

'R' (Complainant) vs State on 29 January, 2019

IN THE COURT OF Dr. KAMINI LAU: SPECIAL JUDGE
(PC ACT): CBI-01: CENTRAL DISTRICT:
TIS HAZARI COURTS: DELHI

Criminal Revision No. 113/2018
Registration No. 876/2018
CNR No. DLCT01-016820/2018

'R' (Complainant)

Versus

1. State
2. Sandeep Sharma @ Toni
S/o Sh. Prem Chand Sharma @ Guddu
R/o L-2/67, Shastri Nagar, Delhi - 110052
3. Pankaj Sharma
S/o Sh. Om Prakash Sharma
R/o F-2, Nag Mandir Road,
Shastri Nagar, Delhi - 110052
4. Bhupender Kumar
S/o Late Tula Ram Sharma
R/o L-135, Shastri Nagar,
Delhi - 110052
5. Shivam Sharma
S/o Late Sh. Krishan Sharma,
R/o B-1603, Shastri Nagar,
Delhi - 110052
6. Chander Mohan Sharma @ Chintu
S/o Ram Avtar Sharma
R/o E-2/105, 1st Floor,
Shastri Nagar, Delhi - 110052

'R' Vs. State & Ors., CrI. Revision No. 113/2018, Judgment dated 29.01.2019
Date of Institution: 13.12.2018
Judgment Reserved on: 28.01.2019
Judgment Pronounced on: 29.01.2019

JUDGMENT:

(1) This Criminal Revision has been filed by the Revisionist Ms. 'R' (name of the victim is withheld as the allegations involved are under Section 376D IPC) against the order dated 16.11.2018 passed

by the Ld. MM-4, Central District, Tis Hazari Courts, Delhi whereby the Ld. Trial Court has accepted the Cancellation Report and dismissed the Protest Petition filed by the complainant/ revisionist. (2) The brief facts of the case are that an FIR No. 1550/15 was lodged on 16.12.2015 at Police Station Sarai Rohilla for the offence under Sections 324/341/354-A/354-B/376-D/34 IPC against the accused persons namely Sandeep Sharma @ Toni, Pankaj Sharma, Bhupender Kumar, Shivam and Chander Mohan Sharma @ Chintu at the instance of the Complainant/ Revisionist. As per allegations, on 19.11.2015 the revisionist along with her husband Ajay went to meet her sister at WZ-22, Nimri Village, Shastri Park, Delhi - 110052 and when she was coming back at around 7:30 PM near M Block, 56 Bigha Park Gate to JJ Colony on the way from Nala towards Park, a white car was parked at the gate of park and when the Revisionist and her husband both went inside the park and started walking few steps, the accused persons/ Respondents no.2 to 6 grabbed the Revisionist and her husband. The husband of the Revisionist objected and freed himself from the grip of the accused and ran towards the gate of park in order to 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 2 of 18 seek help and during this period the accused persons tried to force themselves upon the Revisionist and threatened her of dire consequence if she reported the matter to police. When the husband of the revisionist returned with help, the accused persons ran away. The Revisionist became unconscious and was taken to hospital in the PCR van.

(3) After investigations, the investigating agency filed a Cancellation Report before the Ld. Trial Court wherein it was concluded that from the investigations conducted so far, not a single evidence came on record to corroborate the version of Ajay and 'R' to prove the case. The revisionist/ complainant thereafter filed a Protest Petition before the Ld. Trial Court for taking the cognizance of the offences under Sections 376-D/324/341/354-A/354-B/34 IPC and issuing process to accused persons. The Ld. Trial Court vide the impugned order dated 16.11.2018 accepted the Cancellation Report and dismissed the Protest Petition filed by the complainant/ Revisionist. Being aggrieved by the said order, the Complainant/ Revisionist has filed the present revision petition on the following grounds:

That the Ld. Trial Court has failed to appreciate that the investigation in the present case has been done in a partial manner and unfair manner and the evidence against the accused persons has deliberately not been collected by the investigating agency.

That the Ld. Trial Court has failed to appreciate that after the incident the Revisionist was taken to the hospital by the PCR officials, which fact supports the case of the Revisionist that she 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 3 of 18 was assaulted and abused, both physically and sexually by the accused persons.

That the Ld. Trial Court has failed to appreciate that the Revisionist was an injured eye-witness and she made a PCR call promptly and hence, the reason given by the investigating agency that she had leveled the allegations at a belated stage is untrue.

That the Ld. Trial Court has failed to appreciate that the observations of the Investigating Officer relating to Call Detail Records (CDRs) are contrary to records

since an analysis of the CDRs show their corresponding locations at Shastri Nagar (of accused persons) and Inderlok Metro Station (of complainant) respectively which are not far away situated places rather they are adjacent to each other.

That it was improper for the Ld. Trial Court to not even taken the cognizance and summon the accused persons based on an alleged variance in cell location since the Hon'ble Delhi High Court in the case of Shalu Raghav vs. State & Anr. in Crl. Rev. P. 83/2016 & Crl. M.A. No. 1902/2016 has held that such a difference in location cannot be held to be a valid ground to discharge the accused.

That once a prosecutrix has supported her case in her statement under Section 161 Cr.P.C. and Section 164 Cr.P.C. it was not open for the police to disbelieve her version and not arrest the accused, which proposition has been reiterated in the case of Daati Maharaj in W.P. (C) No. 9752/2018 decided on 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 4 of 18 03.10.2018.

That the Investigating Officer has committed grave error while concluding that from the investigations conducted so far, not even a single evidence came on record to corroborate the version of Ajay and prosecutrix to prove her case except their statements, despite the fact that there is no legal compulsion to look for any other evidence to corroborate the evidence of prosecutrix.

(4) In support of his averments, Ld. counsel for the Revisionist has placed his reliance upon the following authorities:

1. State of U.P. Vs. Pappu @ Yunus & Anr., AIR 2005 SC 1248.
2. Rameshwar Kalyan Singh Vs. State of Rajasthan, AIR 1952 SC 54.
3. Uma Shankar Singh Vs. State of Bihar, MANU/SC/0684/2010.
4. India Carat Pvt. Ltd. Vs. State of Karnataka & Anr., AIR 1989 SC 885.
5. Mukesh & Anr. Vs. State of NCT of Delhi & Ors., Crl. Appeal No. 607-608/2017.
6. State of Punjab Vs. Gurmit Singh & Ors. MANU/SC/0366/1996.
7. State of Karnataka Vs. Krishnappa, MANU/SC0210/2000.
8. Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, MANU/SC/0090/1983.

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9. State of Maharastra Vs. Narsingrao Gangaram, AIR 1984 SC 63.

10. Rajesh Kumar Vs. Dharamvir, AIR 1997 SC 3769.

11. Sunil Arora Vs. State, Crl. A. No. 1284/2015, decided on 08.02.2017.

12. Rajinder @ Raju Vs. State of Himachal Pradesh, MANU/SC/1122/2009.

13. Deepak Vs. State of Haryana, Crl. Appeal No. 65/2012.

14. State of Himachal Pradesh Vs. Sanjay Kumar, decided on 15.12.2016.

(5) Pursuant to the filing of the appeal, notice was issued to all the respondents who have not filed their replies but filed their respective written memorandum of arguments.

(6) Ld. Addl. PP for the State/ Respondent No.1 has argued that the Ld. MM has rightly dismissed the protest petition and accepted the cancellation report filed by the Investigating Agency as a false case was got registered by the complainant with a motive to help Suraj in settling the matters which were filed against him by some of the respondents. It is argued that a free, fair and impartial investigation was conducted by the Investigating Agency in view of the mandate of Hon'ble Supreme Court in the case of Babubhai Vs. state of Gujarat & Ors. Crl. Appeal No. 1599/2010 arising out of SLP (Crl.) No. 2077/2010. (7) Ld. Counsel for the respondents no.2 to 5 has argued that after making her statement under Section 164 Cr.P.C. on 21.01.2016, 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 6 of 18 the prosecutrix has given her affidavit dated 19.03.2016 stating that she cannot identify the respondents no.2 to 6 and also mentioned that the respondents no.2 to 6 were shown to her by her husband Ajay and they were not the persons who have committed the offence as alleged in the FIR. It is further submitted that the said affidavit was got attested from Notary Public Sh. Madan Lal Gupta and the Investigating Officer has taken into possession the photocopy of the Entry No. 621, dated 19.03.2016 of the Register of Notary Public wherein both the prosecutrix and her husband Ajay have signed and also put their thumb impression. Ld. Counsel has pointed out that the Investigating Officer had also obtained the specimen thumb impression of the prosecutrix and her husband Ajay and the copy of the Register of Notary Public which were sent to FSL and Sh. N.K. Sharma Expert and Director, Finger Prints Bureau has, vide his report dated 12.07.2016, confirmed that the said affidavit bear the thumb impressions of the prosecutrix and her husband Ajay. Ld. Counsel has pointed out that Suraj Yadav, Devender Dubey and Ajay were in connivance with each other and the present FIR has been lodged at the instance of Suraj Yadav, who is a Bad Character (B.C.) of the area and all the respondents have been falsely implicated in the present case. It is argued that Suraj Yadav is involved in more than 15 cases registered against him and the respondent no.6 has also lodged two FIRs against Suraj Yadav ie. FIR No.1297/15 and FIR No.133/16 registered at Police Station Sarai Rohilla, Delhi, on the complaint of the respondent no.6 Chander Mohan Sharma. It is further argued that the respondent

nos. 4, 5 and 6 have also sent their Written Representation to Deputy Commissioner of 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 7 of 18 Police apprehending that Suraj Yadav may implicate them in false Criminal cases of heinous crime. Ld. Counsel for the respondents no.2 to 5 has further argued that on 01.12.2015 the prosecutrix had filed a complaint under Section 200 Cr.P.C. against Tony, Pankaj, Bhupender, Shivam Sharma, Chintu and SHO, Police Station Sarai Rohilla for registration of FIR under Section 376 (g)/354/354 B/307/34 IPC, which she later withdrew. He has further argued that the prosecutrix has also sent a complaint posted on 28.05.2016 to SHO Police Station Sarai Rohilla, Delhi at the instance of Suraj Yadav, alleging that Chander Mohan / respondent no.6 had taken the signatures of the prosecutrix and her husband on some papers on 19.03.2016 but she did not mention in the complaint that Chander Mohan had obtained her signatures on the affidavit dated 19.03.2016.

(8) Ld. Counsel has argued that in the Cancellation Report under Section 173 Cr.P.C. the Investigating Officer has mentioned the details of cases filed by the relatives of the respondents against Suraj Yadav and also the details of the cases pending against Suraj Yadav, who is a Bad Character (BC) of the area. He has pointed out that the Investigating Officer has also provided the details of the phone numbers of Bhanu Yadav wife of Sh. Suraj Yadav, Manish, Ajay (husband of the prosecutrix), Devender Dubey (close associate of Suraj Yadav) and Sandeep Yadav (cousin of Suraj Yadav) who had been in contact with each other on the date of incident and thereafter. According to the Ld. Counsel for the respondents, the Investigating Officer has also obtained the CCTV footage of gallery in front of the Court Room No. 222, Tis Hazari Courts Delhi for 03.05.2016 (i.e. the date on which the bail 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 8 of 18 application of the respondents no.2 and 4 was listed for hearing) and it is clear from the said CCTV footage that Suraj Yadav, Devender Dubey were interacting with the prosecutrix and her husband, which shows that Suraj Yadav is the main person at whose instance the present FIR was got registered and the respondent nos. 2 to 6 have been falsely implicated. It is pointed out that the Investigating Officer has also collected the Call Detail Records of the respondent no.2 to 5 which shows that they were not at the place of incident at the alleged time. it is argued that the Investigating Officer has investigated the matter properly and no evidence has come on record against the respondent nos. 2 to 6. Ld. Counsel has also argued that the Investigating Officer has specifically prayed that the prosecutrix 'R', her husband Ajay, Bhanu Yadav wife of Suraj Yadav, Devender Dubey and Sandeep Yadav have conspired with each other to implicate the accused persons falsely so that the respondent no.6 will compromise with Suraj Yadav and the FIR registered against him be got quashed.

(9) In so far as the respondent no.6 Chander Mohan Sharma is concerned, he has also filed his written memorandum of arguments. Ld. Counsel for respondent no.6 has argued that the present FIR No. 1550/15 is the counter blast against the respondent no.6 who has been victimized by Suraj Yadav who is a Bad Character of Police Station Sarai Rohilla and more than 14 cases have been lodged against Suraj Yadav and his associates. It is pointed out that the sister of respondent no.6 has also lodged an FIR No.1286/2015 under Sections 341/354/451/506 IPC registered in PS Sarai Rohilla against Suraj 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 9 of 18 Yadav. Ld. Counsel has also pointed out that on 20.10.2015 at about 10:45 PM when the respondent no.6 was standing on the gate of his house, Suraj Yadav along with his

associate came and fired a bullet on the respondent no.6 pursuant to which an FIR No.1297/2015 under Section 307/341/323/507/34 IPC was registered against Suraj Yadav. It is further pointed out that on 10.01.2016 at about 14:25:53 Suraj Yadav had tried to threaten the respondent no.6 from Tihar Jail through mobile No. +918468870425 pursuant to which several complaints were lodged against Suraj Yadav on the allegation of threatening the witnesses and apprehension of implicating them in false cases. It is also submitted that in order to pressurize the respondent and to create terror upon his rivals, Suraj Yadav has utilized the service of his fellow Ajay and his wife. Ld. Counsel for the respondent no.6 has further pointed out that as per the Call Detail Records of Ajay and 'R', on 20.11.2015 i.e. just day before the incident Ajay through his number made a call to the mobile number of Smt. Bhanu Yadav w/o Suraj Yadav and another associate of Ajay and Suraj Yadav, namely Devender Kumar Dubey S/o Shyam was also found in contact of Ajay as well as Smt. Bhanu Yadav. It is pointed out that Smt. Bhanu Yadav admitted during the investigations admitted that she was in contact of Devender Kumar Dubey and the details received from Tihar Jail shows that Devender Kumar Dubey was regularly visiting to Tihar Jail to meet Suraj Yadav in Tihar Jail. Ld. Counsel has also argued that on 23.04.2016 the complainant amended her statement and alleged that on 19.11.2015 the accused persons had also inserted a finger in her private 'R' Vs. State & Ors., CrI. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 10 of 18 part, which is an improvement in the statement of the complainant and an afterthought. It is further argued that the Investigating Officer made inquiries from HC Satpal who was the first person in PCR Van who had interacted with Ajay and the prosecutrix after the incident and as per the statement of HC Satpal, both Ajay and the prosecutrix came at the parking base of PCR Van and informed them about the quarrel incident by some unknown persons which facts were conveyed to the Police Control Room and hence the allegations of sexual assault or rape were never told by Ajay and the prosecutrix.

(10) I have heard the arguments advanced before me and considered the written memorandum of arguments filed by the parties. I have also gone through the Trial Court Record and the material on record.

(11) At the very Outset I may observe that except for the statement of the complainant / prosecutrix and her husband Ajay, there is no other evidence on record to confirm and corroborate the incident, so much so when pursuant to DD No.27□A when SI Deepak met the complainant at the hospital, she refused her internal medical examination.

(12) Secondly, it is evident from the final report (Cancellation Report) filed by the Investigating Officer that despite the request of SI Deepak the complainant did not give her statement on the plea of feeling unwell due to cold and even on the next day, she did not turn up. Further, when the Investigating Officer visited the address mentioned in the MLC, neither the complainant nor her husband Ajay were found at the given address. However, on 10.12.2015 both the complainant and 'R' Vs. State & Ors., CrI. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 11 of 18 her husband contacted SI Deepak telephonically and informed the police that due to paucity of funds, they could not come and they shall get their statements recorded on 11.12.2015 but again they did not come and rather filed a complaint at the DCP Office pursuant to which the present FIR was registered. During investigating W/SI Renu tried to contact the complainant and her husband but they were again not traceable and finally on 20.01.2016 they joined investigations after which the

statement of Ajay @ Rinku under Section 161 Cr.P.C. was recorded and the statement of the complainant/ prosecutrix was also recorded under Section 164 Cr.P.C. Neither in her complaint nor in her statement under Section 161 Cr.P.C. or under Section 164 Cr.P.C. she disclosed about inserting of finger by accused persons but she changed her version at a very later stage.

(13) Thirdly, the version of the complainant that she had visited her sister on 19.11.2015 at her house bearing No. WZ□22, Nimri Village, Shastri Nagar, Delhi was found to be incorrect since perusal of the PCR form shows that the incident mentioned in the same as "....Jaankaron ke jhagde me lady injured - Hospital le ja rahe hai....". It was only later on 23.04.2016 that the complainant/ prosecutrix modified her statement and alleged that the accused persons had also inserted a finger in her private part (Digital Rape). The first information by Ajay and the prosecutrix who themselves came to the parking base of PCR Van was regarding a quarrel incident only with some known persons which information was forwarded to the Police Control Room and also entered in the Police Log Book. Hence, it is writ large that the allegations of sexual assault and rape was never 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 12 of 18 informed to the police at the first instance and were only afterthought. (14) Fourthly, the material on record shows that the complainant / prosecutrix and her husband Ajay executed an affidavit dated 19.03.2016 in favour of the respondents in the Court and thereafter on 22.03.2016 the complainant/ prosecutrix in the presence of her counsel, also withdrawn her complaint under Section 156 (3) Cr.P.C. which was pending before the Ld. MM and on the same day, a separate statement of the complainant was recorded by the Ld. MM but the complainant/ prosecutrix never disclosed about any threat or forceful signatures on the said affidavit.

(15) Fifthly, during the investigations it has come on record that all the respondents are having some disputes, either civil or criminal or financial, with one Suraj Yadav @ Kake who is a History Sheeter of PS Sarai Rohilla. In fact, the respondent no.6 Chander Mohan Sharma has lodged two FIRs against Suraj Yadav i.e. FIR No. 1286/15 under Sections 341/354/451/506 IPC and FIR No. 1297/15 under Sections 307/323/341/506/34 IPC both of Police Station Sarai Rohilla. Further, the respondent no.4 Bhupender Kumar is a witness in FIR No.278/10 under Section 354/506/34 IPC & 27 Arms Act, PS Sarai Rohilla against Suraj Yadav, Devender Dubey etc. and Devender Dubey has also got registered an FIR No. 66/10 under Section 324/34 IPC, PS Anand Parbat against the respondent no.4 Bhupender Kumar & others. The investigations conducted confirms that there is a property dispute between the respondent no.5 Shivam Sharma with Suraj Yadav pursuant to which an FIR No. 62/15 under Section 420/34 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 13 of 18 IPC, PS Sarai Rohilla was registered. The investigations further confirm that an FIR No. 133/16 under Section 323/341/506/34 IPC, PS Sarai Rohilla has also been registered on the complaint of Smt. Chander Prabha (step□mother of Suraj Yadav) against the respondent no.2 Sandeep Sharma @ Toni. It is evident from the material on record that Suraj Yadav has been pressurizing his opponents, threaten and intimidating them to desist from appearing in the Court to depose against him. The Call Detail Records of the prosecutrix and her husband as well as the CCTV Footage of gallery in front of the Court Room No. 222, Tis Hazari Courts Delhi dated 03.05.2016 (i.e. the date on which the bail application of the respondents no.2 and 4 was listed for hearing) confirm the close association between Suraj Yadav (BC of the area) as well as the husband of the prosecutrix namely Ajay. The conclusion that the present complaint had been introduced

against the accused/ respondents in order to intimidate them when other attempts and threats failed, and to deter them is not all that unfounded. (16) Sixthly, I further note that from the analysis of Call Detail Records it is confirmed that Ajay (husband of the complainant) was in touch with Sandeep Yadav (cousin of Suraj Yadav) on the date of incident as Ajay made a call on the mobile of Sandeep Yadav from the landline number of Hindu Rao Hospital just five minutes before the MLC of prosecutrix was prepared wherein she had stated about the sexual assault on her. Further, the husband of the prosecutrix i.e. Ajay was found to be frequently in touch on mobile phones with Sandeep Yadav (cousin of Suraj Yadav), Smt. Bhanu Yadav (wife of Suraj 'R' Vs. State & Ors., CrI. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 14 of 18 Yadav) and Devender Kumar Dubey (a close associate of Suraj Yadav) during relevant time before and after the alleged incident. This fact is also evident from the statement of Smt. Bhanu Yadav who during the investigations admitted that she was in close touch with Devender Kumar Dubey who had gone to Tihar Jail to meet Suraj Yadav. Further, from the analysis of Call Detail Records all the respondents were found to be at different locations on the alleged date of incident and were in fact found engaged with their respective jobs. Even two accused/ respondents were not found on one place or moving together and no one was found in touch with another on the day of alleged incident.

(17) Seventhly, in so far as the argument of the Ld. Counsel for the revisionist that the observations of Investigating Officer relating to Call Detail Records (CDRs) are contrary to records since an analysis of the CDRs show their corresponding locations at Shastri Nagar (of accused persons) and Inderlok Metro Station (of complainant) respectively which are not far away situated places rather they are adjacent to each other, is concerned I may note that the conclusions arrived at by the Investigating Officer, duly accepted by the Ld. Trial Court are based not only on the basis of locations of accused and the complainant, rather there is other corroborative material collected by the Investigating Officer to disprove the allegations made by the complainant.

(18) Eighthly, I note that the Ld. Trial Court has applied its independent mind to the material placed before it by the Investigating Officer and then reached to the conclusion that there is no evidence on 'R' Vs. State & Ors., CrI. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 15 of 18 record to show the involvement of any of the accused persons and rather, on the contrary there is enough material to raise doubt on the version of the complainant. The relevant portion of the impugned order dated 16.11.2018 is reproduced as under:

"..... IO has minutely examined the present case from all the aspects. The CDRs of accused, complainant and her husband and other persons have been obtained. Several witnesses examined. Accused persons have been interrogated. PCR call records have been obtained and PCR officials examined. Addresses of complainant and accused persons verified. Neighbourers examined. Associates of complainant in Jail examined. Statement of complainant under Section 164 Cr.P.C. recorded. Medical examination of complainant studied by the IO. Past antecedents of the accused as well as the complainant have been investigated. Jail record of associates of the complainant have been obtained. Locations of the complainant from their mobile number as well as CCTV footage have also been obtained. The various improvements made by the complainant in the course of investigation have been pointed out by the

IO and also the contradictions between the various statements have been pointed out by the IO. This court has examined all the materials and statements collected and recorded by the IO (already reproduced above) and is in agreement with the conclusion of the IO that there is no credible material regarding involvements of the accused persons in the allegations levelled by the complainant and her husband. The arguments of Ld. Counsel for the complainant that observations of the IO in contrary to the record appears to be without any merit. Ld. Counsel for the complainant had laid emphasis on the fact that analysis of the CDRs of accused persons as well as the complainant shows their corresponding 'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 16 of 18 locations at Shastri Nagar and Inderlok Metro Station and this court can take note of the fact that both these places are not remotely situated. He has relied upon the judgment passed in Crl. A. No. 1284/2015 of Hon'ble Delhi High Court to lay stress on the fact that the connectivity of the Cell towers depends on air distance and not distance by road and that there is some limit to which the connectivity may be assessed. This court is of the opinion that the IO has not formed his opinion merely on the basis of the locations alone. There is ample corroborative material collected by the IO to disprove the allegations of the complainant and locations is only one factor that weighed in the mind of the IO and it is to be evaluated taking into consideration the other facts and circumstances of the case. This court has also applied its independent mind (law is well settled that court is not bound by the opinion of the IO) and has reached the conclusion that there is no evidence regarding involvement of any of the accused persons and on the contrary enough material to raise doubt on version of complainant. Ld. Counsel for the accused has argued that IO has failed to appreciate that there is no need to corroborate the evidence of the prosecutrix and it is not in the domain of the IO. This rule is only applicable when statement of complainant is otherwise found to be reliable. The very purpose of the investigation is to investigate the allegations and collect material that support or do not support the version of the complainant. It is very much in the domain of the IO to investigate the authenticity of the allegations of the complainant....".

(19) The above observations of the Ld. Trial Court cannot be faulted in view of the Call Detail Records and other material collected by the Investigating Officer.

'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019 Page No. 17 of 18 (20) Lastly, I may note that the investigations into a criminal offence must be free from objectionable features or material infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is the duty of the Investigating Officer to conduct the investigations avoiding any kind of mischief and harassment to any of the accused and the Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth. Reference in this regard is made to the judgment of Hon'ble Supreme Court in the case of Babubhai Vs. State of

Gujarat & Ors. Crl. Appeal No. 1599/2010 [arising out of SLP (Crl.) No. 2077/2010]] decided on 26.08.2010.

(21) This being the background, I find no illegality in the impugned order dated 16.11.2018 passed by the Ld. Trial Court. The Revision Petition is hereby Dismissed. Trial Court Record be sent back along with the copy of this order.

(22) Revision file be consigned to Record Room.

KAMINI

LAU

Announced in the open court
Dated: 29.01.2019

(Dr. KAMINI LAU)
Special Judge (PC Act), C
Central District, Tis Hazar
Delhi

'R' Vs. State & Ors., Crl. Revision No. 113/2018, Judgment dated 29.01.2019

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