

Delhi District Court

State vs Naresh Kumar on 22 April, 2014

Author: Ms. Kaveri Baweja

In the Court of Ms. Kaveri Baweja
Additional Sessions Judge- Special FTC - 2 (Central)
Tis Hazari Courts: Delhi.

Sessions Case No. : 66/2013
Unique ID No. : 02401R0236852013

State versus

Naresh Kumar
S/o Late Sh.Ramesh Chand
R/o A-604, Gali No.9,
25 Foota Road, Part-II,
Mukundpur, Bhalswa Diary,
Delhi

Permanent Address:
Village, Madanpur Chhabila,
P.O. Amrohali,
Tehsil Gabhana,
Aligarh U.P.

Case arising out of:

FIR No. : 37/2013
Police Station : Burari
Under Section : 376/506 IPC

Judgment reserved on : 16.04.2014
Judgment pronounced on : 22.04.2014

JUDGMENT

Case of the Prosecution:

The case in hand was registered on the basis of complaint dated 09.02.2013 lodged by Complainant 'B' [name withheld to protect her identity]. As per the complainant, accused Naresh used to reside in her locality at Mukundpur. She used to work in Deep Hyundai, Wazirpur whereas accused used to work at Krish Automotors at Jahangirpuri. One day in the morning while she was on her way to office, accused met her and started asking the name of her company and her current salary and told that he would secure a good salary job for her. The complainant gave her resume to him and the accused arranged a job for her at Himgiri Hyundai, Wazirpur.

She further alleged in her complaint that accused took her to Baba Balak Nath Temple on the pretext of 'darshan' and there he established sexual relations with her and also made a video recording of the same. She further alleged that the accused threatened her that in case she refused for establishing physical relations with him again, he would upload the said video on the internet. On the basis of the said threat accused Naresh also allegedly kept her in a rented house at Nehru Gali No. 15, 18, Chandan Vihar, Sant Nagar, Burari for about two months. She further alleged that accused also forced her to file a divorce case against her husband, by extending the said threat. During the pendency of this case, when they were referred for mediation proceedings, the complainant revealed all the facts to her husband, who took her and her children from Sant Nagar Burari to his house at Village Kherka Gujjar, Post Office Dulehra, Tshsil Bahadurgarh, Distt. Jhhajhar.

On the basis of the aforesaid complaint, the present case under Section 376/506 IPC was registered against the accused. Prosecutrix was got medically examined and on her pointing site plan of the above said rented house was prepared. Statement of Prosecutrix was also got recorded under Section 164 CrPC. During the course of further investigation, Accused was arrested at the instance of the complainant and his medical examination along with potency test were got conducted. Disclosure statement of Accused was also got recorded. The mobile phones of accused were also taken into police possession and all the exhibits along with the mobile phones were sent to the FSL for expert opinion. Upon completion of the investigation, charge sheet was filed before the court. Charges:

After committal of the case and on the basis of material on record, Accused Naresh Kumar was charged for offence punishable under Sections 376/506 IPC vide order dated 20.05.2013. He pleaded not guilty and claimed trial, when the charges were read over and explained to him. Prosecution Evidence:

Complainant 'B' was examined as PW□. She deposed that earlier she was residing at house No.382, Gali No.5, Part□I, Mukundpur, Delhi along with her husband and at that time, she was working in Deep Hyundai, Wazirpur, Delhi where she worked for about 2□½ years i.e. till the year 2011. She correctly identified the accused in the court and further deposed that he met her at the auto stand of Mukundpur in the end of year 2010. He asked from her as to where she was working and about her salary. She told him that she is getting salary of Rs. 10,000/□per month. Accused told her that he would get job arranged for her in Himgiri, Hyundai for monthly salary of Rs. 10,000/□and took her resume from her. Accused told her to visit office of Himgiri, Hyundai at Jahangirpuri for interview for job where she gave interview and got a job on monthly salary of Rs. 9,000/□and she worked there for about 06 months.

During this period, accused started meeting and talking with her and he told her that he is a devotee of Baba Balak Nath and told her that his entire family will visit the temple of Baba Balak Nath in Himachal Pradesh and asked her to accompany him and that they will return in one day. I went to the railway station. But his family was not with him and he was alone. She went to the temple of Baba Balak Nath with the accused where he had booked a room in a Dharamshala.

PW□ further deposed that Accused forcibly established physical relations with her in that room and made a video clip of the same. Accused showed that video clip to her and transferred the same to his mobile phone. Therefore, accused used to threaten her daily that he would show the video clip to her husband, neighbours and relatives and used to call her at various places. She further deposed that under the fear, she used to visit those places. Accused called me at Baba Guest House at Azadpur on her weekly offs and used to forcibly establish physical relations with her. Accused threatened her that he would kill her husband and asked her to get divorce from her husband or else he would get him killed. She told the accused that she would file a divorce case against my husband.

PW□ further deposed that Accused kept her in a rented premises at Chandan Vihar, Sant Nagar, Burari for about 02 months. Her husband had lodged her missing report at PS Bhalswa and placed suspicion on the accused, as her husband was aware that accused arranged job for her. Police created a pressure on the accused and under the pressure, accused produced me at PS Bhalswa along with his advocate who also filed divorce case on her behalf at instance of accused. Accused also told me that she had to state before police that she did not want to go with her husband, as told by accused and his counsel and due to fear of accused, she stated so before police officials of PS Bhalswa.

From the court, her case was referred to Mediation, where she met with her husband during the mediation proceedings and told him about the true facts. On this, her husband agreed to take her back to her matrimonial house and her divorce case was closed. She along with her husband started living at her matrimonial house, since 14.1.13.

The complainant further proved her complaint which was filed by her in the police station as Ex.PW□/A. She further deposed regarding preparation of the site plan at her instance of the house at Sant Nagar and the house in Gali No. 18 where also she was kept by the accused and proved the same as Ex.PW□/B and Ex.PW□/C respectively. PW□ also correctly identified her signatures on her statement recorded under Section 164 Cr.PC before the Id. MM which is exhibited as Ex.PW□ 1/D. She further deposed regarding the arrest of the accused at her instance vide arrest memo Ex.PW□/E and recovery of two mobile phone at his instance, which were seized vide seizure memo Ex.PW□/F. PW□ also correctly identified the case property in the court when shown to her.

PW□ also deposed that during investigation on 28.02.2013, she handed over the self attested photocopy of all the documents of maintenance petition, settlement, one copy of missing report to SHO Bhalswa and one copy of missing report to ACP Jahangir Puri which were seized vide seizure memo Ex.PW□/G.

PW□₂ is Duty Officer HC Jauhari Singh, who deposed regarding recording of the FIR of this case and proved the computerized copy of the same as Ex.PW□₂/A.

PW□₃ is Dr.Manas Dubey who deposed regarding having conducted the medical examination of the Prosecutrix on 10.02.2013 and proved the same as Ex.PW□₃/A.

PW□4 is Dr.Soloni who deposed regarding having conducted the medical examination of the accused on 10.02.2013 and proved the same as Ex.PW□4/A. She further referred the accused for his potency test.

PW□5 is Dr.S.Lal, Specialist Forensic Medicine who conducted the potency test of the accused and found accused capable to perform sexual intercourse. He also proved his findings from point B to B on the back of MLC Ex.PW□4/A.

PW□6 Ct.Vivesh Kumar deposed regarding making of an entry at Srl. No.23B in DD register by W/SI Doroitha of PS Bhalaswa Diary on 10.02.2013 at 11:25 AM and proved the copy of th same as Ex.PW□6/A.

Husband of the Prosecutrix Sh.Harpal Singh stepped into the witness box as PW□7. He deposed that after about two years of his marriage with Babita, in the year 2009, he along with his family came to Delhi and started living in Mukundpur in a rented accommodation. His wife i.e. the Prosecutrix 'B' started working in 2010 at Deep Hyundai Workshop at Wazirpur. PW□7 correctly identified accused Naresh in the court and further deposed that the accused also used to live at Mukundpur and he got employed his wife at Deep Hyundai Workshop and thereafter, he got employed his wife at Himgiri Hyundai, Wazirpur.

PW□7 further deposed that one day, in the year 2012, his wife informed him on phone that accused had manhandled her near Peer Baba Mukundpur. He went there but accused tendered his apology for the same.

PW□7 also deposed that he have two children and that on 18.11.2012, his wife along with their children left his house. He made a report in PS Bhalaswa regarding this and after about 20□25 days, he was called in the PS, where his wife 'B' was present in the PS with her lawyer. She had filed a petition for maintenance as well a petition for divorce against him in court. The lawyer of his wife did not allow him to meet his wife for 1□2 dates when he went to court to attend the court proceedings. Their case was referred to mediation and his wife told him that accused Naresh took her to Baba Balak Nath Mandir at Himachal Pradesh after giving threats and he clicked her photographs and made videography and threatened her not to disclose the same to anyone and had established physical relations with her forcibly and she further told PW□7 that she had filed this petition for divorce under the threat of accused against him.

PW□7 further deposed that after settlement in court, he took his wife to Delhi to his house at his village and they did not make any complaint to the police due to 'lok laaj'. He used to run a shop of furniture in Mukundpur. Once accused met him and threatened him to upload the photographs and video of his wife on internet. Thereafter, his wife 'B' made a complaint at PS Balaswa and the said complaint was referred to PS Burari.

PW□8 is SI Santosh Sirohi who deposed regarding the transfer of this case to her for further investigation after the transfer of first IO/W.SI Neeraj. She further deposed that she only recorded the statement of HC Dhan Singh and HC Manoj, who joined the investigation with W/SI Neeraj and

after preparation of the chargesheet filed it in the court.

PW□9 is Smt.Bimla Devi who is the land lord of the H.No.8/18, A□2, West Sant Nagar, Burari, Delhi. She deposed that she let out the ground floor of her house to accused Naresh at the monthly rent of Rs. 5000/□ who lived in her house for about 15□20 days along with his wife i.e. the Prosecutrix 'B' and two children. She was unable to get the verification of accused due to demise of her close relative. She further deposed that accused lived in her house with her aforesaid family some time in the month of December, 2012.

PW□10 is SI Dorothia who deposed regarding handing over of all the relevant documents viz., complaint DD entries, medical documents and statement of witnesses, which she procured during the investigation period while posted at PS Bhalaswa Diary, to SI Neeraj who conducted the investigation of this case and proved the entry in this regard in the DD register at Srl. No.23B of PS Burari which is Ex.PW□6/A.

PW□11 is SI Neeraj, who conducted the investigation of this case. He deposed regarding having received the written compliant of the Prosecutrix, two statements of Smt.Bimla and Suresh and MLC of the Prosecutrix along with DD No.23B (Ex.PW□6/A). He also deposed regarding having made inquiries from the Prosecutrix, preparation of the rukka on the written complaint of the Prosecutrix and proved the same as Ex.PW□11/A and got the FIR registered through Duty Officer.

PW□11 further deposed regarding the arrest of the accused at the instance of the Prosecutrix vide arrest memo Ex.PW□/E and conduct of his personal search vide memo Ex.PW□11/B. He also seized two mobile phones which were recovered from the possession of the accused vide seizure memo Ex.PW□/F. He also deposed regarding the preparation of the site plan at the instance of complainant, recording of statement of Bimla, Prosecutrix and her husband. PW□11 also got conducted the medical examination of the accused at Aruna Asaf Ali Hospital and collected the sealed exhibits which were given by examining doctor and seized the same vide seizure memo Ex.PW□11/D. He further deposed regarding having got conducted the potency test of the accused and recording of the statement of Prosecutrix under Section 164 Cr.PC before the Id. MM, taking of the exhibits in the FSL Rohini. PW□11 also collected some documents from the Prosecutrix i.e., copy of the petition under Section 125 Cr.PC, copy of settlement/agreement, one complaint about missing to SHO Bhalaswa Diary and one copy to ACP Jahangirpuri, which he seized vide memo Ex.PW□/C. Thereafter, after his transfer, he deposited the case file with the MHC(R). Plea of the Accused:

The entire incriminating evidence was put to the accused in his statement recoded under Section 313 Cr.PC. He pleaded innocence and claimed that he has been falsely implicated in this case. He further pleaded that he did not rape the Prosecutrix and that the physical relations between him and the Prosecutrix were established with her consent. He never threatened her in any manner whatsoever. He further stated that he never prepared any video recording nor took any photographs of Prosecutrix and never compelled her to go anywhere with her or to live with him forcibly or under any kind of threat. He also never pressurized her to file any case against her husband. He also stated that the Prosecutrix wanted him to transfer his property at Mukundpur in her name and in the name of her children to which he refused. Prosecutrix thereafter left from the tenanted premises where

she was living with him without telling him and falsely implicated him in this case. Accused Naresh did not lead any evidence in his defence.

Arguments, Analysis and Findings:

I have heard submissions of learned defence counsel as well as learned APP and have also gone through the detailed written arguments filed on behalf of accused.

The Hon'ble Superior Courts have time and again in their various pronouncements, laid down that a rape victim must be treated as an injured witness. Her testimony is to be given due credence and if it inspires confidence, it must be relied upon without seeking corroboration. Moreover, courts should not get swayed by minor contradictions or insignificant discrepancies in the testimony of the Prosecutrix, which are not of a fatal nature to throw out an otherwise reliable prosecution case. Reliance in this regard may be placed upon the judgment of Hon'ble Supreme Court in 'State of Punjab vs. Gurmit Singh & Ors.', AIR 1996 SC 1393(1).

However, at the same time, the Hon'ble Superior Courts have been of a consistent view that while analyzing the testimony of a rape victim, the courts have to adopt a cautious and judicious approach. The conviction of an accused in such a case can be based only upon the testimony of a victim which can be said to be of "sterling quality". Reference in this regard may be placed upon Krishan Kumar Malik vs. State of Haryana, 2013 (4) JCC 2358.

Reliance may also be placed on a judgment of Honble Supreme Court titled as Rajoo & Ors. vs. State of M.P., AIR 2009 SC 858, wherein it has been held as under:

"The evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth....

.....It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved."

It has also been held in the judgment titled as Tameezudin @ Tammu vs. State of (NCT) of Delhi, 2009(12) SCALE that "In a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."

In yet another case titled as Mumtaz vs. State (Govt. of NCT of Delhi), 2013 (2) JCC 1308, Hon'ble High Court while reiterating the case of Rajoo & Ors. vs. State of Madhya Pradesh (Supra), has held as under:

"Duties and approach of trial court in - Trial Court has to discern the truth after considering or evaluating the testimony of material prosecution witnesses on the touchstone of basic human conduct improbabilities and effect of deposition before the Court - If a conviction is based and punishment awarded any farfetchedness conjectures and surmises, it would amount to doing violence to the basic principles of criminal jurisprudence."

An analysis of the law as laid down by the Hon'ble Superior Courts would thus clarify that before adjudicating a case for offence punishable under Section 376 IPC, the court must carefully scrutinize the deposition of the Prosecutrix. Conviction in such a case may be based on the sole testimony of the victim, provided if it inspires confidence and is found to be credible and completely trustworthy. At the same time, considering the fact that conviction in such cases it entails severe consequences for the accused, if found guilty, the court must at the same time be cautious and consider the testimony of such victim carefully before arriving at its conclusion.

Keeping in view the aforesaid guidelines, the testimony of the victim in the present case must now be analyzed in detail.

As per the charge sheet, it is the case of the Prosecutrix that accused Naresh offered to secure a job for her at a higher salary and for this purpose, she gave her resume to him and the accused secured a job for her at Hingiri Hyundai. Thereafter, he took her to Baba Balak Nath Temple at Himachal Pradesh in the year 2012 on the pretext of pilgrimage and there he forcibly established sexual relations with her and also made a video recording of the said act.

Prosecutrix 'B' also alleged in her complaint Ex.PW□/A that thereafter accused continued to establish physical relations with her by threatening to upload her video recording on the internet. He also allegedly kept her for about two months at Chandan Vihar, Sant Nagar, Burari, where he continued to establish physical relations with her under the said threat. She also alleged that the accused threatened her and compelled her to file a case against her husband. She also claimed that it is during the mediation proceedings that she revealed all the correct facts to her husband, after which he took her to his house along with her children in which she is residing with him since 14.01.2013.

Prosecutrix 'B' was examined as PW□. In her examination□in□chief she more or less reiterated the contents all the facts as stated by her in her complaint Ex.PW□/A. She also deposed in her examination□in□chief that during the investigation, she showed the house at Sant Nagar, where she was kept by the accused and also preparation of the site plan by the IO at her instance and proved the same as Ex.PW□/B and Ex.PW□/C respectively. She also stated that she was produced before the Id. Magistrate who recorded her statement under Section 164 Cr.PC which is Ex.PW□/D and the arrest memo of the accused was prepared at her instance vide Ex.PW□/E. She also identified the two mobile phones which were seized from the accused vide seizure memo Ex.PW□/F and also various documents including maintenance petition, copy of settlement etc. which were seized vide seizure memo Ex.PW□/G.

When the evidence on record was put to the accused in his statement recorded under Section 313 Cr.PC, he pleaded his false implication and claimed that he is innocent. He pleaded that he never committed rape upon the Prosecutrix and the physical relations between them were established with her consent. He denied having prepared any video recording of the prosecutrix or having compelled her to go anywhere with him or to live with him forcibly or under any kind of threat. The Prosecutrix herself wanted to marry him. He further stated that the Prosecutrix wanted him to transfer his property at Mukundpur in her name and name of her children, to which he refused. He lastly stated that the Prosecutrix left from the tenanted premises where she was living with him without telling him and thereafter she falsely implicated him in this case.

During the cross-examination of the Prosecutrix, certain material facts were elicited by the learned defence counsel, which to my mind, completely demolish the entire case of the Prosecution and clearly belie her claim.

At the outset, it must be noted that the Prosecutrix 'B' claimed in her complaint Ex.PW□/A that accused Naresh offered to arrange a job for her at a higher salary. However, in her examination-in-chief itself she deposed that she was getting a salary of Rs.10,000/□per month at Deep Hyundai, where she was earlier working and accused secured a job for her at Himgiri Hyundai at a monthly salary of Rs.9,000/□per month, which she accepted and started working there. It does not appeal to reason as to why she would accept a job at lower salary if, as per her complaint, the accused had offered to secure a job for her at a higher salary. The only plausible explanation for this could be that she herself wanted to work there, even at a lower salary.

Further, in her cross-examination, Prosecutrix PW□ admitted having been in touch with the accused through her mobile phone after joining Himgiri Hyundai, Wazirpur. She admitted that she used to have long conversations with the accused. She also admitted that before going to Baba Balak Nath Temple at Himachal Pradesh, accused took her to Kali Mandir at Gurgaon.

The aforesaid admissions of the Prosecutrix, if considered in isolation, cannot be said to have much bearing on the facts of the case. However, the entire conduct of the Prosecutrix as brought out from her cross-examination, to my mind, belies her claim as alleged in her complaint Ex.PW□/A. Certainly, her entire deposition has to be read in totality and a careful scrutiny of her entire deposition would reveal that she is not a reliable witness and the accused has been falsely implicated in this case.

It is noteworthy that the Prosecutrix admitted that the accused had purchased salwar suits for her before going to Baba Balak Nath Temple. There is no explanation whatsoever on record as to why she would permit accused to buy clothes for her or to accept the same from him. She again failed to explain as to what was the reason so compelling which made her accept those clothes from the Accused, particularly on occasion of 'Karva Chauth'.

Prosecutrix 'B' further deposed in her cross-examination that the accused might have purchased clothes for her on the occasion of 'Karva Chauth' and further stated that 'Usne Zabardasti Dilvaye the.' She further admitted that she used to go out with the accused on holidays after telling her

husband that she is going out to get medicines for herself. As per the victim PW□, she was living with her husband from March, 2012 to October, 2012 and it is apparently during this period that she used to meet the accused on her holidays after lying to her husband that she used to get medicines for herself. Though, the Prosecutrix claimed that she used to go out with the accused as he used to force her to meet him by making repeated threatening calls, yet in view of the discussion hereinbelow, this claim of Prosecutrix 'B' regarding alleged threats given by the accused is apparently false.

On a careful analysis of her testimony, I find that the claim of the Prosecutrix that she was raped by the accused in a Dharamshala at Baba Balak Nath Temple in March, 2012 cannot be accepted. Prosecutrix PW□ claimed that on reaching the railway station for going to the said temple she realized that the accused had falsely told her that his family is also going with her. Despite the fact that it was revealed to her before leaving for Baba Balak Nath Temple that she was going alone with the accused, she made no attempt to return to her house from the railway station itself.

Further, she stated in her cross□examination dated 04.10.2013 that the accused took one room for their stay in the 'Dharamshala', after reaching there. They entered the room together and stayed in that room over night. There is no explanation whatsoever on record as to why she agreed to stay with the accused over night in one room and did not insist for taking another room for herself. Obviously, her consent to share the room in the said Dharamshala with the Accused clearly belies her own story. It is not her case that other rooms were not available in Dharamshala or that she was forced by the accused to share the said room with him.

What is also striking is that as per the cross□examination of PW□, there were 2□3 other rooms in the Dharamshala and the rest was temple area. There was a 'pujari' in that temple and that the family of the pujari was also living there. She was also told by the pujari that she can ask for help in case of any problem. The Prosecutrix, however, did not seek any help from any such inhabitant of the Dharamshala.

She further deposed in her cross□examination that the accused established physical relations with her for about half an hour and during this period she had raised an alarm and also did 'maar□pitai' with the accused in order to stop the accused, despite which the accused raped her.

She also claimed that the accused had used either a video camera or a mobile phone to make recording, which he had already fixed somewhere before hand and it was not in his hand while he was allegedly committing rape upon her. The Prosecutrix also admitted that she did not mention about the factum of accused having fixed a video camera or mobile phone in the room either to the police or at the time of recording of her statement under Section 164 Cr.PC before the Id. MM or on any earlier occasion and it is for the first time that she disclosed this fact and that too in her cross□examination.

She also admitted that she deposed for the first time in the court that earlier when she had tried to stop the accused by giving him beatings and by raising alarm, accused assured her that they have only came here for 'darshan'. Thereafter, he offered her cold drink and after consuming the same she

became intoxicated and only after watching the video recording, she came to know that the accused had raped her. Admittedly, the allegation of Prosecutrix that she had been administered an intoxicating substance by the accused never saw the light of the day, in any of the earlier statements of the Prosecutrix, including her examination in chief. There are thus clear improvements and embellishments in her testimony which makes her an unreliable witness.

It is also material to note that the Prosecutrix was unable to remember the time when the accused allegedly established forcible physical relations with her in the said 'Dharamshala'. She deposed that she cannot say whether it was afternoon, evening or night. The Prosecutrix apparently also did not mention the date when she was allegedly raped in the Dharamshala by the accused. She failed to remember whether it was morning, evening or night. This, to my mind, is extremely difficult to accept. It cannot be believed that the woman who has been raped by a man against her wishes would forget the date and time of such an incident and would not be able to recall it after a gap of only about one year, from the date of the alleged incident.

The claim of the Prosecutrix also becomes difficult to accept in view of her own cross-examination that after the accused allegedly raped her, she went to the temple for 'darshan' with him and also offered 'Prashad' in the temple. She also deposed that they went to the temple for darshan at about 2 PM and returned at about 4 PM and thus remained in the temple for about two hours along with the accused where, she also offered Prashad.

PW1 also claimed that the accused kept her for about two months in two different rented premises and continued to rape her during this period. However, what is striking here is that the Prosecutrix brought both her children along with her and also got them admitted to another school which was near this house.

In her cross-examination, she admitted the photographs Ex.PW1/DX1 to Ex.PW1/DX5 stating that the same are of her, accused and their children. Though, she claimed that the said photographs were taken under threat by the accused, however, a bare glance at these photographs would reveal that the Prosecutrix does not appear to be under any kind of fear, threat or pressure in any of those photographs.

During the cross-examination of PW1, learned defence counsel put to her a CD containing recording of conversation between her and the accused and the transcript of the said conversation. The Prosecutrix admitted her voice and the voice of the accused stating that the said CD contains the recording of conversation between her and the accused. She also admitted the contents of the transcript of the said conversation and the CD, which are exhibited as Ex.PW1/DX7 (Colly.) and Ex.PW1/DX6 respectively.

On going through the aforesaid admitted CD and transcript, I find that there is no room for any doubt that the Prosecutrix was having consensual sex with the accused. In none of her admitted conversation with the accused there appears to be any element of fear or threat in her voice or the content of the conversation. Rather, the Prosecutrix and accused seem to be engaged in a conversation, which indicates that they were involved in a relationship and were having consensual

sexual relations.

Apart from the testimony of the Prosecutrix PW□, I also find on going through the deposition of PW□9 Smt. Bimla Devi, in whose house the accused and the Prosecutrix lived on rent at Sant Nagar, Burari for some time, that apparently the Prosecutrix lived with the accused in that house as his wife. PW□9 deposed in her cross□examination that the accused used to go for his work in the morning and return in the evening by 7□8 PM and during the day, the victim PW□ used to do the household work and also used to drop the children to the school.

Moreover, in his cross□examination IO PW□11 SI Neeraj categorically admitted that no investigation at all was conducted at Baba Balak Nath temple at Himachal Pradesh, where the accused allegedly raped the Prosecutrix. Moreover, the Investigation Agency has failed to bring on record any video recording allegedly made by the accused at Dharamshala at Baba Balak Nath Temple. Infact, none of the investigation officials even visited the said Dharamshala at Himachal Pradesh to make any inquiries about the alleged rape committed upon the Prosecutrix in the said Dharamshala either from the Pujari or any cohabitants of the said Dharamshala during the course of investigation. Prosecutrix was never taken to the said 'Dharamshala' to point out where she was allegedly reaped by the Accused.

In the light of the aforesaid discussion, I am of the considered opinion that the testimony of PW□ 'B' cannot be said to be worthy of credit. Prosecution has failed to prove its case against the Accused. Accordingly, Keeping in view the evidence brought on record during trial, I am of the opinion that Accused Naresh deserves to be acquitted of all the charges on which he has been facing trial in this case. There is no ground whatsoever, to hold him guilty of having committed the alleged offences. Accused Naresh is thus hereby acquitted of the offences with which he was charged. He be released forthwith if not required in any other case. File be consigned to record room.

Announced in the Open Court on April 22, 2014 (Kaveri Baweja) Additional Sessions Judge□FTC (Central) Tis Hazari Courts: Delhi.