## IN THE COURT OF PRAVEEN KUMAR, ADDL. SESSIONS JUDGE (SFTC), DWARKA COURTS, NEW DELHI.

SC No. 441178/16.

FIR No. 98/2016.

U/s. 376/328 IPC

P.S. Dwarka Sector-23.

State Vs. Vijender Singh

S/o Late Sh. Sukh Lal,

R/o Flat No. A-128, DDA Flat Sector-26,

Dwarka.

New Delhi.

<u>Permanent Address</u>:

Village Chillar, P.O. Dudhwa,

P.S. Charkhi Dadri,

District – Bhiwani,

Haryana.

Date of Institution : 20.05.2016. Date of reserving judgment : 22.03.2017. Date of pronouncement : 03.04.2017.

## **JUDGMENT:**

- 1. Accused was arrested by the Police of Police Station Dwarka Sector-23, New Delhi and was challaned to the court for trial for commission of the offences punishable under Sections 376/328 IPC.
- 2. The case of the prosecution, in brief, is that on 22.03.2016 at about 4.30 p.m. accused, who was known to the prosecutrix 'X' (real name withheld in order to conceal her identity) for the last about 1½ years, called her to Gurgaon Bus Stand. When

the prosecutrix arrived there, he asked to drop her to his flat at Dwarka (address withheld) in her car (registration number of the car withheld). It is further the case of the prosecution that while they were on the way from Gurgaon Bus Stand to Dwarka, accused administered intoxicating substance mixed in beverage – 'Coke' to the prosecutrix consuming which the prosecutrix felt giddiness. The accused took her to his house at Dwarka and committed rape upon her. The prosecutrix was also threatened of dire consequences by the accused.

- 3. On the complaint of the prosecutrix, FIR was registered for the commission of offences punishable u/s. 376/328 IPC and the matter was investigated by the police. During investigation, statement of the prosecutrix was got recorded u/s.164 Cr.PC. Accused was arrested. The statements of the witnesses were recorded. The accused was medically examined. After completing investigation and conducting other necessary formalities, chargesheet was filed in the court.
- 4. After supplying the copies of the documents to the accused u/s 207 Cr.PC, Ld Metropolitan Magistrate committed the present case to the Court of Sessions.
- 5. Charge u/s. 328/376/506 IPC against accused was framed to which he pleaded not guilty and claimed trial. He was accordingly put to trial.
- 6. Trial proceeded and in the course of trial, prosecution in order to substantiate its case against the accused, examined ten witnesses in all. PW-1 is the prosecutrix who has narrated the incident.

PW-2 ASI Birjania Toppo has proved the FIR as Ex.PW2/A. PW3 W/Ct. Sunita joined the investigation with IO SI Saroj Bala on receipt of DD No.29A dated 22.3.2016. PW4 is Const. Hukam Chand who alongwith SI Bikramjeet Singh reached the spot i.e. flat of the accused on receiving DD No.29A. PW-5 SI Bikramjeet has corroborated the testimony of PW-4. PW-6 HC Lekh Ram and PW-7 HC Rameshwar are formal witnesses who deposited the *pullindas* in FSL, Rohini. PW-8 SI Saroj Bala is the Investigating Officer. PW-9 Ms. Purva Sareen is the Metropolitan Magistrate who has proved the statement of the prosecutrix u/s.164 Cr.PC as Ex.PW1/B. PW-10 Dr. Neha Jain has proved the MLC of the prosecutrix as Ex.PW10/A.

- 7. The FSL reports- Ex.PA and Ex.PB were tendered in evidence by the prosecution. These reports are *per-se* admissible u/s.293 Cr.PC.
- 8. Statement of accused was recorded under Section 313 Cr.P.C when a chance was given to explain the incriminating evidence against him. Accused pleaded that he has been falsely implicated in this case. The prosecutrix had helped him by engaging a Counsel in a rape case registered against him *vide* FIR no.76/16, P.S. Sector-23, Dwarka. She demanded money for the help rendered by her. He sought time to pay the money. However, she lodged the present false case against him. In his defence, he has examined Sh. Harish Tyagi as DW1.
- 9. DW1 is the Superintendent, Central Jail-3, Tihar Jail, New Delhi. He has deposed that accused remained in judicial custody

in case FIR No.98/2016, P.S. Sector-23 Dwarka from 23.3.2016 to 03.10.2016. He also remained in judicial custody in FIR No. 76/2016 PS Dwarka Sector-23 from 04.03.2016 to 19.03.2016. He has proved visitor's meeting (*Mulakaat*) details with respect to accused as Ex.DW1/A. This witness was not cross examined by the prosecution and, hence, his testimony has remained unrebutted.

- 10. I have heard Ms. Satwinder Kaur, Ld. APP for the State and Sh. Sanjay Rathi, Ld. Counsel for the accused. I have also perused the material on record.
- 11. Ld. Counsel for the accused has contended that prosecutrix has made several improvements and contradictions in her testimony before the Court. According to him, accused is liable to be acquitted in the present case.
- 12. On the other hand, Ld. APP has contended that the prosecution has proved its case against the accused beyond reasonable doubt.
- 13. The material witness in this case is PW-1 on whose testimony the prosecution case rests. PW-1 has testified that accused was known to her for the last about 1½ years. On 03.03.2016, a case of rape was registered against the accused in which he was arrested. Accused asked her to help him in the said case to which she agreed. She arranged an advocate for him and also paid the fees to the counsel. Accused assured her that on coming out of jail, he would repay the money to her. On 19.03.2016, accused was granted bail in the said case. Thereafter, on 22.03.2016 she received calls on her

mobile phone from the mobile phone of the accused with the request to meet him. She left her house at about 5.30 p.m. in her own car bearing registration no.HR-26-xx-xxxx (make and registration number of the car withheld) driven by her. Accused met her near bus stand of Gurgaon at about 6.15 p.m. She returned the belongings of the accused. However, the accused after taking his belongings asked her to drop him to his flat at Dwarka. On the way accused brought a cold drink and offered the same to her consuming which she felt giddiness. She asked the accused to drive the vehicle as she was unable to drive the same. The accused drove the car to his flat and, thereafter, committed rape upon her and also threatened to defame her. She has further deposed that she came out of the house of the accused at about 10/10.15 p.m. and called the police at no.100. She has proved her complaint to the police as Ex.PW1/A; statement u/s.164 Cr.PC as Ex.PW1/B; site plan as Ex.PW1/C; letters sent by the accused from jail to her as Ex.PA and Ex.PB; her clothes as Ex.P1 to Ex.P4 and one Gadda as Ex.P5.

During her cross examination, she has admitted that in the month of July 2015, she had gone to some place in Dehradun alongwith accused and stayed with him overnight in a single room in a hotel. She has further admitted that in the month of February 2015 or 2016 also she had accompanied the accused to some place in Punjab. It was also admitted by her that on 30.12.2014 she had gone with the accused to Kurukshetra, Haryana and they stayed there for two days. She has also admitted having stayed with the accused at Chandigarh

and also at Nainital on 19.05.2015 where they had gone together. She has deposed that from 22.03.2016 till 14.09.2016, she had gone to meet the accused at Tihar Jail twice or thrice. She has denied that she had gone to meet the accused in Tihar Jail eleven times. However, when she was shown the visitor's meeting record of Tihar Jail she identified her photograph and the said record was exhibited as Ex.PW1/DA and Ex.PW1/DB. She has further deposed that on 20.03.2016 she demanded a sum of Rs.5.5 lakhs from the accused which accused owed to her. The accused agreed to return the same within 5 to 7 days. As per PW1, on 22.03.2016 she had called the accused on his mobile number 5 or 6 times. It was admitted by her that she has received an amount of Rs.4.7 lakhs which was paid to her by one Mr. Sandeep on behalf of the accused. She has admitted the document in this regard which is exhibited as Ex.PW1/DC. When the CDs were played in the court, she identified her voice. The CDs and its transcripts were proved as Ex.PW1/DE, Ex.PW1/DF, Ex.PW1/DG and Ex.PW1/DH. She has denied the suggestion that she had gone to meet the accused in Tihar Jail on 08.03.2016, 14.03.2016, 17.03.2016, 13.04.2016, 19.04.2016, 04.04.2016, 07.04.2016, 03.05.2016, 06.05.2016, 17.05.2016, 23.05.2016 and 24.05.2016. She has also identified her photographs with the accused and the same were exhibited as Ex.PW1/DI to Ex.PW1/DL. She has denied the suggestion that she falsely implicated the accused in the present case to extort money from him.

15. PW3 W/Ct. Sunita has deposed that on 22.03.2016 she

joined the investigation of the present case with SI Saroj Bala on receiving DD No.29A. They reached the flat of the accused (address withheld). The prosecutrix was taken to DDU Hospital for her medical examination and after medical examination, the exhibits were seized *vide* seizure memo Ex.PW3/C. As per this witness, the accused was present at the spot and was arrested in this case. PW4 Const. Hukam Chand and PW5 SI Bikramjeet have corroborated the testimony of PW3.

- 16. PW8 SI Saroj Bala is the investigating officer who filed the chargesheet in the court after investigation. During her cross examination, she has deposed that they remained at the spot for about one and a half hour and left the flat of the accused at about 2.00/2.15 a.m. She has admitted that she did not collect the CDRs of the mobile phones of the accused and the prosecutrix. It was further admitted by her that the prosecutrix was conducting the *Pairvi* of the accused in case FIR no.76/2016, P.S. Sector-23, Dwarka. It was further admitted by her that she had met the prosecutrix several times before 22.03.2016 i.e. the date of registration of present FIR. She has denied the suggestion that it had come to her knowledge during the investigation of this case that a false complaint was lodged by the prosecutrix against the accused in this case as accused failed to return the money to the prosecutrix which she had spent on the accused for his *Pairvi* in case FIR no.76/2016, P.S. Sec.23 Dwarka.
- 17. PW10 Dr. Neha Jain has proved the MLC of the prosecutrix as Ex.PW10/A. As per PW10, she did not find signs of

external or internal vaginal injuries when the prosecutrix was medically examined by her. She has proved her report as Ex.PW10/B. During her cross examination, she has admitted that the prosecutrix was conscious and oriented at the time of her examination.

- 18. I have gone through the file. Prosecutrix and accused were known to each other. Prior to lodging of the present FIR, the prosecutrix accompanied the accused to various places outside Delhi and stayed with him for several days on different occasions. She even stayed with him in a single room at Dehradun in July 2015. The prosecutrix has made material contradictions and improvements in her testimony before the Court. In her complaint Ex.PW1/A she has alleged that she received a call at about 4.30 p.m. from the accused asking her to reach at Gurgaon Bus Stand. However, in her statement u/s.164 Cr.PC she has stated that she received a call from accused at 3.30 p.m. while in her testimony before the court she has deposed that after receiving call at 4.30 p.m. she left her house at about 5.30 p.m. In her complaint Ex.PW1/A she has alleged that the accused offered her Coke at Kapashera road while in her statement u/s.164 Cr.PC she has referred to the said place as Bijwasan.
- 19. It is the defence of the accused that he had taken money from the prosecutrix. The prosecutrix demanded the same. He sought time to repay the money but the prosecutrix lodged the present case against him. The prosecutrix in her cross examination has admitted that there was some money dispute between her and the accused. She has admitted that an amount of Rs.4.7 lakhs was paid to her by one

Mr. Sandeep on behalf of the accused. She has proved the documents in this regard as Ex.PW1/DC and Ex.PW1/DD. She has admitted her conversation with the brother of the accused and the wife of the accused which took place on 17.05.2016 and 04.06.2016 respectively. The CDs for the said conversation have been proved as Ex.PW1/DE and Ex.PW1/DG while their transcripts have been proved as Ex.PW1/DF and Ex.PW1/DH respectively. The relevant portion of the transcript Ex.PW1/DH is reproduced herein-below:

(Note: The conversation is in local dialect.)

"'X':- Teekh Hai. Renu Bala Ko Phone Aaya Tha. Jiska Case Lag Raha Tha. Uska Phone Aaaya Tha 8 Ya 8:30 Par. Boli Ki Kya Raha. Bail Kaa? Mein Kaha Ki Tu Baat Kar Sarkari Vakil Se. Mere Se Baath Karne Ki Jaroorat Nahin Hai. Wo Ye Boli Mein To Aapse Puchungi Aapne Bail Karaai Thi. Theekh Hai. Agar Bail cancel Ho Gayi Na Puri Umar Bahar Nahin Aayega. Ye Baat Dhyaan Rakhna. Wo Bhi Kah Rahi Thi Ki Mein Bhi Apna Vakil Kar Rahi Hoon. Theekh Hai. Aut Agar Puri Umar Tera Bayot Ho Bacche Palne Ka To Tu Paal Le.

Kirosta:- Dharmendra Se Mein Kah Doongi Ki Mil Lega.

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'X' :- <u>Mene Jo Paise Laga Diye Wo Kya Tumhara Bapu Dekar</u> <u>Jayega</u>.

Kirosta: Wo To Pehle Ye Kah Raha Tha Na Ki Mein Apne Aaap Kar Loonga.

'X':- Apne Aaap Kaise Kar Lega | Mene Ise Chahiye.

Kirosta :- Ham To Aapke Bhi De Denge. Paise To Aapke Bhi Dene Hain.

'X' :- <u>Doge Na To Pehle Paise Do Baaki Baad Mein Bahar</u> <u>Aayega. Aur Na Paise Doge Na To Aaisa Itna Badiya Bhitar</u> <u>Jayega Ki Poori Umar Na Bahar Aayega.</u>"

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"'X' :- Inhain Bera Ke Jaan Bujh Ka Karwaya Hai

Dharmender: B Jo Ho Gaya So Ho Gaya Ab To Aapke Haath Mein Baat Hai.

'X' :- <u>Ya Baat To Tanee Bhi Pata Hai Ke Jaan Bujh Kar</u> Karwaya Hai Aur Tujhe Bhi Gyan Hai Is Cheezh Ka."

(Emphasis supplied)

- It has been proved by the accused that the prosecutrix met 20. her in Tihar Jail on several dates as mentioned in Ex.PW1/DA. When a suggestion was specifically put to the prosecutrix, she denied that she had gone to meet the accused in Tihar Jail on 08.03.2016, 14.03.2016. 17.03.2016. 04.04.2016, 07.04.2016. 13.04.2016. 19.04.2016, 03.05.2016, 06.05.2016, 17.05.2016, 23.05.2016 and 24.05.2016. It is said that men may lie but the documents do not, and often documents speak louder than words. Thus, it has been established that the prosecutrix falsely denied her visits to Tihar Jail on abovesaid dates for meeting the accused. The defence taken by the accused is plausible. It has remained consistent throughout the trial. It is not expected that a victim of heinous offence such as rape would try to contact the accused through her family members after lodging the FIR against him. The proecutrix not only tried to contact the family members of accused but even met him several times in Tihar Jail. New Delhi. Further, the tone of the prosecutrix in the audio clips-Ex.PW1/DE & Ex.PW1/DG speaks volumes about her conduct. In such circumstances, the testimony of prosecutrix does not inspire confidence.
- 21. The version of the prosecutrix is not corroborated by medical evidence on record. As per FSL result dated 12.09.2016

(Ex.PA), the semen could not be detected on exhibits pertaining to the prosecutrix. No male DNA was isolated from exhibits pertaining to the prosecutrix. The case of the prosecution is that accused had administered stupefying substance in beverage 'Coke' to the prosecutrix. However, the FSL result dated 12.09.2016 (Ex.PB) in this regard is in negative. On examination, ethyl alcohol, alkaloids, barbiturates and tranquilizers could not be detected in the 'Coke' allegedly administered to the prosecutrix by the accused. All these circumstances create a doubt in the story of the prosecution.

- 22. It is the settled law that conviction in rape cases can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration.
- 23. Though not referred to or relied upon, in judgment Sadashiv Ramrao Hadbe v. State of Maharashtra, 2006 (10) SCC 92, the Apex Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of the prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful while accepting the testimony when the entire case is improbable and unlikely to have happened. This is what has been stated:

"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in acepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

24. Though not referred to or relied upon, in judgment - <u>Rai</u> <u>Sandeep @ Deepu v. State of NCT of Delhi</u>, (2012) 8 SCC 21, the Supreme Court commented about the quality of the sole testimony of the prosecutrix which could be made basis to convict the accused. It held:-

"In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version therefore, be unassailable. should, Theconsidering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the crossexamination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the

test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

25. Though not referred to or relied upon, in judgment - <u>Tameezuddin @ Tammu v. State (NCT of Delhi)</u>, (2009) 15 SCC 566, the Supreme Court held: -

"It is true 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."

I do not find the testimony of prosecutrix reliable and trustworthy. In my opinion the prosecution has failed to prove its case against the accused beyond reasonable doubt. Hence, the accused is acquitted. His personal bond is cancelled and surety is discharged. Documents, if any, be released to the surety/Counsel. In terms of Section 437(A) Cr.P.C., accused is directed to furnish personal bond in the sum of Rs.25,000/- with one surety in the like amount for a

period of six months for his appearance before the High Court of Delhi in the event the prosecution wishes to file an appeal challenging the present judgment. Ahlmad is directed to page and bookmark the file so as to enable the digitisation of the entire record. File be consigned to Record Room.

Announced in open Court today i.e. on 03.4.2017.

(PRAVEEN KUMAR)
Addl. Sessions Judge (SFTC)
Dwarka Courts, New Delhi.