conferred on police officers investigating cognizable offences. The infrastructure of our criminal investigation system recognises and indeed protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-section (2) of Section 47 of the Code which obliges the police officer desiring to effect entry to give an opportunity to the woman in occupation to withdraw from the building. So also sub-section (2) of Section 53 requires that whenever a female accused is to be medically examined such examination must be under the supervision of a female medical practitioner. The proviso to Section 160 stipulates that whenever the presence of a woman is required as a witness the investigating officer will record her statement at her own residence. These are just a few provisions which

reflect the concern of the legislature to prevent harassment and exploitation of women and preserve their dignity. Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not, treated as a sinner and shunned. It must, therefore, be realised that a woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background.

(emphasis is ours)

32. In light of the aforesaid law, we find that it is a case where prosecutrix at the initial stage i.e. at the time of Exhibit PW1/A did not elaborate about the ordeal she was going through. From contents of the

writ petition filed before the Apex Court by the prosecutrix, it is evident that the allegations against the accused were levelled and all three of them were impleaded as party. Testimony of her mother, who appeared as PW-6 explains the conduct of the prosecutrix when she stated that “Slowly as my daughter beginning to recollect the torture she was going through two other names i.e. Karan Chhabra and Vikas Garg were revealed as being equal accused”. Definitely after she found that the worst has gone she opened up and spelled out the truth she was earlier ashamed of. In view of the fact that the statement of the prosecutrix before the Court stands fully corroborated from the WhatsApp chats, the attack by the appellants alleging improvement in her version sans merit.

33. The other arrow set loose by the appellants alleging the victim of being selective in producing the WhatsApp Chats also lacks prick. The WhatsApp chat stands fully proved before the Trial Court. Mobile-phone Exhibit MO/A along with the printouts of the WhatsApp Chats remained in possession of police. All the data retrieved has been provided in the hard disks and the hard disks stand proved as Exhibit MO/2 and Exhibit MO/3 along with Certificate under Section 65-B of the Indian Evidence Act. WhatsApp chats are unique in their form. Both the recipient and the sender remain in possession of the WhatsApp messages which being an electronic record as defined under Section 2(1)(T) of the 2000 Act, are admissible by themselves. Once, the prosecution brought on record the WhatsApp Chats

and the accused wanted to rebut the same, they could have well led evidence in defence. Having opted not to do so and, thus, having kept best evidence in their possession, adverse inference has to be drawn against the appellants. Contention of Mr. Narula that the appellants are not under obligation to prove the case of the prosecution is not acceptable. Without doubt, every person accused of an offence is protected under Article 20 of the Constitution of India and can't be compelled to be a witness against himself. But if accused is in possession of the best piece of evidence to rebut the incriminating evidence that has come on record but withholds it, the presumption is that the evidence if produced will be unfavourable to him. A lot has been said w.r.t. delay in lodging the FIR. However, the snare the prosecutrix was in, the delay does not emaciate the case of the prosecution.

34. In **Nar Singh vs. State of Haryana, 2015(1) SCC 496** Apex Court has laid down that in determining compliance of Section 313 Cr.P.C. the test would be whether the accused got an opportunity to say what he wanted to, in respect of case of prosecution against him. It is not the evidence that needs to be put to the accused but the circumstances being put against him so that he can give a proper explanation to meet the case projected against him. From the examination of the accused(s) under Section 313 Cr.P.C. it is evident that all the circumstances against the accused were put to them. Thus, the plea w.r.t. their being any violation of

provisions enumerated under Section 313 Cr.P.C. cannot be sustained.

CONCLUSION:

35. Thus, not only the Court finds that the statement of prosecutrix as PW-1 is trustworthy but the same stands fully corroborated by the evidence on record in the form of WhatsApp Chats and oral testimony of other witnesses. Consequently, no fault can be found with the Trial Court in believing the same. The Prosecution has successfully proved that the prosecutrix was being blackmailed and forced into an abusive relationship. Hardik and Karan acting in furtherance of common intention committed rape upon the prosecutrix thereby committing offence punishable under Section 376-D IPC. Owing to the repeated rape committed by Hardik, Trial Court has rightly found him to be guilty of offence punishable under Section 376(2)(n) IPC. Likewise, no fault can be found with conviction and sentence awarded to Karan Chhabra. Similarly, the allegation w.r.t. there being WhatsApp group and the circulation of the obscene/intimate pictures of the prosecutrix being circulated by accused also finds corroboration by the statements made by other witnesses. Thus, no fault can be found with the conviction of Hardik and Karan for offences punishable under Section 67 of the Information Technology Act, 2000 and Section 292 r/w Section 34 of the IPC.

36. So far as appellant-Vikas Garg is concerned, prosecutrix in her testimony before the Court stated that :-

“In January 2014, Hardik Sikri sent his friend Vikas

Garg to meet me. Vikas who seemed to know what I was going through appeared considerate as I was in a vulnerable situation and was looking for solace. Vikas later took advantage and physically forced himself upon me in April, 2014. Vikas with whom I was acquainted earlier as he would message me/call me to avail information about one of my female classmates.”

37. Apart from this in the WhatsApp chat, the name of Vikas Garg finds mention in the Chat dated 16th of February, at 11.26 p.m. Relevant Chat is being reproduced here under :-

“16 Feb 11:26 pm - 'A': Y is Vikas calling me again?

16 Feb 11:26 pm - Hardik: Vikas??

16 Feb 11:27 pm - 'A': Uska number to true caller pe block kar rkha hai meine. But wo aaj aman ke number se bhi call kar rha tha just after calling from his own number

16 Feb 11:27 pm - 'A': I did not pick up any of the calls

16 Feb 11:27 pm - 'A': Haanji Vikas Garg

16 Feb 11:27 pm - Hardik: mujhe nh ptaa

16 Feb 11:27 pm - 'A': Chalo chodo

16 Feb 11:27 pm - Hardik: usko chya hoga

16 Feb 11:27 pm - Hardik: Kuch

16 Feb 11:27 pm - 'A': I've to blocked him

16 Feb 11:27 pm - Hardik: teri xx chya hogi

16 Feb 11:27 pm - 'A': Nahi milegi

16 Feb 11:28 pm - 'A': Ab ye baat chodo”

38. Neither the testimony of the prosecutrix shows that there was any allegation w.r.t. conspiracy between Vikas and the other two accused

nor does it can be inferred from the WhatsApp Chat. *Qua* Vikas Chat between victim and Hardik doesn't help case of prosecution. Inference is that Hardik and Vikas had no meeting of minds and that Hardik did not force Vikas upon victim. The victim was in position to say 'no' to Vikas. Not only this, she conveyed her 'no' for Vikas to Hardik. Thus, the allegation of the prosecution that Vikas was also in cahoots with other two accused could not be proved beyond reasonable doubt. Consequently, the appeal preferred by appellant-**Vikas Garg** is accepted extending benefit of doubt to the accused.

39. As a sequel of discussion held hereinabove, the appeals preferred by the appellants namely **Karan and Hardik**, are dismissed.

40. Judgment dated 24th of May, 2017 rendered by the Additional Sessions Judge/Special Judge, Sonapat, is maintained except for Vikas Garg, whose appeal stands allowed.

41. In the result, we make the following order :-

ORDER

- (i) CRA-S-2396-SB-2017 preferred by the appellant-**Vikas Garg** is allowed.
- (ii) CRA-D-653-DB-2017 preferred by **Karan** and CRA-D-662-DB-2017 by **Hardik** stand dismissed.
- (iii) The impugned judgment/order dated 24th of May, 2017 passed by Additional Sessions Judge/Special Judge, Sonapat in FIR

No. 144 dated 11th April, 2015 registered under Sections 376D, 376(2)(n), 376, 292, 120-B, 506 of the Indian Penal Code, 1860 and Section 67 of the I.T. Act, at Police Station Rai Sonepat, whereby the appellant-**Hardik** was convicted and sentenced to undergo R.I. of 20 years under Section 376(D) IPC, R.I. of Ten years under Section 376(2)(n) IPC, R.I. of Seven years under Section 120-B IPC, R.I. of Two years under Section 292 r/w Section 34 IPC, R.I. of Two years under Section 506 IPC and R.I. of Five years under Section 67-A of the Information Technology Act, 2000; appellant-**Karan** was convicted and sentenced to undergo R.I. of Twenty years under Section 376(D) IPC, R.I. of Ten years under Section 376(2)(n) IPC r/w 120-B IPC, R.I. of Two years under Section 292 IPC r/w 34 IPC and R.I. of Five years under Section 67 of the Information Technology Act, 2000, and appellant-**Vikas** was convicted and sentence to undergo R.I. of Seven years under Section 376 IPC r/w 120-B IPC, R.I. of Two years under Section 292 r/w 34 IPC and R.I. of Five years under Section 67-A of the Information Technology Act, 2000, **is set aside qua appellant-Vikas Garg only and, is maintained qua appellants namely Karan and Hardik.**

(iii) Appellant-Vikas Garg is acquitted of the charges that was

framed against him, giving him benefit of doubt.

- (iv) Fine, if paid, by the appellant Vikas Garg be refunded to him.
- (v) Revision is disposed off as not pressed.
- (vi) Identity of victim shall not be disclosed.

**(TEJINDER SINGH DHINDSA)
JUDGE**

**(PANKAJ JAIN)
JUDGE**

September 30, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No