



2026:DHC:5674



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 08.07.2026
Judgment pronounced on: 17.07.2026

+ **CRL.A. 204/2021 and CRL.M.(BAIL) 659/2026**

GAURAV

.....Appellant

Through: Mr. Siddharth Satija, Mr. Akash Sachan, Mr. Anuka Bachawat, Ms. Charu Sinha and Ms. Akanksha Bisht, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for State with SI Sheetal, P.S. Hauz Khas.
Mr. Anuj Kapoor, Advocate (DHCLSC) with Mr. Nandeesh Nanda and Mr. Shivom Sethi, Advocates for victim.

+ **CRL.A. 410/2021 and CRL.M.(BAIL) 131/2024**

PRAVEEN KUMAR @ PANKAJ

.....Appellant

Through: Mr. Nikhil Kumar Singh, Advocate with Ms. Shasya Singh, Advocate.

versus

STATE (GNCT DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for State with SI Sheetal, P.S. Hauz Khas.
Mr. Rohan J. Alva, Advocate (Amicus Curiae) along with Mr. Anant Sanghi, Advocate.



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**CORAM:****HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT****CHANDRASEKHARAN SUDHA, J.**

1. In these appeals filed under Section 374(2) read with Section 482 of Code of Criminal Procedure, 1973(the CrPC), accused nos. 1 and 2 (A1 and A2) in Sessions Case No. 13/2018 on the file of the Additional Sessions Judge-Special Fast Track Court, South District, South District, Saket Courts, New Delhi assail the judgment dated 10.12.2020. By the said judgment, A1 and A2 have been convicted and sentenced for the offences punishable under Sections 365, 376D, 323, 506, 392 read with Section 34 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on the intervening night of 14.11.2017 and 15.11.2017, A1 and A2 abducted PW2 when she boarded A2's taxi bearing no. DL-1ZA-3298 to travel home. Acting in furtherance of their common intention, A1 and A2 diverted the vehicle to a secluded jungle like area in Greater



Noida, where they consumed alcohol, disrobed PW2 and subjected her to gang rape, unnatural sex and also physically assaulted her and also recorded their acts which took place inside the car during the time from 01:30 A.M. to 05:00 A.M. Following the assault, the accused persons robbed PW2's jewellery, ₹12,000/- in cash, and her mobile phone before abandoning her at Pari Chowk, Noida around 06:00 A.M. Hence, as per the chargesheet/ final report, A1 and A2 are alleged to have committed the offences punishable under Section 365, 366, 367, 376D, 392, 411, 506 read with Section 34 of the IPC.

3. Based on Ext. PW2/A, stated to be the FIS/FIR of PW2, crime no. 427/2017 Hauz Khas Police Station, that is, Ext. PX FIR was registered by CW25 (Charge Witness) Sub Inspector. PW22, Assistant Sub Inspector, conducted investigation into the crime and on completion of the same, submitted the chargesheet/final report before the Court, alleging the commission of the offences punishable under the aforementioned Sections.



4. On appearance of A1 and A2 before the jurisdictional magistrate pursuant to receipt of summons, copies of all the prosecution reports were furnished to them as contemplated under Section 207 Cr.P.C. Thereafter, in compliance of Section 209 Cr.P.C, the case was committed to the Court of Session concerned.

5. When A1 and A2 appeared before the trial court, as per orders dated 16.02.2018, Charge under Sections 365, 376D, 323, 506, 392 read with 34 IPC was framed, read over and explained to both A1 and A2 to which they pleaded not guilty.

6. On behalf of the prosecution, PWs.1 to 22 were examined and Ext. PW1/A-B, Ext. PW2/A-F, Ext. PW4/A-B, Ext. PW4/P-1 to P-4, Ext. PW6/A-C, Ext. PW8/A, Ext. PW9/A, Ext. PW10/A-B, Ext. PW11/A-D, Ext. PW12/A, Ext. PW13/A, Ext. PW14/A, Ext. PW15/A, Ext. PW16/A-I, Ext. PW18/A-F, Ext. Mark Ext. PW19/A, Ext. PW19/A-G, Ext. PX1-PX2, Ext. PW20/A-F, Ext. PW21/A-F, Ext. PW22/A-G, Ext. PX. Ext. PX1 - Ext. PX6 were marked in support of the case.



7. After the close of the prosecution evidence, A1 and A2 were questioned under Section 313(1)(b) Cr.P.C., with regard to the incriminating circumstances appearing against them in the evidence of the prosecution. A1 and A2 denied all those circumstances and maintained their innocence. According to A1 and A2, PW3 had accompanied them voluntarily, and that they had not committed sexual intercourse against her will or without her consent. The sexual relationship was consensual and done with her free will and consent. PW3 gave a false statement with the intention of extorting money from them.

8. After questioning A1 and A2 under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C., was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C., is seen done by the trial court. However, non-compliance of the said provision does not *ipso facto* vitiate the proceedings unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K.**



Vs. State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888). In the case on hand, A1 and A2 have no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to them.

9. On behalf of A1 and A2, DW1 to DW3 were examined and Ext. DW1/A, Ext. DW2/A, Ext. DW3/A-B were marked.

10. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 10.12.2020 found A1 and A2 guilty of the offences punishable under Sections 365, 376D, 323, 506, 392 read with Section 34 IPC. Accordingly, *vide* order on sentence dated 06.02.2021, both A1 and A2 have been sentenced to undergo rigorous imprisonment for a period of twenty (20) years and to pay a fine of ₹2,000/- for the offence punishable under Section 376D IPC, and in default of payment of fine, to undergo simple imprisonment for two months; to undergo rigorous imprisonment for five (05) years and to pay a fine of ₹1,000/- for the offence



punishable under Section 392 read with 34 IPC, and in default of payment of fine, to undergo simple imprisonment for one month; to undergo rigorous imprisonment for five (05) years and to pay a fine of ₹1,000/- for the offence punishable under Section 365 read with 34 IPC, and in default of payment of fine, to undergo simple imprisonment for one month; to undergo rigorous imprisonment for one (01) year and to pay a fine of ₹1,000/- for the offence punishable under Section 506 read with 34 IPC, and in default of payment of fine, to undergo simple imprisonment for one month; and to undergo rigorous imprisonment for six months and to pay a fine of ₹1,000/- for the offence punishable under Section 323 read with 34 IPC, and in default of payment of fine, to undergo Simple Imprisonment for one month. The sentences have been directed to run concurrently. Aggrieved, both A1 and A2 have preferred the present appeals.

11. The learned counsel appearing for A2 submitted that the although PW2 alleged that the videos of the repeated sexual



assault had been recorded by A1 and A2 and transmitted to her sister through WhatsApp, no such videos were ever recovered or produced during the course of investigation or trial, thereby rendering the prosecution version doubtful. According to the learned counsel for A2, there is a material contradiction in the testimony of PW2 regarding her mobile phone which A1 and A2 are alleged to have taken away. However, she has a further case that she had received video calls from the accused on the same mobile number on 16.11.2017 and 17.11.2017. PW2 is also alleged to have taken screenshots of A1's photograph on her mobile phone and forwarded the same to PW19. These versions are stated to be mutually inconsistent.

11.1. It was further contended that, apart from the mobile phone allegedly recovered from the possession of A1, none of the other articles alleged to have been robbed from PW1, including her earrings, *mangalsutra*, *paijeb* and bangles, were ever recovered, thereby casting a doubt on the prosecution case.



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11.2. The learned counsel for A2 further relied on Ext. PW11/B Call Detail Records (CDRs) which would show that PW2 and PW3, her husband were in continuous telephonic contact during the relevant period, i.e., about 19 calls were made between 08:10 PM and 12:48 AM on the night of the alleged incident. It was further pointed out that, according to the prosecution, the car reached the place of occurrence at about 01:30 AM on 15.11.2017 and the journey took approximately one hour. Even during the said period, Ext. PW11/B shows that seven calls were exchanged between PW2 and her husband between 12:30:31 AM and 01:30:48 AM. Further, it was pointed out that PW3, the husband of PW2, admitted that he had received a call from her at about 12:13 AM during time which she was supposed to be shouting. Therefore, despite remaining in continuous contact with his wife and being aware that she was in danger, PW3 neither informed the police nor took any immediate steps to secure assistance. According to the defence, the conduct of both PW2 and PW3 in



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not alerting the police despite repeated telephonic communication raises a serious doubt.

11.3. The learned counsel for A2 further pointed out the inconsistent statements of PW2 regarding the alleged use of a weapon during the incident. It was submitted that in the initial PCR call, recorded as Ext. PW12/A, PW3, the husband of PW2 reported that the accused persons were armed with a pistol. However, in Ext. PW14/A, the statement of PW2 recorded at K.N. Katju Marg police station, the weapon alleged to have been used to threaten and intimidate PW2 is a knife. Further, Ext. PW1/B MLC of PW2 specifically records that “no weapons or objects” were used during the alleged sexual assault. Such mutually inconsistent versions regarding the use of a weapon creates doubt on the credibility of the prosecution case.

11.4. The defence further relied upon the data regarding the GPS installed in the vehicle used for the commission of the offence. According to PW6, Ext. PW6/C GPS logs conclusively



show that the vehicle remained parked at a single location in Noida from 12:00 AM till 08:37 AM on 14.11.2017. The GPS data establishes that the vehicle was never present near Ansal Plaza between 10:30 PM and 11:30 PM, as alleged by PW2. The two locations are separated by a distance of approximately 30 kilometres. It was therefore contended that the GPS records furnish a clear alibi for the accused and contradict the prosecution's version regarding the time and place of the alleged abduction.

11.5. Reference was also made to the testimony of DW2, Traffic Inspector, Rajasthan State Road Transport Corporation, Delhi Depot, ISBT Sarai Kale Khan, who DW2 deposed that, as per Ext. DW2/A, buses to Mehandipur Balaji departed at regular intervals at 08:30 PM, 09:30 PM, 10:30 PM and that the last bus at 11:30 PM on 14.11.2017. This evidence disproves the testimony of PW2 who claimed that she had reached ISBT Sarai Kale Khan at about 08:30 PM, waited for nearly two and a half hours, but no bus had come. Reliance was placed on the dicta in **Manoj v. State**,



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2026 SCC OnLine Del 758, Sharad BirdhichandSarda v. State of Maharashtra, (1984) 4 SCC 116and Anwar v. State (NCT of Delhi), 2026 SCC OnLine Del 914in support of the arguments advanced.

12. *Per contra*, it was submitted by the learned Additional Public Prosecutor (APP) that the prosecution has proved its case beyond reasonable doubt and that the impugned judgment warrants no interference. It was submitted that by virtue of Section 114A of the Indian Evidence Act, once PW2 deposes that the sexual intercourse was without her consent, the Court is bound to presume absence of consent. It was submitted that the burden shifts to the accused to rebut the same by leading cogent evidence to the contrary. Further, reliance was placed on the decision of the Apex Court, **State of Punjab v. Gurmit Singh, 1996 AIR SC 1393** to canvass the point that Courts must recognize the immense social stigma of sexual assault and generally trust a victim's testimony, as no woman would lightly subject herself to such



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humiliation. Therefore, it was contended that the testimony of PW2 alone is sufficient for a conviction, and that the courts should neither demand corroborative evidence as a rule nor reject the case over minor discrepancies.

13. The learned counsel appearing for PW2, while countering the defence's challenge to the conduct of PW2, invited the attention of the Court to the conduct of A1 and A2. It was submitted that the A2 had taken possession of PW2's mobile phone and, on 22.11.2017 at about 10:11 AM, used the same to make a video call to PW3, her husband. According to the prosecution, the said call was made with the object of threatening PW2 and her husband and extorting money from them.

13.1. It was submitted that the trial court has rightly appreciated the GPS data of the vehicle. The GPS coordinates reveal that, from 00:00 hours on the intervening night of 14.11.2017 and 15.11.2017 till about 01:30 AM on 15.11.2017, the vehicle was continuously moving around different parts of Delhi,



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including Lajpat Nagar, Andrews Ganj, South Extension, East Kidwai Nagar and Aurobindo Marg. These locations are all in the vicinity of the place from where PW2 claimed to have been picked up. It was therefore submitted that there existed a clear probability and feasibility of the accused having picked up PW2 from the said area. The prosecution is not required to establish the exact spot of abduction with mathematical precision. Hence the materials on record are more than sufficient to justify the conviction and sentence of A1 and A2 by the trial court.

14. Heard both sides and perused the records.

15. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/A1 and A2 by the trial court are sustainable or not.

16. As per the Court charge, on 15.11.2017 at about 12:30 a.m. PW2 boarded the taxi driven by A2 at Ansal Plaza for the purpose of going to her residence at Rohini. After traveling for



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some distance, A2 also joined them in the taxi. Thereafter, A1 and A2 in furtherance of their common intention criminally intimidated and threatened PW2 into silence and took her to a secluded place at Greater Noida, raped her and robbed her of all her valuables. They also took video and photos of the sexual assault. They are alleged to have reached the place of occurrence at 01:30 a.m. and that the rape and assault took place from 01:30 a.m. till 05:00 a.m. inside the car. Thereafter, at about 06:00 a.m., PW2 was dropped at Pari Chowk, Noida. This is the Charge that A1 and A2 have to answer.

17. As per the prosecution case, Ext. PW2/A is the statement/information given on 16.11.2017 by PW2 to PW22 on the basis of which crime no. 427/2018 Haus Khas police station (PS), that is, Ext. PX FIR was lodged. However, a perusal of the records reveals that even before Ext. PW2/A statement was recorded, a detailed statement of PW2 had been recorded on 15.11.2017, which aspect is clear from the testimony of PW14 and



"DD No. 44A Dt. 15/11/17 PS KNK Marg, Delhi

DO PCR CALL

(Emphasis Supplied)



17.1. Ext. PW14/A roughly translated reads thus:- “....It is recorded at 6.20 PM that w/off came to the DO Room and recorded that Sec 16 HNo 137 P&T G-6 caller had gone to Sarai Kale Khan, from where an auto was taken and dropped at Green Park Ansal Plaza. From there a taxi was taken. In the taxi along with the driver there was another person, and the taxi was taken to Pari Chowk, Noida. Showing a knife, raped the caller's wife and took her mangalsutra, anklet, etc., and assaulted her. 9582810913 on receipt of the information, the PCR call was recorded in the daily diary, a copy of the report was separated and handed over to ASI Navratan no. 589/RD (PW15), who along with Ct. Dinesh no. 1524/RD left for the spot to take appropriate action...”

18. According to PW14, the aforesaid call was marked to PW15 for necessary action. PW15, another ASI, KNK Marg PS deposed that on 15.11.2017 he received a call from the duty officer



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relating to DD No. 44A at about 06:20 p.m. On receipt of the said call, he along with Constable Dinesh proceeded to House no. 137, Pocket no. 6, Sector-16 Rohini, where he met PW2 and her husband (PW3). After making enquiries from PW2 and in the presence of PW3, he recorded her statement, which has been marked as Ext. PW15/A. PW15 further deposed that by this time the SHO, KNK Marg PS also reached the residence of PW2 and made enquiries with the latter. The SHO then directed him to take PW2 and her husband to Haus Khas PS as the incident had occurred within the jurisdiction of the said police station. Before proceeding to the said station, he first took PW2 to Ansal Plaza, from where she had boarded the taxi. PW2 pointed out the place of occurrence, but he did not prepare any site plan as no FIR had been registered. He thereafter contacted the duty officer of Haus Khas PS, pursuant to which PW22 WASI reached Ansal Plaza. He then handed over PW2's statement (Ext. PW15/A) recorded by him, appraised PW22 of the facts of the case, and then returned to KNK



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Marg PS without conducting any further investigation. On being shown Ext. PW14/A DD No. 44A, PW15 deposed that the said DD was neither prepared nor signed by him and that it must probably have been prepared by the duty officer of KNK Marg PS.

19. According to PW22, to whom PW15 had handed over PW2 along with Ext. PW15/A statement, on 16.11.2017 PW2 along with her husband had come to Haus Khas PS. She then recorded Ext. PW2/A statement of PW2 and then handed over the same to the duty officer for registration of the FIR. Pursuant to the same, Ext. PX FIR was registered.

20. Therefore, according to the prosecution, Ext. PW2/A is the statement/information given by PW2 under Section 154 CrPC on the basis of which crime bearing number 427/2017 was registered, that is, Ext. PWX FIR. In this context it would be apposite to refer to the dictum of the Apex Court in **T.T. Antony v. State of Kerala (2001) 6 SCC 181** in which it has been held that apart from a vague telephonic message or a cryptic



communication, the earliest information relating to the commission of a cognizable offence that is recorded by the officer in charge of a police station in the station house diary constitutes the First Information Report within the meaning of Section 154 CrPC. Any subsequent information, whether oral or written, furnished after the commencement of the investigation into the same occurrence would merely amount to a statement under Section 161 CrPC and cannot be treated as a fresh FIR. Registration or treatment of such subsequent statement as another FIR would, in effect, amount to a second FIR, which is impermissible under the scheme of the CrPC.

21. Going by the materials on record, the first information/statement given by PW2 was reduced into writing by PW15, who had been deputed to proceed to the house of PW2 pursuant to the police receiving information of the crime. This information/statement was never produced before the court along with the final report/charge sheet. But when PW15 was examined, the prosecutor himself brought it out during the course of the



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examination-in-chief of the former that such a statement had been recorded and as directed by the trial court the same was brought on record and marked as Ext. PW15/A. It is true that PW2 was never shown Ext. PW15/A during the course of her examination. But PW15 is a loyal prosecution witness and it is as per the request of the prosecutor, the first statement/information of PW2 was introduced in evidence, marked and proved through PW15. It has also come out in evidence that PW15 had handed over Ext. PW15/A to PW22 as it was revealed that the crime was committed within the jurisdiction of Haus Khas PS. In such circumstances, the correct procedure to have been adopted by PW15 was to register a Zero FIR based on Ext. PW15/A and then transfer the same to Haus Khas PS to complete the further formalities. On the other hand, PW15 just handed over the first information/statement/report, that is, Ext. PW15/A to PW22. As Ex. PW15/A is the earliest information/statement/report given relating to the commission of a cognizable offence recorded by a



competent police officer under Section 154 CrPC, PW22 ought to have registered the crime and proceeded with the investigation. On the other hand, PW22 is seen to have recorded another statement of PW2, that is, Ext. PW2/A, on the basis of which the crime, that is, Ext. PX FIR was registered. The statement recorded by PW22, that is, Ext. PW2/A has been treated by the prosecution and the trial court as the first information/report received under Section 154 CrPC on the basis of which the crime was registered. This is apparently wrong. Once the statement of PW2 dated 15.11.2017 given to PW15, that is, Ext. PW15/A had set the law in motion, any subsequent statement relating to the same occurrence could only be treated as a statement under Section 161 CrPC and not as a fresh FIS/FIR as treated by PW22 in this case. Ex. PW2/A is a statement given later in point of time and hence can only be a statement under Section 161 CrPC attracting the bar contemplated under Section 162 CrPC and therefore ought not to have been marked in evidence.



22. Now coming to Ext. PW15/A, the earliest or the first information/statement/report given by PW2 to PW15 on 15.11.2017 recorded in Hindi roughly translated reads thus – *“Yesterday on 14.11.2017, I caught a TSR (three seater rickshaw) from Sarai Kale Khan bus stand to go home. The TSR driver dropped me near Ansal Plaza in Green Park. From there, I took a taxi. After I got into the taxi, the driver drove a short distance and then picked up another boy on the way. The taxi driver and the boy, by showing a pistol, directed me to keep quiet. They took me from there to a jungle near Pari Chowk in Noida, where they committed a wrong act with me. In the morning, I realized that I was at Pari Chowk in Noida. Both the boys took my gold earrings, gold mangalsutra, four gold bangles, and silver anklets, as well as my mobile phone (Oppo A-57) containing vodafone SIM number 9643461988. There was approximately ₹12,000/- in my purse. They took all the aforementioned articles from me. I am giving this statement in the presence of my husband Awadesh Kumar without*



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any pressure. Legal action may be taken."

(Emphasis Supplied)

23. The aforesaid statement is seen signed by PW2. As noticed earlier, it is true that this document was never shown to PW2 when she was in the box. However, PW15, a loyal prosecution witness, has proved that this is the statement given by PW2 on 15.11.2017. On going through Ext. PW15/A, it is seen that after PW2 had affixed her signature, PW15 has attested the same. Thereafter, it is recorded thus in Hindi :

“मैने अपने फोन नं. 9643461988 से अपने पति अवधेश कुमार को उनके फोन नं. 9582810913 पर रात को समय करीब AM 12:30 रात में फोन किया था व ऑटो वाले से बात करवाई थी कि मैं अंसल प्लाजा के पास हूँ तथा कुछ देर बाद मुझे टैक्सी मिली जिसने मुझे रोहिणी ले जाने के लिए बिठाया था जैसे ही मैं टैक्सी में बैठी मैने द्वारा अपने पति को फोन करके बतला दिया / कि मै टैक्सी में बैठ कर आ रही हूँ / सुबह समय करीब 6:00 बजे मुझे उन लोगो ने परी चौक के पास छोड़ दिया / मैने वहाँ पर खड़ी हुई टैक्सी वाले से रोहिणी छोड़ने के लिए कहाँ / घर पर मैने अपने पति को सारी बात बतलाई / तथा मैं घर पर आके नहा ली थी

लक्ष्मी



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अवधेश कुमार

9582810913”

(Emphasis Supplied)

24. The aforesaid content roughly translated reads thus: “*I had called my husband from my mobile number 9643461988 to his mobile number 9582810913 at about 12:30 AM. The auto driver told my husband that I was near Ansal Plaza. After some time, I took a taxi to Rohini. As soon as I boarded the taxi, I again called my husband and told him that I am returning home in the taxi. By about 06:00 a.m., they left me near Pari Chowk. I took a taxi from there and told the driver to take me to Rohini. When I reached home I told everything to my husband. After reaching home, I took a bath.*”

(Emphasis Supplied)

25. Ex. PW2/D, the 164 statement of PW2, also seen recorded in Hindi, roughly translated reads thus: “*I was going to*



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Balaji Mehndi Pur. I had started from home at about 06:00 p.m. on 14.11.2017. I went by auto to Sarai Kale Khan. It was dark when I reached the bus stand. For a long time, I waited for the bus. I called my husband and told him that the bus had already left and that no bus had come. My husband asked me to return home. I then hired an auto. The auto driver said that he would not go to Sector 16 Rohini but would drop me at a place from where I could get a bus to the place. The auto driver dropped me near Ansal Plaza. As soon as I got down there, a taxi came and stopped in which there was one man. I told him that I wanted to go to Sector 16 Rohini. He agreed to take me and told me that the fare would be ₹550/-. I sat in the taxi. As soon as I got in, I called my husband. After the taxi went a little further, the taxi driver took another man inside. Both of them started threatening me (डराने धमकाने लगे). Then, they took me very far in the dark. The car was driven for about 45 minutes and then stopped by the side of the road. I called my husband. They had locked all the windows of the



car. They snatched my phone and slapped me. They asked me not to shout, otherwise, they would kill me right there. They made me take off all my clothes. Then, they did dirty things (.....मेरे साथ गंदे काम किये, मुँह से किया, लैट्रिन वाली जगह से भी किया....). Around 05:00 a.m., they dropped me at Pari Chowk. From there, I took a taxi and told the taxi driver to follow them. The taxi driver took me to some distance, but they were not to be seen. Then I saw a police jeep. I told them (policemen) everything. The policemen asked me to sit in the taxi and that they would join me in following the assaulters. But the police car went quite far ahead. Then I told the taxi driver to drop me at my house. The taxi driver then put my address at Rohini on his mobile and told me that the fare would be ₹850/-. The taxi driver dropped me in front of my house. My husband asked the taxi driver from where he had picked me up. The taxi driver replied that he had picked me up at Pari Chowk. I did not have any idea of the route. I can only tell by seeking the place. The boys took my money, anklets, mangalsutra, ₹12,000/-



and four bangles. They took all my belongings. After reaching home, I did not tell my husband about the incident. My husband realised that my belongings had been robbed, but he did not realise that wrong things had also been done to me. The boys had taken my Oppo phone. From my phone, the boys were making video calls to my sisters. They had made my dirty videos. They activated my SIM at 01:00 a.m. last night. The boys are torturing my sisters by sending videos after undressing. In between, they also activate my SIM. On the day after the incident at 11:00 a.m., I told my husband about the incident. This is all I have to say. My husband became frightened/scared. I filed a report before the police. If I am shown the boys, I can identify/recognize them. Their age is around 18 to 19 years. Both of them are lean.”

(Emphasis Supplied)

26. During the trial, A1 and A2 took up the defence that PW2 had voluntarily joined them and that the sexual acts thereafter were consensual. A1 and A2, while questioned under Section



313(1)(b) CrPC, submitted that PW2 had falsely implicated them; that she had voluntarily joined them; that they did not sexual assault her against her will or consent; that she has falsely implicated them with the intention to extort money and that the sexual relationship was consensual. In the light of the defence taken up, the only question that needs to be considered is whether the materials on record show that the relationship was consensual.

27. According to the learned prosecutor, as per Section 114A of the Evidence Act, in cases 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. But, Section 114A is attracted only in case of rape falling under any of the clauses, that is, (a) to (n) of Sub Section (2) of Section 376 IPC. No such presumption is attracted to cases of rape falling under Section 376(1) IPC. A Charge should therefore always be



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framed in case of rape either under Sub Section (1) or Sub Section (2) of Section 376 IPC. Conviction should also be so distinctly recorded. (See **Pankaj Singh vs. State of Haryana**, 2024 KHC 8156: AIR 2024 SC 3091).

28. In the case on hand, there is no Charge under any of the clauses of Section 376 (2) IPC. On the other hand, the Court Charge *inter alia* is for the offence punishable under Section 376D IPC. The conviction by the trial court is also for the said offence. Hence, it is clear that the presumption under Section 114A Evidence Act is not attracted to the facts of the present case. Therefore the trial court went wrong in concluding and applying Section 114A of the Evidence Act to the facts of the present case.

29. Even assuming for argument's sake that Section 114 A Evidence Act is attracted, the following position emerges. No doubt conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and



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there exist no circumstances which cast a shadow of doubt over her veracity (**Ramdas v. State of Maharashtra, 2007 KHC 3044: 2007 (2) SCC 170**). It is also true as held in **State of Punjab v. Gurmit Singh, AIR 1996 SC 1393**, that it cannot be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a



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rule, in such cases amounts to adding insult to injury. In **Wahid Khan v. State of Madhya Pradesh, 2010 KHC 6059: (2010) 2 SCC 9**, it has been held that it is a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires



confidence and appears to be credible.

30. Be that as it may, does that mean that the evidence of the prosecutrix is the gospel truth? The answer can only be in the negative. In **Rajoo v. State of M. P., 2009 KHC 4344: AIR 2009 SC 858** it has been held that the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. 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. It must, further, be borne in mind



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that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference was then made to **Gurmit Singh's (supra)** case and to the amendments in 1983 to S.375 and 376 IPC making the penal provisions relating to rape more stringent, and also to S.114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape and it has been held that it is however significant that S.113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under S.114A is extremely



restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a 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. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. It is under these principles; the case needs to be examined.

31. The term 'consent' has not been defined in IPC. Section 90 IPC, though does not define "consent", describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the prosecutrix under misconception of fact, it is vitiated. Consent for the purpose of S.375 IPC requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also



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after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances. As held by a learned single Judge of the High Court of Kerala in **Sunil Kumar v. State of Kerala, 2013 KHC 468**, a reading of the literature on the subject and also the various decisions relating to the matter, it becomes clear that there is no straight-jacket formula in ascertaining whether there is consent in a particular case. A decision has to be arrived at on the basis of the facts and circumstances of each case and in the light of the evidence adduced in the case. In each case the evidence will have to be appreciated independently. But for the consent given by the victim, the act would be illegal and would amount to rape. It is axiomatic that consent is the linchpin of the offence. Consent being a state of mind of an individual, the difficulty arises when one is called upon to ascertain the state of mind of a person at a particular point of time. In order to ascertain whether there is consent on the part of



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the victim, her conduct before, during and after the incident has to be ascertained. The potential of consent lies in its authority to metamorphose an act that is wrong into one which the law will permit.

31.1. In **Pramod Suryabhan Pawar v. State of Maharashtra, 2019 KHC 6829**, the Apex Court has held that an inference as to consent can be drawn only based on evidence or probabilities of the case. "Consent" is an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of. This understanding was also emphasised in the decision in **Kaini Rajan v. State of Kerala (2013 KHC 4753: (2013) 9 SCC 113**. "Consent", for the purpose of S.375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the 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 the



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relevant circumstances.

31.2. I also refer to the dictum in **Deelip Singh @ Dilip Kumar vs State of Bihar, AIR 2005 Supreme Court 203**, wherein the Apex Court after referring to Section 90 IPC held that consent given firstly under fear of injury and secondly under a misconception of fact is not 'consent' at all. That is what is enjoined by the first part of Section 90 IPC. These two grounds specified in the Section 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. 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



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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, was 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. Section 90 cannot, however be construed as an exhaustive definition of consent for the purposes of the IPC. The normal connotation and concept of 'consent' is not intended to be excluded. There is a difference between consent and submission, every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Reference was also made to the three Judge Bench decision in **State of Himachal Pradesh v. Mango Ram, (2000) 7 SCC 224**, wherein it has been held that submission of the body



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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. The burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides. Whether on the basis of the evidence adduced by the prosecution, it is reasonably possible to infer lack of consent on the part of the prosecutrix is the ultimate point to be decided.

32. Keeping the aforesaid principles in mind, I proceed to consider whether the prosecution has been successful in



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establishing that PW2 was raped under threat/ coercion or whether the materials on record indicate that it was a consensual one.

33. PW2 when examined before the trial court deposed that as she was not keeping good health, about 4 to 5 months prior to the incident, she and her husband (PW3) had visited Mehndipur Balaji Temple. On 14.11.2017 at about 06:30 p.m, she left her house alone for Mehndi Pur Balaji as her husband was unwell. She reached Sarai Kale Khan bus stand within 1 ½ to 2 hours. She waited for a bus to the said place but she did not get any. On informing her husband over the phone about the same, he advised her to return home in an auto. She hired an auto. The driver expressed his inability to take her to Sector 16 Rohini but said that he would drop her at a place from where she could get a taxi. The auto driver dropped her at some place saying that she would be able to get a taxi to Sector-16 Rohini. The time was around 11:00 PM. A car with yellow plate arrived. The car was being driven by A2 who agreed to take her to Sector-16 Rohini for ₹550/- saying



that he had to pick up another person from the said place. After boarding the taxi, she informed her husband that she would reach home in 40 to 45 minutes. After driving for a while, the driver took a u-turn and picked up another man, that is, A2 from beneath a bridge. The windows of the car were closed as the driver had switched on the air conditioner. She asked the driver the time within which she would reach her destination as he had taken another passenger. The car was being driven at high speed. She noticed that the driver and the other passenger were conversing in some native dialect. The driver and the passenger appeared to be homely persons and so she did not initially apprehend any danger. They told her that they would reach her destination within 30 to 40 minutes. All the windows were locked from inside. Then, the driver started threatening her and asking her to remain quiet or else she would be killed. She was also slapped. The car was then driven towards a jungle, which she realized in the morning to be Pari Chowk, Greater Noida. The driver stopped the car in the jungle.



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Then, the driver and the other passenger got down to urinate during which time she again called her husband. When the driver and the co-passenger noticed her on the phone, they snatched away her mobile phone. The car had three rows of seats. She was pushed to the last row of seats, threatened and forced to remove all her clothes. Both the persons forced themselves on her. They forcibly committed sexual intercourse with her by penetrating her vagina with male organs and also subjected her to oral sex. They pulled her by her hair, took away her purse containing ₹12,000/- and her gold earrings, mangal sutra, anklets, bangles and mobile phone. They gave her ₹50/- and pushed her out of the car near Pari Chowk before speeding away. She walked some distance and boarded another taxi. She disclosed to the driver of the said taxi that a wrong act had been committed against her. The taxi driver took her to a police gypsy parked nearby. She got down from the taxi and informed the policemen about the incident. The policemen appeared to be drunk and so she refused to get into the vehicle of



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the police despite being told to do so. She requested the taxi driver to drop her home. It was still dark at that time. The taxi driver booked another cab for her and she returned home in that cab. The police gypsy had followed the cab for some distance before turning away. The cab driver on reaching home told her husband about the place from where he had picked her up. After about 1 ½ to 2 hours of reaching home, she informed her husband about the incident. Her husband informed his friend. Thereafter, she and her husband attempted to locate the place of occurrence since she was unable to recollect as to where she had been taken to. Thereafter, a call was made to telephone no. 100. The police came to the showroom where her husband worked and recorded her statement. According to PW2, it was a lady police official of Hauz Khas police station who had recorded her statement. PW2, on being shown her statement, identified her signature therein, but stated that she was unaware of the contents as she is illiterate. The said statement has been marked as Ext. PW2/A. (I have already held that this



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statement is inadmissible and that it ought not to have been marked)

33.1. During the course of the examination-in-chief, the prosecutor is seen to have sought the permission of the court to put leading questions to the witness. This request was allowed by the trial court. On further examination by the prosecutor, PW2 deposed that both A1 and A2 had consumed liquor before as well as after raping her. She had stated to the police that A1 and A2 had repeatedly subjected her to sexual intercourse by taking turns, committed oral and unnatural sexual acts upon her and had also with her mobile phone recorded a video of the incident using the torchlight of their mobile phone. She had also stated to the police that the semen ejaculated by the accused had fallen on the seat of the car and that the accused had wiped it off using her top. She had stated before the Magistrate that after committing rape, A1 and A2 had threatened to kill her and circulate the obscene video recorded by them to her sisters and other relatives. According to PW2, the



contact number of her relatives were available on the WhatsApp in her mobile phone and that the accused had, in fact, called her sisters from her mobile phone. She had not stated before the Magistrate that A1 and A2 were torturing her family members by sending them the video they had recorded of the assault, though she had stated that they were harassing her family members. PW2 further deposed that she had not seen her mobile phone after it had been taken away by A1 and A2. She was unable to say whether the video recording made by A1 and A2 during the course of the assault, still remained in her device. At this stage of her examination, PW2 the Investigating Officer (IO) was asked to clarify by the trial court, as to whether PW2's mobile phone had been examined. The IO answered that though she had checked the mobile phone, no objectionable material was found.

33.2. PW2 in her cross-examination deposed that she is illiterate, had never attended school, and is a homemaker. Her husband worked in a showroom. She reiterated that on 14.11.2017,



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she had left her house at about 06:30 p.m. for Mehndi Pur Balaji, reached Sarai Kale Khan after about 1 ½ hours and waited there for about 2 to 2 ½ hours for a bus. She did not take a bus in the morning or afternoon, as she was unwell then. According to PW2, if one takes a bus from Sarai Kale Khan in the evening, they can reach Balaji in the early hours of the next day. Since no bus arrived, she contacted her husband who said that he would come and pick her up. But it was quite late and so she was scared/frightened. Hence she took an auto to return home and told her husband not to come. She had spoken to her husband five to six times during the night, that is, between the time she had reached Sarai Kale Khan and the time she reached home. PW2 was unable to specify the time taken to travel from Sarai Kale Khan to Ansal Plaza. PW2 further deposed that she informed her husband about the incident at about 03:00 to 04:00 p.m. Thereafter, she, her husband (PW3) and his employer (PW7), first went to Sarai Kale Khan, and then to the place where the auto driver had dropped her,



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and subsequently to Greater Noida in PW7's car. PW2 further deposed that they reached Sarai Khan at about 5:00 p.m. Thereafter, they proceeded to Ansal Plaza, where they reached within half an hour, and then proceeded to the showroom of PW7, from where a call was made to the police. PW2 denied having stated to the doctor that she had boarded the taxi pursuant to a ride offered by the accused. PW2 further deposed that for two to three days, they had searched for A1 and A2 in the Greater Noida area. A1 and A2 were ultimately traced through the video calls they had been making. PW2 admitted that she had identified A1 and A2 before the police after they had been arrested. According to PW2, the police had come to the showroom where her husband worked on 15.11.2017 or 16.11.2017 in the evening, and that her statement had been recorded at the showroom by a male police official. She met a lady police officer later at the police station. PW2 denied the suggestion that it was completely dark when A1 and A2 left her near Pari Chowk. According to her, as it was dawn, there was



some light at the time, which according to her was about 04:30 to 05:00 a.m. Although there were houses nearby, she could only see their boundaries and hear the noise of passing vehicles as A2 had parked the taxi in a jungle. She did not raise any alarm while being taken to the place of occurrence as she never thought that the accused would do any wrong to her. The road was empty. She did not raise an alarm at the spot also as the windows were locked from outside and the accused were beating her. When she boarded the taxi from Ansal Plaza, she had informed her husband that she would reach home within 30 to 45 minutes. The time then was past 11:00 p.m. PW2 denied the suggestion that her husband took no action when she failed to reach home within 30 to 45 minutes. According to PW2, her husband called his colleagues and did make efforts to search for her. PW2 further deposed that by the time she reached Sarai Kale Khan, the bus to Mehandipur Balaji had already left. According to her, she had made enquiries with the other passengers waiting at the bus stop and she had also waited



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for about two and half hours for a bus. PW2 denied the suggestion that she had falsely implicated A1 and A2 in order to extort money from them. She also denied the suggestion that she had voluntarily accompanied A1 and A2 and had consented to the sexual acts.

34. PW3, husband of PW2 deposed that on 14.11.2017 his wife left home alone at about 05:00 PM to visit Mehandipur Balaji Temple as he could not accompany her due to some official work. PW2 was to board a bus from Sarai Kale Khan. At about 09:00-09:30 PM, his wife informed him over phone that she could not board a bus to Mehandipur Balaji. He asked his wife to return home. Around 10:45 PM - 11:00 PM, she again called and informed him that she had boarded a car to return home. At about 12:30 AM, she again called him on phone and told him that she apprehended danger as the driver had taken her to an unknown place. Shortly thereafter, she made another call stating that she was being beaten, following which her mobile phone was switched off. He immediately informed his employer, PW7, who came to his



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room. As PW2's phone remained switched off, he and PW7 waited for PW2 to return. After about half an hour, PW7 left his room and so she continued to wait for his wife at home under the impression that she had lost her way. PW3 further deposed that his wife returned home at about 05:00 AM - 06:00 AM. Since she appeared extremely nervous, he did not ask her anything. She took a bath and went to sleep. She woke up at around 11:00 AM - 12:00 Noon. He then called PW7 to his room. After his wife woke up, he asked her about her whereabouts. His wife did not tell him anything for about half an hour but thereafter told him about the entire incident. She told him that she had been raped by two unknown persons. Initially, he did not want to report the matter to the police. But his wife wanted to file a complaint. He told his employer about the incident, who advised him to call the police. He made a call to 100 number pursuant to which PCR officials came and took them to K.N. Katju Marg, PS from where they were referred to Hauz Khas PS. His wife narrated the incident to a lady police officer.



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Thereafter, they accompanied the police to various places, including Pari Chowk, in connection with the investigation for about 4-5 days. Within 7-8 days, one of the accused persons was apprehended near the place Loni. His wife identified the said person as one of the rapists. On the following day, the other accused was apprehended who was identified by his wife at the police station. He further deposed that his wife told him that A1 and A2 had taken away her purse containing ₹11,000/- - ₹12,000/-. mangalsutra, anklets, four bangles, earrings (jhumki), and her gold coloured OPPO A57 mobile phone.

34.1. PW3 in his cross-examination deposed that on the date of the incident, his wife had left home at about 05:00 – 06:00 p.m. According to PW3, his wife did not specify the time by which she would reach home, but she only told him that she had boarded a taxi. It would take around 01 – 1 ½ hours to reach his home from Ansal Plaza. PW3 admitted that normally, if a family member goes missing, the other family members would file a police



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complaint. But he could not do so as he was extremely nervous. He made efforts to search for his wife in the nearby area, in which attempt he was joined by PW7. He had called his employer during the night itself, but the latter advised him to wait till morning. His employer remained with him for about half an hour. He again called his employer at 12:00 noon. PW3 further deposed that he did not talk to his employer during the time between 11:00 a.m.–12:00 noon. His wife did not disclose the incident immediately upon returning home, but narrated it only around noon after his employer arrived. Both he and his wife were initially reluctant to lodge a complaint, but on being counseled and advised by his employer, they gave the complaint. It was around 12:00-12:30 p.m. on 15.11.2017, his employer had advised them to approach the police. Thereafter, he and his wife accompanied by his employer (PW7), by around 12:30-01:00 p.m., left in his employer's for Pari Chowk. From Pari Chowk, they returned to the showroom of his employer by 05:00-07:00 PM. It was his



employer who informed the police by calling number 100. His wife had on 14.11.2017 had only called him twice, both of which were received by him at his residence.

35. PW7 deposed that he has been running an electronic showroom under the name and style, S.S. Electronics at Sector-16, Rohini and that PW3 had been working as a salesman in his showroom since February 2016. On 15.11.2017, at about 01:00 a.m., he received a call from PW3 informing him that PW2 had been kidnapped. He immediately rushed to the house of PW3. He advised PW3 to wait till morning and, if PW2 did not return, to lodge a complaint with the police. Thereafter, he returned to his house. At about 12:30 p.m. on the same day, he again received a call from PW3 informing him that PW2 had returned home in a nervous condition. He again went to their house and found PW2 in a disturbed and nervous state. PW2 started weeping and upon being asked, told him that she had been beaten, raped and that her jewellery, money, and mobile phone had been taken away.



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Thereafter, he persuaded both PW2 and PW3 to lodge a complaint with the police regarding the incident. He then took PW2 and PW3 to Pari Chowk and also made a search of two to three nearby places. Thereafter, they returned to his showroom and called the police. The SHO, K.N. Katju Marg, PS came to his showroom, but as the matter fell within the jurisdiction of Hauz Khas police station, the police took them there, where PW2 lodged her complaint.

35.1. PW7 in his cross-examination deposed that it was PW3 who had called the police, though he was unable to recall whether the call was made from his own mobile phone or from the former's phone.

36. As noticed earlier, the genesis of the present case lies in Ext. PW15/A, the first statement/information/report given by PW2 to PW15, which, in the facts of the present case, constitutes the FIS/FIR and not Ext. PW2/A, as has been erroneously treated by both the prosecution and the trial court. It is no doubt true that a



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witness cannot be expected to narrate every event with mathematical precision. Nevertheless, there must be a consistent and coherent account of the material particulars of the occurrence so as to inspire confidence in the prosecution case.

37. A careful perusal of the information conveyed through the PCR call and recorded as DD entry no. 44A, namely, Ext. PW14/A; Ext. PW15/A FIS/FIR no. 232, and Ext. PW3/A Section 164 statement of PW2, reveal material inconsistencies on fundamental aspects of the prosecution story. Though it was submitted on behalf of the defense that there are severe contradictions, none have been proved by resort to the procedure contemplated under Section 145 Evidence Act and hence, the defense cannot take advantage of the same. But, the prosecution relies on Ext. PW15/A FIS/FIR and Ext. PW2/D 164 statement for the purpose of corroborating the testimony of PW2. It is true, as noticed earlier, that PW2 was never confronted with Ext. PW15/A. But, the prosecution has no case that Ext. PW15/A is not the first



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information/report given by PW2 as testified by PW15, a loyal prosecution witness. Even after Ext. PW15/A was proved through PW15, PW2 was never recalled to clarify or explain the same. Therefore, it is clear and obvious that the prosecution has no quarrel/dispute regarding Ext. PW15/A. In fact, it is the prosecutor himself who made a conscious effort to bring the said information/statement on record and prove it.

38. Ext. PW15/A FIS/FIR does not corroborate the testimony of PW2 on certain material aspects. To begin with, there are glaring inconsistencies regarding the weapon allegedly used by A1 and A2. Ext. PW14/A, DD entry no. 44A, which records the first call to the police relating to the crime made by none other than PW3, the husband of PW2, says that his wife was raped at knife-point. However, in Ext. PW15/A, PW2 has stated that the taxi driver and the other boy in the taxi threatened her by showing a pistol (...टैक्सी ड्राइवर व दूसरे लड़के ने मुझे पिस्टल दिखाकर चुप रहने के लिए बोला था...) Ext. PW2/D 164 statement, records that



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one of the accused said [..निकाल पिस्टल और इसको ठोक.. (take out the pistol and shoot her)]. In the box, PW2 has neither a case of rape at knife or gunpoint. On the other hand, there is absolutely no reference to the use of any weapon, be it a knife or a gun by A1 and A2 before, during, or after the incident.

39. Further, there is also no consistency regarding who, when, and where the FIS/FIR of PW2 had been recorded. PW15 claimed that he had recorded Ext. PW15/A at the residence of PW2 in Rohini. But PW2 has a different version. Initially, she deposed that it was recorded by a female police official of Hauz Khas police station. PW22 the IO, has a case that PW2 and PW3 had come to Hauz Khas police station on 16.11.2017, and then she had recorded the statement/information/report of PW2, which led to the registration of the FIR. Though initially PW2 has a case that her statement/information/report was recorded by a female police official, she thereafter deposed that on 15.11.2017-16.11.2017, it was recorded by a male police official at the workplace of her



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husband. PW3, on the other hand, deposed that PW7, his employer, informed the police about the incident, pursuant to which the police came to his workplace. The police took them first to KNK Marg police station from where the case was sent to Hauz Khas police station, at which station PW2's statement/report/information was recorded by a lady police official. PW7 has yet another case. According to him, the SHO KNK Marg police station came to his showroom, but however, since the crime was committed within the jurisdiction of Hauz Khas police station, the police took them to the said police station where the statement of PW2 had been recorded.

40. It is also pertinent to note that PW2 never disclosed anything regarding the video alleged to have been recorded by A1 and A2 while she was being subjected to the alleged sexual assault, in Ext. PW15/A, which constitutes the earliest detailed version of the occurrence. It is true that the FIS/FIR is not an encyclopedia and need not necessarily contain all the minute details related to



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the crime. But the broad details must certainly be there. This is especially so because PW2 has a specific case that A1 was threatening her that he would send the said objectionable video to her relatives and friends. In fact, the specific case of the prosecution is that it was pursuant to one such video call, A1 had been apprehended. But there is no reference to the video in Ext. PW15/A. However, in Ext. PW2/D 164 statement, PW2 introduced the allegation that A1 and A2 had recorded a video of the incident. The said version was reiterated by her in the box also. PW2 has also a case that A1 and A2 tried to circulate the video to her sister and other relatives. But no such objectionable material was found by the police in the mobile phone of PW2, which has been marked as Ext. P2, in which the recording is alleged to have been made. On the other hand, to a query by the Court during the course of the trial, PW22, the IO categorically stated that on examination of Ext. P2 phone, no objectionable material was found. The prosecution has no case that A1 and A2 had deleted the video and hence, the



data was not retrievable. On the other hand, the definite answer given by PW22 is that nothing objectionable was found in Ext. P2 phone.

41. According to PW2, apart from the money in her purse and her gold ornaments, A1 and A2 had robbed her Ext. P2 mobile phone also. Hence, I will refer to the evidence regarding the mobile phone. PW2 in her cross-examination has a case that after the incident, the accused had in fact made a call to her sisters. She admitted that she had not in her 164 statement stated that A1 and A2 had threatened to kill her or threaten to send the objectionable video recorded by them to her sisters and relatives. But she added that since the contact numbers were available on her phone, the accused had in fact made a call to her sisters from her mobile. PW2 has not specified as to which of the accused persons had made the video call to her sisters. The prosecutor seems to have never thought it necessary to clarify the same also. Ext. PW19/A are three photographs alleged to have been clicked by PW2, when



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A2 made a video call to her. PW19, ASI Haus Khas PS deposed that on 16.11.2017, he joined the investigation with PW22. On 22.11.2017, he along with Sub Inspector Varun Gulliya and other policemen went to village Maicha, Greater Noida from where PW2 was receiving calls on her mobile phone from A1 and A2. PW2 took a screenshot, when she received the calls. The photos were sent to his mobile phone by PW2, and he in turn forwarded the same to PW22. PW19 identified the photos and the same have been marked as Ext. PW19/A (03 in number).

42. PW22, the IO deposed that on 17.11.2017-18.11.2017, PW2 informed her that she and her relatives were receiving obscene video calls from her mobile phone which had been robbed by A1 and A2. She directed PW2 to remain in touch with A1 and A2 so as to enable the police to trace their location. As instructed by the police, PW2 informed A2 that she would be coming to meet him. A2 showed his face on the mobile phone and then PW2 took a screenshot of the same and sent it to PW19. PW22 also identified



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Ext. PW19/A photographs. PW22 further deposed that Sub-Inspector (SI) Varun Gulia on 23.11.2017 produced A2 before her along with two mobile phones, one a Samsung and the other an Oppo phone, golden color, which she seized as per Ext. PW19/B and Ext. PW19/C seizure memos respectively. Ext. PW19/C prepared by PW22 on 23.11.2017 says that the Oppo gold color phone with IMEI number 865166031826798 and 865166031826780 with Vodafone SIM number 9643461988 had been produced before her by SI Varun Gulia, who informed her that the said phone had been seized from the custody of A2. However, the SI who is alleged to have seized the mobile phone from A2, is not seen examined before the trial court. In the charge sheet, SI Varun Gulia is shown as CW6. On 20.08.2018, the trial court is seen to have ordered summons to be issued to CW6 to appear on 17.09.2018. CW6 was in fact present on 17.09.2018, but was discharged due to paucity of time and his examination was adjourned to 29.09.2018. On the said day, the prosecutor submitted



that his examination was unnecessary in the light of the testimony of PW19 and PW22. In the light of the submission made, CW6 was given up and never examined before the trial court.

43. PW19 deposed that on 22.11.2017, he along with CW6 and team went to village Maicha, Greater Noida from where PW2 was receiving calls from A1 and A2 on her mobile. After they received Ext. PW19/A photographs, they showed the same to an informer with whose help they apprehended A2. A Samsung phone and an Oppo phone were recovered from A2 which were seized as per Exts. PW19/C and PW19/B seizure memos, in which he is an attesting witness. PW19 in his cross-examination deposed that after A2 was apprehended by CW6 and team, it was he who had handed over the custody of A2 to PW22, who in turn arrested A2 at about 08:00 a.m. in the police station. But according to PW22 it was CW6 who had produced A2 before her on 23.11.2017 at 07:00 a.m. PW2 further deposed that she is unaware as to when CW6 apprehended A2.



44. Further, the arrest memo and search memo of A2 alleged to have been prepared by PW22 at the time of arrest are Exts. PX4 and PX5 respectively. In the column relating to the articles seized from A2 it is recorded thus- “-NIL-”. Neither PW19 nor PW22 has a case that the seizure of the phones from A2 were made in the presence of PW22. On the other hand, both agree that A2 was apprehended and the seizure effected by CW6. But Ext. PW19/C the seizure memo of Ext. P2 phone alleged to have been robbed from PW2 and seized/recovered from A2 has not been prepared by CW6. On the other hand, it appears to have been prepared by PW22 whose signature is seen at the bottom of the same in which document, PW19 is an attester. CW6 is seen to have also signed Ext. PW19/C as “पेश कर्ता”. There are no independent witnesses to prove the seizure of Ext. P2 phone. It is true that in all cases it is not necessary to examine independent witnesses to prove the recovery/seizure of stolen articles from the accused. But in such cases, the materials on record must be quite cogent and



satisfactory to establish the same beyond reasonable doubt, which does not seem to be the case in the matter on hand.

45. Further, PW2 has a case that in addition to the mobile phone, A1 and A2 had robbed an amount of ₹ 12,000/- as well as her gold ornaments, four gold bangles, her gold ear earrings, mangal sutra, as well as her silver anklets. PW22 is seen to have conducted no investigation whatsoever relating to the same. The prosecution has no case that A1 and A2 had disposed of the same and hence they were unable to recover the same. On the other hand, there is complete silence of PW22 and team regarding the gold ornaments and cash alleged to have been robbed from PW2.

46. Further, PW2 has a case that A2 had called her as well as her sisters/relatives over phone. However, according to PW22, her investigation revealed that on 21.11.2017-22.11.2017, A1 and A2 had made several calls to PW3, the husband of PW2, the call details of which are at pages 561, 563, 565, 567 of Ext. PW11/B (colly). But, PW3 has no such case. PW3 was never asked



regarding these calls alleged to have been made by A2 to him. If PW2's version is right, why did A2 make several calls to PW3? No explanation whatsoever is forthcoming from the prosecution on this aspect. In addition, there is no evidence to substantiate the claim of PW2 that A1 and A2 had made several obscene video calls to her sisters/relatives.

47. Now coming to the conduct of PW2 and PW3. As per the testimony of PW2, she remained in telephonic contact with her husband (PW3) at several stages, beginning from the time she intended to board a bus to Mehandipur Balaji from ISBT Sarai Kale Khan, the non-availability of the bus, her journey by auto rickshaw to Ansal Plaza, her boarding of the cab driven by A2, and even during the alleged assault by the accused persons. According to PW2, on the date of the incident, she had made about 5 to 6 calls to her husband. According to PW3, the first call was received at about 09:00 – 09:30 pm when her wife informed him that she did not get any bus to Mehandipur Balaji. He received the second



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call at about 10:45 – 11:00 pm when she informed him that she had boarded a taxi to return home. The third call was received at about 12:30 a.m. when his wife informed him that she apprehended danger and that the driver has taken her to an unknown place. Shortly thereafter, he received one more call when his wife informed him that she was being beaten, following which her phone was switched off. According to PW3, he waited for his wife to return home as he was under the impression that his wife had lost her way. PW3 has also a case that he along with PW7 had searched for his wife in the nearby places. The conduct of PW3 appears to be quite unusual and inconsistent with the natural course of human conduct. PW3 in his cross examination admitted that he did not immediately inform the police as he was nervous and instead confined his efforts to searching the nearby areas.

48. It is no doubt true that the Court cannot expect a person faced with the sudden disappearance or abduction of a close family member to react in any particular manner or to mechanically



follow legal procedures. Human behaviour varies from person to person. Nevertheless, in the facts of the present case, when PW3 claims to have been specifically informed by PW2 that she apprehended danger and was thereafter beaten by the accused persons, his failure to immediately alert the police or any other authority, coupled with his decision to merely wait for PW2 to return home on her own till the following morning, despite the alleged occurrence having taken place in another part of the city, appears unnatural and quite improbable. Such conduct, when viewed in the backdrop of the other inconsistencies appearing in the prosecution case, creates further doubts in the mind of this Court regarding the truthfulness of the prosecution version.

49. Further, I also refer to the Ext. PW11/B Call Detail Record from 14.11.2017 08:00 PM to 15.11.2017, which was proved by the prosecution thereafter, PW11, Nodal Officer, Vodafone mobile Services. The relevant portion is reproduced hereinbelow:-



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S.No.	Call made from	Called received	Date	Time	DURATION (SECONDS)
1.	09643461988	09582810913	14-NOV-2017	20:10:16	523
2.	09582810913	09643461988	14-NOV-2017	20:28:30	189
3.	09643461988	09582810913	14-NOV-2017	22:45:06	123
4.	09582810913	09643461988	14-NOV-2017	23:56:17	44
5.	09582810913	09643461988	15-NOV-2017	00:04:40	10
6.	09643461988	09582810913	15-NOV-2017	00:07:55	32
7.	09582810913	09643461988	15-NOV-2017	00:10:31	37
8.	09643461988	09582810913	15-NOV-2017	00:15:03	39
9.	09643461988	09582810913	15-NOV-2017	00:20:23	33
10.	09643461988	09582810913	15-NOV-2017	00:27:23	119
11.	09643461988	09582810913	15-NOV-2017	00:30:31	73
12.	09643461988	09582810913	15-NOV-2017	00:34:59	237
13.	09582810913	09643461988	15-NOV-2017	00:39:17	70
14.	09643461988	09582810913	15-NOV-2017	00:42:03	58
15.	09643461988	09582810913	15-NOV-2017	00:47:17	38
16.	09582810913	09643461988	15-NOV-2017	00:48:55	41

50. Admittedly, mobile number 9643461988 is of PW2 and



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9582810913 is that of PW3. A bare perusal of Ext. PW11/B Call Detail Records (CDRs), read with the testimony of PW2 and PW3, reveal several inconsistencies in the prosecution version regarding the sequence of events on the intervening night of 14.11.2017-15.11.2017. According to PW2, she reached ISBT Sarai Kale Khan at about 08:00-08:30 PM after travelling for about 1 ½ to 2 hours. Finding that no bus was available for Mehandipur Balaji, she immediately informed PW3 over the phone. This version is substantially reflected in the CDR, which shows a call from PW2 to PW3 at 08:10:16 PM lasting 523 seconds, followed by a return call from PW3 at 08:28:30 PM lasting 189 seconds. PW2 further deposed that after proceeding to Ansal Plaza, she boarded the taxi driven by the accused at about 10:45 PM - 11:00 PM and immediately informed her husband. PW3 also deposed that he received a call from PW2 informing him that she had boarded a car to return home. The CDRs corroborate this aspect by recording a call from PW2 to PW3 at 10:45:06 PM lasting 123 seconds.



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According to PW2, after travelling for about 45 minutes, the taxi reached a secluded place where the accused persons began assaulting her. PW3 deposed that, at about 12:30 AM, he received a distress call from PW2 informing him that she apprehended danger as the vehicle had taken a wrong route, followed by another call stating that she was being beaten, after which her mobile phone was switched off. However, the Call Detail Records gives a different version. The records show a call from PW3 to PW2 at 11:56:17 PM lasting 44 seconds, followed by a series of thirteen short-duration calls exchanged between 12:04:40 AM and 12:48:55 AM. These calls were initiated alternately from both numbers. Thus, Ext. PW11/B Call Detail Records does not support PW3's version that the mobile phone was switched off immediately after the alleged distress call. On the contrary, the CDRs demonstrate continued telephonic activity between the two numbers for nearly forty-five minutes thereafter. This materially contradicts PW3's version that communication had completely



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ceased and that he merely waited at home after receiving the initial calls. The prosecution has offered no explanation for these repeated calls, thereby creating a serious doubt regarding the sequence of events narrated by PW2 and PW3.

51. It is also pertinent to note that the prosecution witnesses have given materially inconsistent versions regarding the manner and timing in which PW2 disclosed the alleged incident to PW3, her husband. In Ext. PW15/A she has stated that she revealed the incident on reaching home. In Ext. PW2/D 164 statement, she in fact states that after reaching home she did not tell her husband about the incident. On the other hand, her case is that on the day after the incident at about 11:00 a.m. she disclosed the incident to her husband. So was it on 16.11.2017 she had disclosed it to her husband? But in her examination-in-chief, PW2 deposed that she narrated the incident to PW3 after about 1 ½ to 2 hours of reaching home. However, in her cross examination, she stated that she informed her husband about the incident only at about 03:00 PM to



04:00 PM.

52. PW3, on the other hand, gave an altogether different version. According to him, PW2 returned home at about 05:00 AM-06:00 AM in a nervous condition. He did not question her immediately, instead, PW2 took a bath and went to sleep. When she woke up at about 11:00 AM - 12:00 noon, he enquired about her whereabouts. Initially PW2 remained silent for nearly half an hour before narrating the entire incident to him.

53. Now coming to the version of PW2 regarding non-availability of any bus to Mehandipur Balaji. Going by the version of PW2, she was unable to get any bus to Balaji Mehndipur and hence the reason why she was constrained to take an auto to Ansal Plaza and thereafter, the taxi driven by A1. According to her, she had waited for a bus for a considerable period of time, however, no bus had come. Here I refer to the testimony of DW2, Traffic Inspector, Rajasthan State Road Transport Corporation, Delhi Depot, ISBT, Sarai Kale Khan, New Delhi, examined on behalf of



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A1 and A2, who produced the details of the buses which had left ISBT, Sarai Kale Khan on 14.11.2017 for Balaji Mehandipur. The same has been marked as Ext. DW2/A (running into six sheets). DW2 deposed that the last bus of Rajasthan State Road Transport Corporation left ISBT, Sarai Kale Khan on 14.11.2017 for Balaji, Mehandipur at 23:30 hours. The first page of Ext. DW2/A reads thus :-

दिनांक - 14-11-2017 में देहली (सराय काले खाँ) से संचालित देहली बालाजी मार्ग की वाहनों की सूची

क्रिकिंग चर्क :- श्री महेश जैन

समय	वाहन नं.	आगार का नाम	रूट	वाया	नाम - चालक	नाम - परिचालक
20.00	2319	लोहागढ़	देहली से बालाजी	नगर रैक्डली सोहना	श्री हरवीर सिंह	श्री करण सिंह
20.15	955	दौसा	देहली से बालाजी	तिजारा अलवर	" वीर सिंह	" भानू कुमार शर्मा
21.00	2352	लोहागढ़	देहली से बालाजी	नगर रैक्डली सोहना	" रामेश्वर दयाल	" मनीष कान्त
21.15	1254	दौसा	देहली से बालाजी	तिजारा अलवर	" बहादुर सिंह	" हितेश कुमार जोषी
22.00	4551	भरतपुर	देहली से नंदवई	सोहना, नगर रैक्डली, कूड़मर	" रघुवीर सिंह	" अतल सिंह
22.15	1344	दौसा	देहली से बालाजी	तिजारा अलवर	" सत्यनारायण प्रीत	" हरकेश नीला
		क्रिकिंग चर्क का नाम	जोगेन्द्र सिंह	✓		
20.30	2381	लोहागढ़	देहली से बालाजी	भरतपुर मथुरा	" सियाराम	भाव प्रताप सिंह
21.30	2380	लोहागढ़	देहली से बालाजी	मथुरा भरतपुर	" चतर सिंह	" रामपाल सिंह
22.30	4536	लोहागढ़	देहली से बालाजी	मथुरा भरतपुर	" प्रताप सिंह	प्रहलाद गौतम
23.30	2353	लोहागढ़	देहली से बालाजी	मथुरा भरतपुर	" जयवीर	योगेश कुमार



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The aforesaid document translated reads –

Date - 14-11-2017: List of vehicles operating from Delhi (Sarai Kale Khan) on the Delhi – Balaji route.

Booking Clerk: Mr. Mahesh Jaiman

Time	Vehicle No.	Depot Name	Route	Via	Driver's Name	Conductor's Name
20:00	2319	Lohagarh	Delhi - Balaji	Nagar, Kherli, Sohna	Mr. Harveer Singh	Mr. Karan Singh
20:15	955	Dausa	Delhi - Balaji	Tijara, Alwar	Mr. Dheer Singh	Mr. Bhanu Kumar Sharma
21:00	2352	Lohagarh	Delhi - Balaji	Nagar, Kherli, Sohna	Mr. Rameshwar Dayal	Mr. Manish Kant
21:15	1254	Dausa	Delhi - Balaji	Tijara, Alwar	Mr. Bahadur Singh	Mr. Hitesh Kumar Joshi
22:00	4551	Bharatpur	Delhi-Nadbai	Sohna, Nagar, Kherli, Kathumar	Mr. Raghuveer Singh	Mr. Atar Singh
22:15	1344	Dausa	Delhi - Balaji	Tijara, Alwar	Mr. Satyanarayan Meena	Mr. Harkesh Meena

Booking Clerk's Name: Mr. Jogendra Singh

Time	Vehicle No.	Depot Name	Route	Via	Driver's Name	Conductor's Name
20:30	2381	Lohagarh	Delhi to Balaji	Bharatpur, Mathura	Mr. Siyaram	Mr. Bhanu Pratap



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						Singh
21:30	2380	Lohagarh	Delhi Balaji	to Mathura, Bharatpur	Mr. Chatar Singh	Mr. Rampal Singh
22:30	4536	Lohagarh	Delhi Balaji	to Mathura, Bharatpur	Mr. Pratap Singh	Mr. Prahlad Gautam
23:30	2353	Lohagarh	Delhi Balaji	to Mathura, Bharatpur	Mr. Jayveer	Mr. Yogesh Kumar

54. According to PW2, on 14.11.2017 at about 06:30 p.m. she left home and reached Sarai Kale Khan within 1 ½ to 2 hours. If that be so, she must have reached the bus stand between 08:00 – 08:30 p.m. As per Ext. DW2/A there was a bus at 20:30 hours; 21:00 hours; 21:15 hours; 21:30 hours; 22:00 hours; 22:15 hours; 22:30 hours and 23:30 hours. The testimony of DW2 and Ext. DW2/A (colly) has not been discredited or disproved in any way. This will again discredit the testimony of PW2 that she was unable to get any bus to the place of destination. This is yet another factor to doubt the prosecution case.

55. Further, the case of PW2 is that she had decided to go alone to the temple as her husband was unwell. But PW3, has no



such case. According to PW3, he could not accompany his wife as he had some official work.

56. Now coming to the location of the taxi driven by A1 in which A2 was also present, which vehicle PW2 is alleged to have boarded from Ansal Plaza.

57. PW6 Regional Manager, Moveinsync Technology Pvt. Ltd. was examined to prove the location of the taxi based on the GPS installed in the taxi. PW6 deposed that as requested by the IO, he had handed over the location log of the taxi which document was seized as per Ext. PW6/C seizure memo. PW6 explained how the location could be determined by the Geo code mentioned in the location log. This aspect of the testimony has not been disputed by either side. PW6 in his cross-examination deposed that the GPS of the car in question remained at the same place from 0.00 to 8.37 a.m. on 14.11.2017. To a Court question as to whether it was possible for the driver of the vehicle to switch off the GPS, PW6 answered in the affirmative, but also stated that in such an event, it



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would not have been possible to get the location log. PW6 was further asked whether from Ext. PW6/C, the location of the taxi bearing no. DL1ZA3298 could be stated to be at Ansal Plaza between 10:30 to 11:30 p.m. on 14.11.2017. PW6 answered that he would be able to answer after logging the locations for the said period. This was permitted by the trial court. PW6 thereafter logged in the entries for duration between 10:30 to 11:30 p.m. on 14.11.2017 in his mobile phone and referred to the location of the taxi thus :—

Entry Point	Time (PM)	Logged Location
A-1	10:30	Greater Noida
A-2	10:35	Pari Chowk, Greater Noida
A-3	10:40	Near LG Chowk, Greater Noida
A-4	10:45	Dadri Main Road, Greater Noida
A-5	10:50	Dadri Main Road, near Panchmukhi Hanuman Mandir, Greater Noida
A-6	10:55	Dadri Main Road, near Jagram Bhati Market, Noida
A-7	11:00	Dadri Main Road, near Vishkarma Chowk, Noida
A-8	11:05	Dadri Main Road, Near Noida Golf Course, Noida
A-9	11:10	Metro Pillar No.93, Noida



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A-10	11:15	Sector-18, near Atta Peer, Noida
A-11	11:20	Near Radha Krishan Temple, Noida
A-12	11:25	Near Gazipur Road, New Ashok Nagar Marg
A-13	11:30	Gazipur Road, near Sadbhawana Marg

57.1. PW6 further deposed that as per the location reflected from the location log, the said taxi was on constant move during the aforesaid period. He also deposed that as per the location log, the vehicle was not at Ansal Plaza during the period between 10:30 p.m. to 11:30 p.m. on 14.11.2017. According to PW2, it was around 11:00 p.m. she had boarded the taxi from Ansal Plaza. No re-examination of PW6 was conducted by the prosecutor. Therefore, the testimony of PW6, again a loyal prosecution witness, that the car was not at Ansal Plaza at the relevant time as claimed by PW2 has not been discredited in any way.

58. The learned counsel appearing for PW2 sought to justify the findings of the trial court by referring to Para 69 of the impugned judgment. Para 69 of the impugned judgment reads –



“69. On enlarging the kaleidoscope of GPS log detail (co-ordinates of the vehicle) commencing from midnight (00:00 hrs) of the night intervening the date 14.11.2017 and 15.11.2017 to next one and half hour i.e up to 01:30 AM of 15.11.2017, it leaves no doubt that at the relevant time the vehicle was taking rounds of the city of Delhi. The co-ordinate log of this one and half hour (00:00 to 01:15) were when posted in the Google Map as suggested by the witness PW-6, shows that the car was roaming in Lajpat Nagar, Andrews Ganj, South Ex., East Kidwai Nagar and Arbindo Maarg. These areas are in the vicinity of the area which the prosecutrix has stated that she was picked up from. There is a probability, possibility and feasibility of the accused Gaurav picking her up; therefore mentioning of exact place is not necessary.”

59. The conclusion in paragraph 69 seems to have been arrived at by the trial court on the basis of its own analysis of the GPS log details. The conclusion arrived at by the trial court is against the testimony of PW6, a loyal prosecution witness, that at the time spoken to by PW2, that is, around 11:00 PM on 14.11.2017, the vehicle was not at Ansal Plaza. The locations of the vehicle, as spoken to by PW6 between the time from 10:30 PM to 11:30 PM, appears to be at Noida, Greater Noida, etc., which admittedly are places far away from Ansal Plaza in New Delhi. As



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noticed earlier, the testimony of PW-6 has not been discredited in any way. Therefore, this Court finds no reason to disbelieve or discard his testimony. If the learned trial judge was of the opinion that PW6 was not speaking the truth, or only half-truths, the Court could have very well put it to the witness that the GPS log details show that the vehicle was in fact roaming around areas quite near the area from which PW2 is alleged to have been picked up by A2. Instead of adopting such a course, or giving an opportunity to the defense to explain the possibility of the vehicle being in the near vicinity, the trial court arrived at a conclusion which goes against the testimony of PW6, whose testimony, the prosecution has no case, is untrustworthy or unbelievable or unreliable.

60. Further, another reason given by the trial court for arriving at the conclusion in paragraph 69 of the impugned judgment appears to be that PW2 was not sure of the exact location or place where she was picked up in the taxi by A2. This conclusion is also erroneous because in Ext. PW14/A DD entry;



Ext. PW15/A FIS/FIR, and Ext. PW2/B 164 statement, the case is that PW2 had been picked up from Ansal Plaza or near Ansal Plaza. It is true that PW2, while examining before the Court, stated that she was dropped at some place by the auto-rickshaw driver saying that she would be able to get a taxi to Rohini from the said place. The prosecution has no case that PW2 was unaware or not sure about the place from where she was picked up by A2 in his taxi. The Court charge also specifically refers to the place of abduction as Ansal Plaza. All the statements of PW2, right from the first call made by her husband to the police till her 164 statement, the definite case is that she was picked up from Ansal Plaza. In such circumstances, the conclusion of the trial court that PW2 probably must have been picked from the vicinity of Ansal Plaza and not from Ansal Plaza proper, appears to be unjustified and erroneous.

61. In the light of the aforesaid unsatisfactory materials on record, the conclusions arrived at by the trial court are obviously



erroneous, into which interference is called for. Hence, I find that A1 and A2 are entitled to the benefit of doubt.

62. In the result, both the appeals are allowed and A1 and A2 are acquitted under Section 235(1) for the offences punishable under Sections 365, 376D, 323, 506, 392 read with Section 34 IPC. They are set at liberty and their bail bonds shall stand canceled.

63. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 17, 2026

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