

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 22nd December 2021**
Pronounced on: 14th February 2022

+ CRL.A. 692/2016
AMIT @ SONU JAAT Appellant
Through: Mr. Sumeet Verma (DHCLSC)
with Mr. Mahinder Pratap Singh,
Advocate
versus
STATE Respondent
Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

+ CRL.A. 815/2016
YASEEN KHAN @ TEHANA Appellant
Through: Mr. Sumeet Verma (DHCLSC)
with Mr. Mahinder Pratap Singh,
Advocate
versus
STATE OF NCT OF DELHI Respondent
Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

+ CRL.A. 892/2016
VICKY @ VIJAY Appellant
Through: Mr. Sumeet Verma (DHCLSC)
with Mr. Mahinder Pratap Singh,
Advocate
versus
STATE Respondent
Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

+ CRL.A. 894/2016
LUCKY Appellant

Through: Mr. Sumeet Verma (DHCLSC)
with Mr. Mahinder Pratap Singh,
Advocates

versus

STATE Respondent

Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

+ CRL.A. 897/2016
SATYAJIT BISWAS @ SATTE Appellant

Through: Mr. S.B. Dandapani, DHCLSC
(through VC)

versus

STATE Respondent

Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

+ CRL.A. 1053/2016
UMASHANKAR Appellant

Through: Mr. Karan Prakash, DHCLSC

versus

STATE NCT OF DELHI Respondent

Through: Ms. Kusum Dhalla, APP for State
along with W/SI Madhu, P.S.
Jaitpur

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T
[VIA VIDEO CONFERENCING]

CHANDRA DHARI SINGH, J.

1. The instant criminal appeals under Section 374(2) of the Code of Criminal Procedure, 1973, (hereinafter "Cr.P.C.") have been filed against the impugned judgment dated 16th March 2016 and order on sentence

dated 11th April 2016 passed by learned Additional Sessions Judge, Special Fast Track Court, Southeast District, Saket Court, New Delhi wherein the Appellants/Accused persons were convicted and sentenced.

2. Since the criminal appeals bearing number CRL.A.-692/16, CRL.A.-815/16, CRL.A.-892/16, CRL.A.-894/16, CRL.A.-897/16, and CRL.A.-1053/16 have arisen out of the same FIR, pertain to the same set of facts, and have been heard together, therefore the same are being decided by way of this common judgment.

FACTUAL MATRIX

3. The brief facts and circumstances that have led to the instant case are as under:

- (i) On 19th May 2012 at about 4:45 P.M., information was received at Police Control Room that a lady had been raped by many persons in a truck near Gas Plant, Kalindi Kunj. On receiving the said information, police team reached on the spot at Agra Canal Road near Indane Gas Plant. The enquiry was made from the Prosecutrix/Complainant and her statement was recorded. In her statement, the Prosecutrix/Complainant stated that she was a rag picker and used to come from Najafgarh to JJ Colony, Madanpur Khadar for rag-picking.
- (ii) On 18th May 2012 at about 9:00 P.M., Prosecutrix/Complainant boarded *Gramin Sewa* vehicle from Jalebi Chowk, Madanpur Khadar for going to Nehru Place. The *Gramin Sewa* vehicle was

driven by one co-accused namely Lucky, while the other co-accused Tehna was the helper.

- (iii) After reaching Nehru Place, all the passengers got down from the Vehicle, Tehna took the Prosecutrix/Complainant near CNG pump, Nehru Place, where the Prosecutrix/Complainant was introduced to Vicky @ Vijay and Satyajeet Biswas @ Satte, who shifted the Prosecutrix/Complainant into a car forcibly by twisting her arms. Vicky @ Vijay drove the car and took her near a cinema hall at Nehru Place where the Prosecutrix/Complainant was allegedly raped in the car by Satyajeet Biswas @ Satte.
- (iv) Thereafter, the Prosecutrix/Complainant was taken into a room at JJ Colony, Khadar where co-accused Lucky, Vicky @ Vijay, Yasin Khan @ Tehana and Satyajeet Biswas @ Satte allegedly committed rape upon her. Vicky @ Vijay called the co-accused Uma Shankar and the Amit @Sonu Jaat who also committed rape upon the Prosecutrix/Complainant. The Prosecutrix/Complainant also complained about an act of sodomy committed upon her by Vicky @ Vijay.
- (v) Thereafter, the Prosecutrix/Complainant was taken in the *Gramin Sewa* by three of the co-accused. Near the gas plant, Kalindi Kunj, the vehicle went out of order. The co-accused Vicky @ Vijay again committed rape upon the Prosecutrix/Complainant. All the accused persons left the Prosecutrix/ Complainant there and threatened her to kill if she disclosed about the alleged incident to anyone. The

Prosecutrix/Complainant sought help from a truck driver Abhimanyu @ Bantu. However, Abhimanyu @ Bantu took the Prosecutrix/Complainant into the truck cabin and committed rape upon her.

- (vi) On the statement of Prosecutrix/Complainant, the instant FIR bearing No. 166/2012 dated 19th May 2012 was registered in Police Station Jaitpur against the Appellants/Accused persons. The Prosecutrix/Complainant was medically examined in AIIMS Hospital, wherein injuries were found on her body and internal parts.
- (vii) On 20th May 2012, Vicky @ Vijay, Lucky, Yasin Khan @ Tehana, Satyajeet Biswas @ Satte, Uma Shanker, Abhimanyu @ Bantu and Amit @ Sonu Jaat were arrested upon the identification by the Prosecutrix/Complainant.

4. After Investigation, Chargesheet dated 15th August 2012 was filed before the Court below against all the Appellants/Accused persons and vide order dated 9th October 2012, the Court below had framed charges under Sections 366/34/367(2)(g)/506 of the IPC against the Appellants/Accused persons to which they pleaded not guilty and claimed trial.

5. To substantiate its case, the prosecution examined PW-1 to PW-27 and exhibited PW-Ex-1/A to PW-Ex-27/B and Ex-PA to Ex-PH before the Trial Court. On the contrary, in the defense, the Appellants/Accused persons examined DW-1 to DW-5.

6. The Sessions Court observed that the Appellants/Accused persons did not give any plausible explanation, to counter the incriminating evidence against them, in their statements recorded under Section 313 of Cr.P.C. It was further observed that they only examined their family members in defense to falsify the statements of the Prosecutrix/Complainant. The Sessions Court relied upon the evidence led by the prosecution to record the finding that the Appellants/Accused persons had committed an offence of rape upon her.

7. The Sessions Court held that the testimony of the Prosecutrix/Complainant, the examination of witnesses, and the material available on record has led to credible evidence to prove the guilt of the Appellants/Accused persons. It was held that the sexual assault was proved, and the Prosecution had established its case beyond reasonable doubt that the Appellants/Accused persons had committed rape on the Prosecutrix/Complainant.

8. Vide judgment dated 18th July 2006 and order on sentence dated 20th July 2006, the Learned Additional Sessions Judge, Special Fast Track Court, Southeast District, Saket Court, New Delhi convicted and sentenced the Appellants/Accused persons in the manner as furnished below:

Name of Appellant	Sections of the Indian Penal Code under which Convicted	Quantum of Sentence
Vicky @ Vijay	Sections 366/34	Five years of Rigorous Imprisonment and a

		<p>fine of Rs.15,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for six months</p>
	Sections 506/34	<p>One year of Rigorous Imprisonment and a fine of Rs. 5,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for three months</p>
	Section 377	<p>5 years of Rigorous Imprisonment and a fine of Rs. 15,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for six months</p>
	Section 376 (2)(g)	<p>Twelve years of Rigorous Imprisonment and to pay a fine of Rs.35,000/-</p> <p>In default of payment of fine, to further undergo Simple</p>

		Imprisonment for fifteen months
Lucky	Sections 366/34	Five years of Rigorous Imprisonment and a fine of Rs.15,000/- In default of payment of fine, to further undergo Simple Imprisonment for six months
	Section 376 (2)(g)	Ten years of Rigorous Imprisonment and to pay a fine of Rs.25,000/- In default of payment of fine, to further undergo Simple Imprisonment for one year
Yasin Khan @ Tehana	Sections 366/34	Five years of Rigorous Imprisonment and a fine of Rs.15,000/- In default of payment of fine, to further undergo Simple Imprisonment for six months
	Section 376 (2)(g)	Ten years of Rigorous Imprisonment and to

		<p>pay a fine of Rs.25,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for one year</p>
Satyajeet Biswas @ Satte	Sections 366/34	<p>Five years of Rigorous Imprisonment and a fine of Rs.15,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for six months</p>
	Section 376 (2)(g)	<p>Ten years of Rigorous Imprisonment and to pay a fine of Rs.25,000/-</p> <p>In default of payment of fine, to further undergo Simple Imprisonment for one year</p>
Amit @ Sonu Jaat	Section 376 (2)(g)	<p>Ten years of Rigorous Imprisonment and to pay a fine of Rs.25,000/-</p> <p>In default of payment</p>

		of fine, to further undergo Simple Imprisonment for one year
Uma Shanker	Section 376 (2)(g)	Ten years of Rigorous Imprisonment and to pay a fine of Rs.25,000/- In default of payment of fine, to further undergo Simple Imprisonment for one year

9. Hence, aggrieved by the same, the instant criminal appeals have been filed by the Appellants/Accused persons challenging the judgment dated 18th July 2006 and order on sentence dated 20th July 2006.

SUBMISSIONS

10. Mr. Summet Verma, learned counsel appearing for the Delhi High Court Legal Services Committee (DHCLSC) *qua* the accused Amit @ Sonu Jaat, Yaseen Khan @ Tehana, Vicky @ Vijay and Lucky submitted that the Appellants/Accused persons did not commit any offence, rather they were not present on the spot and have been falsely implicated in the present case.

11. The learned counsel appearing on behalf of the Appellants/Accused persons submitted that there are several contradictions as to who was

driving the car and who got the Prosecutrix/Complainant seated in the car. There are also contradictions as to from where and on whose identification the accused persons were arrested. The Prosecutrix/Complainant (PW-1) had stated that she did not know the accused persons by their names, however the accused had been named in the complaint, which makes her statement contradictory and raises serious doubts regarding the identification statement of the Prosecutrix/Complainant.

12. The Prosecutrix/Complainant had stated that she had seen the Appellants/Accused persons in the police station but in the Examination-in-chief of the Investigation Officer (PW-21) stated that on following a tip, the accused namely Vicky @ Vijay, Lucky and Yaseen Khan @ Tehana were arrested on 20th May 2012 from Samosa Chowk, JJ Colony, Madanpur, Khadar at the instance of the Prosecutrix/Complainant. On the same day, on a secret information, other accused persons namely Uma Shanker, Satyajeet Biswas @ Satte, Abhimanyu @ Bantu and Amit @ Sonu Jaat were arrested on the identification of the Prosecutrix/Complainant.

13. It is further submitted by the learned counsel that as per the complaint (Ex.-PW-1/A), accused Vicky @ Vijay was driving the car and accused Satyajeet Biswas @ Satte committed rape on the Prosecutrix/Complainant but in her testimony (PW-1), the Prosecutrix/Complainant had categorically stated that the car was being driven by a fourth person and the accused lucky committed rape in the car. It is submitted that there is also contradiction as to how many persons

were actually present in the car when the Prosecutrix/Complainant was being raped.

14. It is submitted by the counsel appearing on behalf of the Appellants/Accused persons that in the complaint (Ex.-PW-1/A), the Prosecutrix/Complainant did not mention that she was shifted in the *Gramin Sewa* from the car and then three persons took her to a room at JJ colony where four persons were already present and the rape was committed by accused Vicky @ Vijay, Lucky, Yasin Khan @ Tehana and Satyajeeet Biswas @ Satte. It is submitted that the Prosecutrix/Complainant did not even identify the accused persons correctly and she again improved her version by stating that there were five persons in the room.

15. It is submitted by the learned Counsel appearing on behalf of the Appellants/Accused persons that in the complaint (Ex.-PW-1/A), Prosecutrix/Complainant alleged that Vicky @ Vijay and Satte caught her hand and dragged her into the car. Vicky @ Vijay drove the car and Satte committed rape on the rear seat. Then they took her to JJ Colony in a house where Vicky @ Vijay, Tehana and Lucky committed rape upon her one by one. Vicky @ Vijay had also called Uma Shanker and Sonu Jaat who also committed rape upon her and during that period, Vicky @ Vijay also committed unnatural sex with her.

16. It is further stated that the Prosecutrix/Complainant is inconsistent as to how many persons committed rape upon her in the room whether five or seven in number. As per the FSL report, no biological evidence

was found either in the truck, car or the *Gramin Sewa*. It is submitted that the police arrested many drivers and showed them to the Prosecutrix/Complainant before arresting the Appellants/Accused persons.

17. It is submitted by the counsel appearing on behalf of the Appellant/Accused persons that the Court below has failed to appreciate that the entire prosecution case is based upon the sole testimony of interested and police witnesses and no independent witness was examined by the prosecution to corroborate their version and prove the case beyond reasonable doubt.

18. It is submitted by the counsel appearing on behalf of the Appellant/Accused persons that the Court below has failed to appreciate that PW-1, Prosecutrix/Complainant has alleged that the act of rape had been committed upon her by seven persons simultaneously and the co-accused Vicky @ Vijay allegedly raped her twice, but on the other hand, Dr. Richa Vasta (PW-18) has deposed in her report that the hymen of Prosecutrix/Complainant was ruptured and there were no fresh injury marks in her vagina. It is highly unbelievable that no injury marks were found in the vagina of Prosecutrix/Complainant when she was raped by seven persons.

19. It is submitted by the learned counsel appearing on behalf of the Appellants/Accused persons that being a married lady, Prosecutrix/Complainant has neither cited her husband as a witness, nor her husband was examined in the Court. Even though the Complainant

being a married woman, who was outside her house throughout the night and even on the following day, her husband did not even bother to follow up on the whereabouts of his wife.

20. It is vehemently submitted that since the Prosecution has failed to prove its case beyond reasonable doubt and as such the Court below ought to have given the benefit of doubt to the Appellants/Accused persons. Therefore, in view of the above facts and circumstances, the conviction of the Appellants/ Accused persons has to be set aside and the criminal appeal deserves to be allowed.

21. Mr. S.B. Dandapani, learned counsel appearing for the DHCLSC *qua* the accused Satyajeet Biswas @ Satte submitted that he assents to the submissions made by Mr. Sumeet Verma and added that the prosecutrix had failed to identify the Appellant/Accused, and time and again she had improved her versions in the statements recorded at various stages of the trial.

22. Mr. Karan Prakash, learned counsel appearing for the DHCLSC *qua* the accused Uma Shanker submitted that the Appellant/Accused was not present on the spot and has been falsely implicated in the present case. It is submitted that on the statement of the co-accused Vicky, Vinod (brother of Uma Shanker) was arrested by the police. The Appellant/Accused is a fruit vendor in Gurgaon and was called to Delhi. The Police upon his arrival arrested him and released his brother. It is submitted that version of the accused person is corroborated by the defense witness and there is no reason to disbelieve the same. It is

submitted that there is doubt on the authenticity of samples collected and the DNA report.

23. *In arguendo*, learned Counsels appearing on behalf of the Appellants/Accused persons relied upon the judgment passed by the Hon'ble Supreme Court of India in *Sonadhar v. The State of Chhattisgarh* [SLP (Crl.) No. 529/2021], dated 6th October 2021 and prayed that the Appellants/Accused Persons may be granted bail/released from jail or appeals be disposed of, since they have already undergone more than half of the sentence.

24. *Per contra*, Ms. Kusum Dhalla, learned APP appearing on behalf of the State has vehemently opposed the Criminal Appeal and contended that the Appellants/Accused persons have been rightly convicted on the testimony of the Prosecutrix/Complainant and witnesses examined before the court below. The Prosecutrix/ Complainant is a victim of double gang rape. All the Accused persons are named in the FIR and have also been identified by the Prosecutrix/Complainant before the court below. It is further submitted that all the Appellants/Accused persons with a common intention and in connivance gang raped the Prosecutrix/Complainant. The commission of gang rape is evident as per the injuries found by the doctor on her body as well as on private parts.

25. It is submitted that the Prosecutrix/Complainant was so traumatized from the event that she was sent to the Institute of Human Behaviour and Allied Sciences (hereinafter "IHBAS"), where she remained for about seven months in Gynae Ward for treatment. It is

submitted that there are no contradictions in the statement of the Prosecutrix/Complainant. The complaint was lodged by the Prosecutrix/Complainant immediately after the incident and there is no reason with the police to wrongly implicate the accused persons. The Learned Additional Sessions Judge, Special Fast Track Court, Southeast District, Saket Court, New Delhi has appreciated the facts in the correct perspective and the findings so recorded does not require any interference, thus, the appeal is liable to be dismissed.

26. It is submitted by the learned APP that the Appellants/Accused Persons have been charged with heinous and serious offences of mental depravity. Such offences are not private in nature and have a serious impact on society and therefore the rationale behind *Sonadhar (Supra)* should not be applied for disposal of appeal on the basis of sentence undergone.

ANALYSIS AND FINDINGS

27. This Court has heard and considered the rival submissions made by the learned counsel for the parties and perused the record.

28. In order to appreciate the evidence and to test the veracity of the depositions of the Prosecutrix/Complainant (PW-1), it is relevant to make reference to her examination-in-chief, in which she stated as under:

“I am doing the work of Garbage Collection. Earlier, I was residing at Block-D, Najafgarh, Roshan Vihar. On 18.05.2012 at about 09:00pm, I was coming from JJ Khadar colony, Madangir, after finishing my work. I sat in a gamin sewa in order to go to my residence at Najafgarh. I was

sitting alongside the driver sewa in gramin sewa. I reached at Nehru place where, I was shifted by the driver of Gramin Sewa in the other A/C car which was of light mehroon colour and was of white colour from the front side. Apart from car driver, there were two other persons, who made me sit in the car.

At this stage, witness points out towards accused Lucky and states that he was the driver of Gramin Sewa and also points out towards accused Satyajeet and Vicky and states that all of them had shifted her forcibly from the Gramin Sewa to the A/c car by twisting her arm.

The said car was being driven by fourth person, who is not present in the Court today. They took me near a cinema hall in the area of Nehru Place where, accused (witness points out towards accused Lucky) committed galatkaam with her in the car.

The Fourth boy, who was driving the car had made a telephonic call to someone and told him that they were bringing a mall. Thereafter, they took me in the same car to JJ Colony Khadar Madangir, again said, they again shifted me in a gramin sewa vehicle and all the above three accused persons took me to a room in JJ Colony, Khadar Madangir near mother dairy. Four other persons were already present in the said room. One by one, four persons committed rape upon me (witness points out towards accused Lucky, Vicky, Yasin and Stayajeet, who committed rape upon her in the room.)

Lucky, Vicky and Satte had committed rape upon me. They had also committed sodomy. They had committed rape one after the other. I cannot identify other persons by name, but I can identify them by face. Witness had pointed out towards accused Vicky as Lucky and Lucky as Vicky. She is unable to identify as to who is Satte. She states that all the seven accused person present in court are involved, but she cannot identify each of them by name... I cannot identify that which

of the three persons out of the seven had taken me in the vehicle. They called some mechanic telephonically. I had informed the police through my mobile phone. I had called SHO five-six times and I had informed the police about the place. Police vehicle came there. On hearing the alarm of the Police, those three person had ran away leaving the Gramin Sewa at the spot. I narrated the incident to the police, but the police official, who had come were not believing me. Since I was feeling giddiness and had told those police officials that I was not in a position to speak. Thereafter SHO came there. I had become unconscious. I was given water and tea by the SHO and thereafter I gained conscious ... SHO alongwith lady police official took me to AIIMS Hospital. I was medically examined ... thereafter, police had dropped me at IBHAS Hospital. I remained in IBHAS Hospital (Gynae ward) for about seven months for my treatment.... I had identified each of the accused one by one in the police custody. I had seen each of the them in the Police Chowki..."

29. The relevant reference of the cross examination of the Prosecutrix/Complainant is stated as under:

Cross-examination by learned counsel for the state

"It is correct that in the night at about 02:30 am, the three accused person while leaving me in Gramin Sewa Vehicle then, at Agra Canal Road near Indane Gas Plant the vehicle went out of order. It is correct that at that the accused persons had left me and threatened to kill me, if I would disclose the incident to any person. It is correct that thereafter, I sought help from one truck driver. It is correct that the said driver had taken me in the cabin of the truck and there he also committed rape upon me.

Q. Can you identify the said truck driver in the court?

Ans. Witness points out towards the accused Satyajeet and states that perhaps, he was the truck driver.

I am not able to recollect the name of the truck driver now.

Q. I put it to you that the name of the said Truck Driver was Abhimanyu. What you have to say?

Ans. It is Correct that the name of the Truck Driver was Abhimanyu.

I can identify Abhimanyu, if he is shown to me. At this stage, accused Abhimanyu is shown to the witness and she is asked whether he was the Truck Driver, who committed the rape upon you in the Truck Cabin. Initially witness stated 'galathai' and thereafter, seeing him carefully, witness states that it was I he, who was the truck driver, who committed the rape upon her.

It is correct that on 20.05.2012, in the afternoon the police had arrested the accused persons Vicky, Lucky and Yaseen Khan from Samosa Chowk, J. J. Coloni Madanpur Kahadar at my instance vide their arrest memos Ex.PW1/ E, Ex.PW~/F and Ex.PW1/G respectively, bearing my signatures at point-A. It is correct that the remaining accused persons namely Amit @ Sonu Jatt, Uma Shanker, Satyajeet @ Satte and Abhimanyu, were arrested from the Jungle behind Shiv Mandir in front of gas plant at my instance vide their arrest memo Ex.PW~/H, Ex.PW1/ J, Ex.PW1/K and Ex.PW1/L respectively, bearing my signatures at point-A. I can identify my undergarments, if shown to me.

I do not remember the registration number of the vehicle including Gramin Seva vehicle, Indica car and the truck, which were used in the commission of the offence.”

Cross-examination by learned counsel for the accused Uma Shanker

“Q. How much you used to spent on fare from Nazafgarh to Sarita Vihar and back?

Ans. At this stage, witness started weeping and do not wish to answer this question.

I have not other source of income except rag picking. I used to live on rent. I do not have any mobile now as I am poor but at the time of incident, I used to keep a mobile. It is correct that police had shown me the accused persons in the PS and their names and I identified them. It is correct that police told me the name of the accused Uma Shanker.

IO had not put the seal in my presence on the pullandas of my clothes, seized at my instance. It is wrong to suggest that I was unable to identify the clothes. Vol. Since the incident had happened with me, I identified the case property correctly.”

Cross-examination by learned counsel for the accused Lucky & Vicky

“Police had recorded my statement. I had stated the fact that on or hearing the siren of police vehicle, the three accused ran away leaving me in the gamin seva Vehicle. Confronted with the statement Ex. PW 1/A wherein it is not so recorded. I used to ply in the RTV whenever, I used to go for my work. I knew accused lucky from about one or two weeks before the incident as he used to tease me along with his friends whenever I used to leave the house of my friend, a Christian Lady. I did not report this matter to the police. Accused lucky also used to drive RTV and I used to ply in that vehicle. I used to even commute in the RTV being driven by lucky on different occasions. Accused vikky also used to be on the same vehicle and I knew him also prior to the incident as my friend also used to tell me about them. ... At the Jalebi chowk when passengers alighted from the RTV accused persons did not allow me to get down from it as they had kept me between themselves and had made me smell some substance and I was in their control. I do not remember the time when I reached Nehru place along with the accused persons as the incident is about more than an year old...

When I was taken to a room I was in inebriated state and when they pull my hair, I came to senses. I was conscious when I was introduced with the accused Vikky and Satte...

Q. How long the accused continue driving the car?

Ans. I was in inebriated condition hence, I cannot tell for how much time, accused went on driving the car.

I even tried to contact police but my mobile was not fully charged with money and hence, I could not do so. Finally, I made a call at telephone no. 100 since it was free call. I do not remember the exact time when I made the call to the police.”

Cross-examination by learned counsel for the accused Yasin

“I do not want to tell where I am residing today. I will not tell the name of my landlord where I was staying at the time of incident. It is wrong to suggest that I never used to live at Najafgarh.

I normally used to go out for work at about 8 AM and used to return home at about 8/9 PM and sometime I also used to get late. I used to travel by Gramin Seva Vehicle. I cannot tell the time when I was made to inhale something in Gramin Seva but it was evening time and the sun was already set. I was acquainted with the locality of the Madanpur Khadar as I also used to pick rag there. It is correct that I was using the vehicle of accused Vicky since last one year prior to the incident. I had never met the other accused persons earlier except accused Vicky, Lucky and Satte. I saw them first time when they committed rape with me. I had identified the other accused person from their dossiers and then I came to, know their names. It is correct that I have not mentioned the fact about inhaling of some stupefying substance in the FIR.”

Cross-examination by learned counsel for the accused Amit & Abhimanyu

“I am married. It is correct that I have stated to the police on 18.05.12 at about 9.00 pm I was coming from JJ Khadar Colony Mandanpur. Confronted with the statement Ex. PW 11A where the time mentioned as 7.30 pm. It is correct that I had stated to the police that there were four persons in the car. Confronted with the statement Ex. PW 1/A wherein the number of person in the car is different. When I telephoned the police, I was though conscious but perplexed. It is correct that accused persons were shown to me at police post..... The accused persons were arrested in my presence. The accused persons were arrested from different places.

Q. Can you tell from which place accused Amit @ Sonu, Abhimanyu and Uma Shanker were arrested?

Ans. I pointed to a truck, parked at a place and one of the accused was arrested from the truck. I do not remember the exact places from where the accused persons were arrested.

My statement was recorded after accused persons were apprehended. Thereafter, led them to the spot and police found my allegations as correct. It is correct that I had not stated about the number of the truck in my statement. It is correct that I had stated to the police that when I was taken to the room at JJ Colony, Khadar Madanpur, four persons were already present. Confronted with the statement Ex. PW 1/A wherein it is not so recorded. It is correct that I have stated that four persons had committed rape with me in a room, however, my that statement is not correct, infact all the accused persons have committed rape upon me. I had stated to the police that fourth boy who was driving the car had made telephone and told him that they were bringing a maal. Confronted with the statement Ex. PW 1/A wherein it is not so recorded. I do not remember now my mobile number which I was using at the time of incident. I cannot tell within what time the police reached the spot. There were two trucks parked near CNG station. There was not much crowd near the CNG station.”

Cross-examination by learned counsel for the accused Satyajeet.

“I do not remember from where accused Satyajeet was apprehended. It is wrong to suggest that accused Satyajeet was not present at the spot or that I have taken his name at the instance of the IO. I do not remember how many accused persons were apprehended near the truck. I do not know that accused Satyajeet is suffering from some disease. It is wrong to suggest that accused Satyajeet had not committed rape upon me. I had identified the vehicles involved in the incident. I do not remember the colour of the car..... IO had conducted the inspection of the car in my presence. I do not know if the IO Had lifted anything from inside the car.”

30. *Prima facie*, there are several contradictions in the statements of Prosecutrix/Complainant recorded at different stages of investigation, enquiry and trial, which are discussed as follows:

- i. In the FIR as well in her Examination-in-chief, Prosecutrix/Complainant stated that she used to commute by *Gramin Sewa*; *whereas* in her cross-examination, she stated that at the Jalebi chowk when passengers alighted from the RTV, accused persons did not allow her to get down as they had kept her between themselves and had made her smell some substance. She could not even recall the time when they reached Nehru Place along with the accused persons.
- ii. In the FIR, the Prosecutrix/Complainant stated that Vicky was driving the car and accused Sattu committed rape; *whereas*, in her Examination-in-chief (PW-1), she has stated that the car was being driven by a fourth person and the accused Lucky committed rape in the car.

- iii. In the FIR, the Prosecutrix/Complainant stated that she was taken to CNG Pump Nehru place where a car a parked and Yasin Khan @ Tehana introduced to Vicky and Satte who held her hand and forced her into the car. Vicky started driving the car while Satte raped her in the back seat; *whereas*, in the examination-in-chief, Prosecutrix/Complainant stated that she was shifted by the driver of *Gramin Sewa* (Lucky) in the other A/c car. Apart from the car driver, there were two other persons who made her sit in a car forcibly while twisting her arm. The said car was driven by a fourth person. Prosecutrix/Complainant further added that she was taken near a cinema hall in the area of Nehru Place, and Lucky committed rape on her at that place.
- iv. In the FIR the Prosecutrix/Complainant stated that around 11:30 PM, accused took her to a room in JJ Colony and there again Vicky, Lucky and Tehana committed rape upon her. Thereafter Vicky called Uma Shanker and Sonu Jaat, who also raped her. Vicky also tried to commit sodomy upon her; *whereas*, in the Examination-in-chief, the Prosecutrix/Complainant stated that the fourth boy made a telephonic call to someone and told him that they are bringing a 'mall'. She was taken to JJ Colony Khadar Madangir in a car and shifted into *Gramin Sewa*. Thereafter, all three of them took her to a room in JJ Colony, Khadar Madangir near mother dairy. Four persons namely Lucky, Vicky, Yasin and Satyajeeet were already present in the room and committed rape one by one.

- v. Prosecutrix/Complainant in her Examination-in-chief stated that she could not identify the accused persons by name but can identify them by their faces; *whereas*, on producing all the accused in front of her, she could not identify each of them by name. She pointed out towards Vicky as Lucky and Lucky as Vicky. She was even unable to identify the accused Sattu.
- vi. In the FIR, Prosecutrix/Complainant stated that *Gramin Sewa* went out of order near Indane Gas Plant, where Vicky again committed rape upon her and threw her out of the vehicle and threaten to kill, if she disclosed the incident to anyone and left the place; *whereas* in the Examination-in-chief, the Prosecutrix/Complainant stated that three persons (which she does not identify) out of seven took her in the vehicle, and on break-down of the vehicle, they had telephonically called a mechanic.
- vii. In the FIR, Prosecutrix/Complainant stated that after the accused persons left, she took the help of a truck driver (whose name is Abhimanyu), who instead of helping her, had committed rape upon her in the truck cabin; *whereas* in the Examination-in-chief, the Prosecutrix/Complainant has not uttered a word about the commission of offence by a truck driver (Abhimanyu).
- viii. In the FIR, Prosecutrix/Complainant stated that she called at '100' number from her mobile phone and police reached on the spot; *whereas* in Examination-in-chief she stated that she made a call to the SHO almost 5-6 times from her mobile phone and upon hearing

the police alarm, the accused persons ran away. She narrated the incident to police officers who had not believed her and thereafter the SHO came on the spot. She was then taken to AIIMS hospital for her medical examination accompanied by a lady police officer.

31. In so far as the injury on Prosecutrix/Complainant is concerned, Dr. Richa Vatsa (PW-18), did not find any fresh injury marks on her private parts. The relevant portion of the statement of Dr. Richa Vatsa is as under:

“I have seen MLC Ex.PW7/A. The same has been prepared by Dr. Moumita Naha, the then S.R. Deptt. of Obs. And Gynae, IAIIMS with regard to the medical examination of the prosecutrix conducted on 19.05.12 at AIIMS hospital. Dr. Moumita Naha has now left the hospital and her present whereabouts are not known. I identify her writing and signature at point C on the MLC Ex.PW7/A as I have seen her writing and signing during the course of my official duty. Dr. Moumita Naha had worked with me for 1 ½ years in the same department. As per MLC Ex.PW7/A the following injuries were observed during the examination of prosecutrix:

a) Tender bruise mark on right shoulder.

b) Linear cut mark on the left knee joint (blade injury).

c) Bruise marks on both labia minora,

d) Tenderness in the vagina.

Hymen of the prosecutrix was found ruptured. No fresh injury marks seen in vagina.”

32. As far as the Deoxyribonucleic Acid (hereinafter ‘DNA’)

examination is concerned, Dr. Anupuma Raina (PW-19) Scientist Department of FMT, AIIMS, New Delhi, did not see any biological/sticky stains on the petticoat of the Prosecutrix/Complainant, but the fresh blood samples of Vicky, Uma Shanker and Lucky were found mixed with DNA profile of anal swab and undergarments of the Prosecutrix/Complainant. The relevant portion of the statement of Dr. Anupuma Raina is as under:

“On 19.05.2012, a request qua DNA examination of the exhibits of the prosecutrix was received from ACP, Sarita Vihar, New Delhi through IO of this case, WSI Josepha Kujur... As told by the IO that blood sample of the prosecutrix was not taken at the time of her internal medical examination. I advised the IO to get the fresh blood sample of the prosecutrix collected in an EDTA vial provided by me to the IO...

I had conducted the DNA profiling of the said exhibits and prepared my detailed report in this regard. Same running into 24 pages including details of the proceedings conducted in determining the DNA profiling is Ex. PW 19/L bearing my signature at points A on each page.

On the examination of the said exhibits qua DNA profiling, I came to following conclusion:-

No biological/ sticky stains was observed on petticoat Exhibit 458 with naked eyes. Thus, it was not processed for DNA analysis. Further based on my observation, it was concluded that DNA profile from exhibit 461, fresh blood sample of Vikky@Vijay, exhibit 464, fresh blood sample of Uma Shankar and exhibit 466 fresh blood sample of Lucky were found mixed with DNA profile in exhibit 459 anal swab of the prosecutrix and her undergarment exhibit 460. The involvement of the said individuals in the incident cannot be ruled out.”

33. Moreover, as far as the fingerprints are concerned, ASI Sajjan Kumar (PW-5), In-charge of the Crime Team of South East District, New Delhi has stated in his cross examination that no fingerprints were found from the alleged place of incident. The relevant portion of the cross examination of ASI Sajjan Kumar is as under:

“We reached at the spot early morning, exact time I do not remember. The police officials were found at the spot and few public persons were moving along the spot but on one was present with the police officials at the spot except the prosecutrix. I did not found any public person or occupant of the room, in the room. I remained at the spot for about 30/40 minutes. I do not remember as to how many photographs were taken by the photographer. The proficient had made efforts to lift the finger prints, but the same could not be found. We left the spot leaving behind the investigating officer at the spot...”

34. In so far as the biological material inside the truck as well from the Indica Car is concerned, Naresh Kumar (PW-6), Sr. Scientific Officer, Biology, FSL, Rohini, Delhi, did not find any material in his examination. The relevant portion of the statement is stated under:

“On 19.5.12, on the request of the SHO, PS Jaitpur, I along with photographer, Shri Prakash Chand visited the scene of crime near Agra Canal and inspected one Tata Magic ACE Vehicle/Grahim Sewa bearing Registration no. DL-2W-1857. The front left wheel of the vehicle was missing. One truck (tanker) was also found stationed near the said vehicle. On thorough inspection of vehicle, a pillow and a blanket were found in the said vehicle. I also taken into possession suspected portion of some pieces of pillow found in the front left seat of the vehicle and a portion of a seat just behind the driver seat. I handed over the said material / articles to the

investigating officer W/51 Joseph who converted them into pulandas and sealed the same with the seal of JK.

On the same day, I had also inspected one truck / tanker bearing no. HR-63-5688 (14 tyres) standing near the canal. I also inspected one more truck bearing no. HR-38G-4894 stationed at PS Jaitpur. No biological material was detected from inside and outside of the truck.

On 24.5.12, police official has brought one TATA Indica car bearing no. DL-3C-BN-0318 at the premises of FSL Rohini. On the instructions of the IO, SI Joseph Kujur inspected the said vehicle. No biological material could be detected from the side car.”

35. As far as the information regarding the person whose phone was used to call the police is concerned, WSI Josepha Kujur (PW-21) has stated in the cross-examination that there was no information about the said person. The relevant portion of the statement is stated as under:

“Cross Examination by Sh. R K Prashad, Ms. Nisha and Dharamvir Singh Chauhan, Ld. Counsel for accused Umashankar, Amit and Yasin.

I got instructions from the SHO P.S Jaitpur on 19.05.2012 at around 6.30 a.m. I do not remember as to when I reached P.S Jaitpur after receiving the instructions from SHO PS Jaitpur. I do not remember the duration of time taken by me in recording the DD No. 14A. I do not remember the exact duration of my reaching to the spot from the P.S. I do not remember the name of the Constable who accompanied me to the spot. I met the SHO at the spot for the first time. I prepared the rukka at 9 a.m and handed over the same to Ct. Anil for registration of FIR. I do not remember when Ct. Anil came back and handed over to me the copy of FIR at AIIMS. I alongwith SI Rajiv Ranjan and Lady Ct. Jaidai accompanied the prosecutrix to

the hospital. DD No. 11 A was recorded on receipt of call from the prosecutrix made from her mobile phone. I have not met Suresh Singh Chauhan whose number was used to call the police at 100 number. Vol. on enquiry, prosecutrix told me that she was using the said mobile phone number which was given to her by someone.”

36. As per the statement given by ASI Matloob Ali (PW-22) in his cross examination, accused persons were present at Samosa Chowk towards the jungle-side. The relevant portion of the statement is as follows:

“I was deputed to take care of said place at about 11 am. I was sent to the said place by the duty officer. I remained present there till about 3 pm. Crime team reached the said place at about 12 noon by car but I do not remember the colour and its number. First they inspected the Magic vehicle. The said team comprised of 3-4 officials. I cannot say how many officials of the crime team inspected the vehicle from inside. It took about one and half hour to inspect both the vehicles. Complainant was not present at that time. Crime team left the spot at about 3 pm. Thereafter, complainant also reached there along with one lady constable, whose name I do not remember. We left the said place about 3.30 pm for further proceedings. We went in one car. Again said, we went in different vehicles to Indane Bottling plant. It took about 5-7 minutes to reach at house no. 67. The crime team reached there after about half an hour. We did not inspect the said room. I do not remember whether the room was locked or not. I cannot tell who opened the door before the inspection. No one was there inside the room, however persons were moving in the gali. IO had requested the house owner and 3-4 persons moving in the gali to join the investigation but all

refused. The house was single storied. Crime team reached there at about 4 pm. The crime team inspected the spot i.e. the room and the place outside the room. The crime team remained there upto 7 pm. I also remained there. Prosecutrix also remained present throughout the said period. The prosecutrix had also gone with us from the spot to the police station.

On 20.05.2012, we left the police station for the search of the accused at about 3 pm. The prosecutrix remained with us as she had no pace to go. We reached Samosa Chowk at about 3.30 pm. I do not know whether anyone had called the IO that the accused was at Samosa Chowk, Madanpur Khadar. HC Shiv Charan Meena was posted at PS Jaitpur during those days. Accused persons were found standing towards the jungle side in the west of Samosa Chowk. Accused persons were not having any idea that they could be apprehended. People were passing through the said place. IO had requested 3-4 persons moving there to join the investigation but all refused. We stayed there till 4.15 pm.”

37. The Appellants/Accused persons in their statements under Section 313 of the Cr.P.C. and their Defense Witnesses are stated as under:

(i) Accused Vicky @ Vijay:

“Q20: It is in evidence against you that FSL team of experts from Rohini on the information given by the SHO also reached the spot and did the inspection of both the vehicles. They found front left wheel of the Gramin Sewa missing. They cut the pieces of pillow found in the gramina sewa (Tata Magic No. DL 2W 1857) and also removed the pieces containing stains from the seat cover of the vehicle, one brown colour blanket having some stains. The aforesaid material was converted into parcels and sealed with the seal

of JK and seized vide memo Ex. PW 21/C. PW-21 then deposited the same in the Malkhana. What you have to say?

Ans. I do not know because on that day, I was on leave and for the whole day, I was at my home with my wife and children.

Q.23 It is in evidence against you that on 20.05.2012, the police following a tip off, arrested you accused Vijay @ Vikky, your co-accused Lucky and Yasin Khan @ Tehna from Samosa chowk JJ Colony Madan Pur Khadar at the instance of the prosecutrix/PW-1 vide arrest memos Ex. PW 1/E (Vikky), Ex. PW1/F(Lucky) and Ex. PW 1/G (Yasin) respectively. The personal search of you and your co-accused was conducted by HC Matloob and SI Rajiv Ranjan vide memo Ex. PW 21/E (Vikky), Ex. PW 21/F (Lucky) and Ex. PW 21/G (yasin) respectively. What you have to say?

Ans. It is incorrect. Ct. Shiv Charan Meena and Kishan came at my house and enquired about me on 19.05.2012 at about 7 a.m and at that time, I was sleeping in my house so he left his number with my wife. At about 8 a.m, I called Ct. Shiv Charan Meena on his mobile No. 9868026905 who asked me to come at Beat (chowki). I reached the chowki at 8.30 a.m. Thereafter, Ct. Shiv Charan Meena took me to P.S JaitPur and I was kept there for three days till 21.05.2012.

Q28. It is further in evidence against you that on 21.05.2012 you all were got medically examined from AIIMS. Your exhibits (Vikky; Lucky; Yasin, Amit, Uma Shanker, Abhimanyu and Satyajit Biswas) were taken into possession alongwith the sample seals vide memo Ex. PW 21/N to T respectively. What you have to say?

Ans. It is correct that I was medically examined. No exhibits were taken by the doctor rather the exhibits are manipulated by the 10 after conniving with the doctor.

Q29. It is further in evidence against you on 21.05.2012 again a request was made by the ACP to PW-19 qua DNA

examination of you & your coaccused blood samples viz a viz blood samples of the prosecutrix already provided vide Ex PW 19/C. Before that PW-21 had deposited the exhibits pertaining to you accused persons in the Department of FMT, AIIMS for the DNA examination. PW-19 obtained your and your co-accused consent vide consent/identification forms filled by you and your co-accused individually with your photographs (Lucky, Vikky, Yasin, Abhimanyu, Satyajit, Amit and Uma Shanker) which were provided by PW-21 vide Ex. PW-19/D to K (three sheets each) and thereafter Ajay Prakash Technician of PW-19 in the presence of PW-19 and PW-21 took your and your co-accused blood samples. What you have to say?

Ans. The blood samples were collected in P.S JaitPur in connivance with the doctor and technician. The same are manipulated by the IO.

Q32. It is further in evidence against you that on 26.07.2012, PW-21 collected the result of DNA profiling qua the exhibits. She also collected the exhibits alongwith the sample seal which were not used by PW-19 for DNA profiling vide memo Ex. PW 21/W. What you have to say?

Ans. Report is false and fabricated and manipulated by the doctor in connivance with the IO.

Q36. That in the evidence of PW-23 it has come that so long as the exhibits remained in his custody, they were not tampered with in any manner. It has also come in the evidence of PW-24 that that so long as the exhibits remained in his custody, they were not tampered with in any manner What you have to say?

Ans. The exhibits were tampered with and the whole story was made by the IO in connivance with the prosecutrix and other police officials.

Q40. It is further in evidence against you that PW-17 had taken the Gramin Sewa vehicle bearing No. DL 2W 1856

and DL 2W 1857 from PW-16/ Darshan Khurana for running on contract basis at Rs.500/600/daily on route. The vehicle No. DL 2W 1857 Ex. PW 16/ Pl was on route from Nehru Place to Madan Pur Khadar till JJ Colony at Jalebi chowk and accused Vikky was the driver of the said vehicle. Accused Lucky was the driver on his another Gramin Sewa bearing No. DL 2W 2492. Lucky and Vikky used to take the vehicles at their houses and park them there. What you have to say?

Ans. It is correct that I was driving the Gramin Sewa bearing No. DL 2W 1857 but on that day I was on leave and the vehicle was in the custody of another driver Vijay as per the directions of the contractor.

Q49: Why is this case against you?

Ans: It is a false case. I have been falsely implicated in this case by the prosecutrix and the ro. As stated above, r called Ct. Shiv Charan Meena on his mobile number who told me to come at chowki JaitPur. I accordingly went there. The police took me to P.S JaitPur, detained me there for three days and thereafter got me falsely implicated in this case.

Q.52 What else do you want to say in this case?

Ans: I am innocent and falsely implicated in this case. I never had any contact with the prosecutrix nor I committed rape upon her. All the exhibits were manipulated by the 10 to prepare a false and fabricated report against me.”

In his defense, Appellant/Accused Vicky @ Vijay got examined his wife Smt. Alka as DW-1, and she deposed as under:

“On 18.05.2012, accused Vicky had returned home at about 9/9:30 p.m. after parking his vehicle. In the morning of 19.05.2012, at about 5 a.m, he left with the vehicle. Police man came in her house at about 7 a.m and told her that Lucky has caused an accident. They asked her to send Vicky

at the police station to settle the matter. She informed her husband and also gave the number of her husband to the police. He went to the police station at about 9:00 a.m and later in the evening, she came to know that police arrested him.”

(ii) Accused Lucky:

“Q23. It is in evidence against you that on 20.05.2012, the police following a tip off, arrested your co-accused Vijay @ Vikky, you accused Lucky and Yasin Khan @ Tehana from Samaosa Chowk JJ Colony Madan Pur Khadar at the instance of the Prosecutrix/PW-1 vide arrest memos Ex. PW 1/E (Vikky), Ex PW1/F (Lucky) and Ex. PW 1/G (Yasin) respectively. The personal search of you and your co-accused was conducted by HC Matloob and SI Rajiv Ranjan vide memo Ex. PW 21/E (Vikky), Ex. PW 21/F (Lucky) and Ex. PW 21/G (Yasin) Respectively. What you have to say?”

Ans. It is incorrect. I got a call from my contractor namely Vijay Gautam on 19.05.2012 at about 11:30 a.m to come to Police Station Jaitpur for some enquiry. I accordingly went there and my name was falsely planted in this case.

Q28. It is further in evidence against you that on 21.05.2012 you all were got medically examined from AIIMS. Your Exhibit (Vikky, Lucky, Yasin, Amit, Uma Shanker, Abhimanyu and Satyajit Biswas) were taken into possession along with sample seals vide memo Ex. PW 21/N to T respectively. What you have to say?”

Ans. It is correct that I was medically examined but no exhibits were taken by the doctor rather the exhibits are manipulated by the IO after conniving with the doctor.

Q29. It is further in evidence against you on 21.05.2012 against a request was made by the ACP to PW-19 qua DNA examination of you & your co-accused blood samples viz a viz a blood samples of the prosecutrix already provided vide

Ex. PW 19/C. Before that PW-21 had deposited the exhibits pertaining to you accused person in the department of FMT, AIIMS for DNA examination. PW-19 obtained your and your co-accused consent vide consent/identification forms filed by you and your co-accused individually with your photographs (Lucky, Vikky, Yasin, Abhimanyu, Satyajit, Amit and Uma Shanker) which were provided by PW-21 vide Ex. PW-19/D to K (three sheets each) and thereafter Ajay Prakash Technician of PW-19 in the presence of PW-19 and PW-21 took your and your co-accused blood samples. What you have to say?

Ans. The blood samples were collected in P.S Jaitpur in connivance with the doctor and technician. The same are manipulated by the IO.

Q32. It is further in evidence against you that on 26.07.2012, PW-21 collected the result of DNA profiling qua the exhibits. She also collected the exhibits alongwith the sample seal which were not used by PW-19 for DNA profiling vide memo Ex. PW 21/W. What you have to say?

Ans. Report is false and fabricated and manipulated by the doctor in connivance with IO

Q36. That in the evidence of PW-23 it has come that so long as the exhibits remained in his custody, they were not tampered with in any manner. It has also come in the evidence of PW-24 that that so long as the exhibits remained in his custody, they were not tampered with in any manner What you have to say?

Ans. The Exhibits were tampered with and the whole story was made by the IO in connivance with the prosecutrix and other police officials.

Q37. It is further in evidence against you that PW-21 collected the DNA result from FSL which is exhibited as Ex. PW 21/X. As per the report, no biological/sticky stain was observed on petticoat, exhibit 458 with naked eyes, thus not

processed for DNA analysis. Further, based on the above observations, it is concluded that the DNA profile from exhibit 461 (fresh blood sample of Mr. Vikki @ Vijay), exhibit 464 (fresh blood sample of Mr. Uma Shankar) and exhibit 466 (fresh blood sample of Mr. Lucky) were found mixed on the exhibit 459 (anal swab of Rajni) and undergarment of Rajni, exhibit 460, thus the involvement of these individual scan not be ruled out. What you have to say?

Ans. The report is false and fabricated.

Q40. It is further in evidence against you that PW-17 had taken the Gramin Sewa vehicle bearing No. DL 2W 1856 and DL 2W 1857 from PW-16/ Darshan Khurana for running on contract basis at Rs.500/6001- daily on route. The vehicle No. DL 2W 1857 Ex. PW 16/Pl was on route from Nehru Place to Madan Pur Khadar till JJ Colony al Jalebi chowk and accused Vikky was the driver of the said vehicle. Accused Lucky was the driver on his another Gramin Sewa bearing No. DL 2W 2492. Lucky and Vikky used to take the vehicles at their houses and park them there. What you have to say?

Ans. It is correct that I was driving the Gramin Sewa bearing No. DL 2W 2492. I have no concern with the incident.

Q.46. It is further in evidence against you that PW-13 is the owner of H No. 67 Samosa Chowk Gali No.1, J J Colony, Madan Pur Khadar and had rented out the house to Zakir where you accused Lucky with your wife and children had stayed ti1119.05.2012. What you have to say?

Ans. It is correct that I alongwith my wife and children was staying at the aforesaid address but no such incident as alleged by the prosecutrix never happened in the said premises. It was only a manipulated and concocted story by the IO in connivance with the prosecutrix.

Q49: Why is this case against you?

Ans: It is a false case. I have been falsely implicated in this case by the prosecutrix and the 10. On the call of my contractor, I reached P.S Jaitpur alongwith my wife and children. The police officials got me implicated falsely in this case and detained me in the PS for three days.

Q.52 What else do you want to say in this case?

Ans: I am innocent and falsely implicated in this case. I never had any contact with the prosecutrix nor I committed rape upon her. All the exhibits were manipulated by the 10 to prepare a false and fabricated report against me.”

In his defense, Appellant/Accused Lucky got examined his wife Smt. Usha as DW-4, and she deposed as under:

“On 19.05.2012, her husband Lucky had come from duty at about 10:00 p.m. He parked his vehicle in front of her-house. On the next day, Ct. Shiv Charan called him in the police station alleging that he has caused an accident. She took him to the police station on 20.05.2012 at 11.30 a.m where police involved him in this case after detaining for three days.”

(iii) Accused Yasin Khan @ Tehana

“Q.23 It is in evidence against you that on 20.05.2012, the police following a tip off, arrested your co-accused Vijay @ Vikky, Lucky and you accused Yasin Khan @ Tehna from Samosa chowk JJ Colony Madan Pur Khadar at the instance of the prosecutrix/PW-1 vide arrest memos Ex. PW 1/E (Vikky) , Ex. PW1/F(Lucky) and Ex. PW 1/G (Yasin) respectively. The personal search of you and your co-accused was conducted by HC Matloob and SI Rajiv Ranjan vide memo Ex. PW 21/E (Vikky) , Ex. PW 21/ F (Lucky) and Ex. PW 211 GcYasin) respectively. What you have to say?

Ans: It is incorrect. Police had come to my house but at that time, I was not present there. They had informed my family to send me at the Police Station. I accordingly went to the P.S myself where I was arrested on false allegations.

Q49: Why is this case against you?

Ans: It is a false case. I have been falsely implicated in this case by the prosecutrix and the 10. On the alleged day of incident, I was not present at the spot rather I was present at my home alongwith my family. The police called me at the Police Station. I accordingly went to the Police Station where I was falsely implicated in the present case.

Q.52 What else do you want to say in this case?

Ans: I am innocent and falsely implicated in this case. I never had any contact with the prosecutrix nor I committed rape upon her. On the day of alleged incident, I was present at my house.

In his defense, Appellant/Accused Yasin Khan @ Tehana got examined his wife Smt. Nazma as DW-2, and she deposed as under:

“Accused Yasin Khan is my husband. On 18.05.2012, some construction work in the house was done on that day. The accused was present in the house. On 19.05.2012, at about 11:30 p.m., he left the house for purchasing electric wire. At about 3 p.m., the accused Vicky who is the friend of my husband brought the police at my house. Accused Vicky asked me where is my husband. I told him that he had gone to market. I asked the accused Vicky about the arrival of police. He told me that a quarrel had taken place. Police asked me to send Yasin to the police station. Accused Yasin went to the police station. Police sent him to the house. He was called again by the police and arrested in this case.”

(iv) Accused Satyajeet Biswas @ Satte:

Q.2 It is in evidence against you that your co-accused Lucky, Satyajit, Vikky and car driver took the prosecutrix PW-1 near a cinema hall in the area of Nehru Place where your co-accused Lucky committed rape upon her in the car. What you have to say?

Ans. It is incorrect. I took one passenger from Nehru place at 7.30 P.M to Kendriya Vihar, Sector-82, Greater Noida and I left the passenger at Greater Noida at about 8.30 P.M. I returned back to my home at about 9.45 p.m.

Q.24 It is in evidence against you that on the same day; on a secret information, the police arrested your co-accused persons namely Uma Shanker, you accused Satyajit Biswas @ Satte, and your co-accused Abhimanyu @ Bantu and Amit @ Sonu Jaat from the jungle behind Shiv Mandir in front of gas plant at the instance of the prosecutrix/PW-1 vide arrest memos Ex PW 1 / J (Uma Shankar), Ex. PW 1/K (Satyajit), Ex. PW 1/L (Abhimanyu) and Ex. PW 1/H (Amit) respectively. Their personal search was got conducted vide memo Ex. PW 21/ H(Uma Shankar), Ex. PW 21/J (Satyajit), Ex. PW 21/ K (Abhimanyu) and Ex. PW 21/L (Amit) respectively. What you have to say?

Ans. I was taken by the police from the house of my employer Mahender Singh Oberoi at Jangpura on 20.05.2012 at about 2.30 p.m. I am falsely implicated in this case.

Q26. It is further in evidence against you that during investigation, you accused Satyajit made disclosure Ex. PW 21/V and got recovered the Indica car bearing No. DL 3C BN 0318 (which was used in the commission of crime) from the gali near his house at J.J. Colony; Madanpur Khadar, Phase-II which was taken into possession vide memo Ex. PW 211M. What you have to say?

Ans. I have not given any disclosure to the police. My signatures were obtained on blank papers. The Indica Car was lifted by the police from the house of my employer Mahender Singh Oberoi.

Q49: Why is this case against you?

Ans: It is a false case. I was taken from the house of my employer to P.S Jaitpur by the police officials on 20.05.2012 and got me falsely implicated in this case.

Q.52 What else do you want to say in this case?

Ans: I am innocent. I am falsely implicated in this case by the police. I never met the prosecutrix at any time nor committed rape upon her.”

(v) Accused Uma Shanker:

“Q.5 It is further in evidence against you that you accused Lucky called you accused Uma Shankar and Sonu Jaat in the room who came there and committed rape upon her. What you have to say?

Ans. It is incorrect and it is a false and fabricated story.

Q.24 It is in evidence against you that on the same day, on a secret information, the police arrested your co-accused persons namely Uma Shanker, Satyajit Biswas @ Satte, Abhimanyu @ Bantu and Amit @ Sonu Jaat from the jungle behind Shiv Mandir in front of gas plant at the instance of the prosecutrix X/PW-1 vide arrest memos Ex PW 1/J (Uma Shanker), Ex. PW 1/K(Satyajit), Ex. PW 1/L (Abhimanyu) and Ex. PW 1/H (Amit) respectively. Their personal search was got conducted vide memo Ex. PW 21/H (Uma Shanker), Ex. PW 21/J (Satyajit), Ex. PW 21/K (Abhimanyu) and Ex. PW 21/L(Amit) respectively. What you have to say?

Ans. It is incorrect. I got a call from my mother because my elder brother taken to the PS Jaitpur by the police official of Jaitpur then I visited to the PS Jaitpur on 20.05.2012.

Q28. It is further in evidence against you that on 21.05.2012 you all were got medically examined from AIIMS. Your exhibits (Vicky, Lucky, Yasin, Amit, Uma Shanker,

Abhimanyu and Satyajit Biswas) were taken into possession alongwith the sample seals vide memo Ex. PW 21/N to T respectively. What you have to say?

Ans. It is correct that I was medically examined but no exhibits were taken by the doctor rather the exhibits manipulated by the IO after conniving with the doctor.

Q29. It is further in evidence against you on 21.05.2012 again a request was made by the ACP to PW-19 qua DNA examination of you & your co-accused blood samples viz a viz blood samples of the prosecutrix already provided vide Ex PW 19/C. Before that PW-21 had deposited the exhibits pertaining to you accused persons in the Department of FMT, AIIMS for the DNA examination. PW-19 obtained your and your co-accused consent vide consent/identification forms filled by you and your co-accused individually with your photographs (Lucky; Vikky; Yasin, Abhimanyu, Satyajit, Amit and Uma Shanker) which were provided by PW-21 vide Ex. PW-19/D to K (three sheets each) and thereafter Ajay Prakash Technician of PW-19 in the presence of PW-19 and PW-21 took your and your coaccused blood samples. What you have to say?

Ans. The blood samples were collected in PS Jaitpur in connivance with the doctor and technician but the same are manipulated by the IO.

Q32. It is further in evidence against you that on 26.07.2012, PW-21 collected the result of DNA profiling qua the exhibits. She also collected the exhibits alongwith the sample seal which were not used by PW-19 for DNA profiling vide memo Ex. PW 21/W, What you have to say?

Ans. Report is false and fabricated and manipulated by the doctor in connivance with the IO.

Q36. That in the evidence of PW-23 it has come that so long as the exhibits remained' in his custody, they were not tampered with in any manner. It has also come in the

evidence of PW-24 that that so long as the exhibits remained in his custody, they were not tampered with in any manner What you have to say?

Ans. The exhibits were tampered with and the whole story was made by the IO in connivance with the prosecutrix and other police officials.

Q49: Why is this case against you?

Ans: It is a false case. I have been falsely implicated in this case by the IO and the prosecutrix. On the call of my mother, I reached PS Jaitpur along with my mother and a lady who is my neighbour because the police officials took my younger brother to the PS.

Q.52 What else do you want to say in this case?

Ans: I am innocent and falsely implicated in this case. I never had any contact with the prosecutrix nor I committed rape upon her. All the exhibits were manipulated by the IO to prepare a false and fabricate reports against me.”

In his defense, Appellant/Accused Uma Shanker got examined Smt. Mohar Kali, W/o Ramphal as DW-5, and she deposed as under:

“Accused Uma Shanker is my son. On 19.05.2012, the police took my younger son Vinod to the police station after false implication of accused Uma Shanker by co-accused Vikky. When we reached the Police station on the same day, the police told me to produce the accused in the police station then they will release my younger son Vinod. Accused Uma Shanker is a fruit vendor in Gurgaon and for his work, he was at his shop in Gurgaon on 18.05.2012 to 19.05.2012. On 20.05.2012, accused Uma Shanker came to Delhi on receipt of our call. When I alongwith my neighbor Vimla were taking the accused to the police station, on the way we met a police official named Siya Ram who took the accused with him in his vehicle and told us to come to the police station

Jaitpur of our own. When we reached police station, the police narrated the present case to us. The police arrested accused Uma Shanker and relieved my younger son Vinod.”

(vi) Accused Amit @ Sonu Jaat:

“Q.24 It is in evidence against you that on the same day, on a secret information, the police arrested your co-accused persons namely Uma Shanker, Satyajit Biswas @ Satte, Abhimanyu @ Bantu and you accused Amit @ Sonu Jaat from the jungle behind Shiv Mandir in front of gas plant at the instance of the prosecutrix/PW-1 vide arrest memos Ex PW 1/J (Uma Shankar), Ex. PW 1/K (Satyajit), Ex. PW 1/L (Abhimanyu) and Ex. PW 1/H (Amit) respectively. Your personal search was got conducted vide memo Ex. PW 21/H (Uma Shankar), Ex. PW 21/J (Satyajit), Ex. PW 21/K (Abhimanyu) and Ex. PW 21/L(Amit) respectively. What you have to say?

Ans. It is incorrect. I myself had gone to the Police Station on a call and surrendered myself. I did not know the incident when I was called in the Police Station.

Q49: Why is this case against you?

Ans: It is a false case. I was called at the Police Station. Once I had talked to Vikky, police got my number and falsely implicated me in this case.

Q.52 What else do you want to say in this case?

Ans: I am innocent. I knew Vikky. Once Vikky called me, police got my number from the mobile of Vikky and called me in the Police Station. I was falsely implicated in this case. I never met the prosecutrix nor committed rape upon her.”

In his defense, Appellant/Accused Amit @ Sonu Jaat got examined Sh. Raj Pal Singh S/o Late Sh. Leela Dhar as DW-3 and he deposed as under:

“On 20.05.2012 police came in our house at about 5 p.m and inquired about my son accused. Amit. At that time, the accused was on duty. I replied to them that he will come after 10 p.m. I alongwith my cousin brother Mahender Singh took the accused at police station Jaitpur and handed over him to the police official namely Shiv Charan Meena. On enquiry, the police told us that somewhere, a quarrel has taken place .and they have to enquire the accused Amit. The police thereafter took him in custody.

On 19.05.2012, the accused had come at 10 p.m at home from his duty. My son has been falsely implicated by the police. He is innocent.”

38. It is a settled legal proposition that once the statement of the Prosecutrix/Complainant inspires confidence and is accepted by the Court as such, the conviction can be made on the sole evidence of the Prosecutrix/Complainant and no corroboration would be required, unless there are compelling reasons which necessitate the Court for corroboration of her statement. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. The testimony of Prosecutrix/Complainant has to be appreciated on the principle of preponderance of probabilities just as the testimony of any other witness. However, if the court finds it difficult to accept the version of the Prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

39. In ***Vimal Suresh Kamble v. Chaluverapinake Apal S.P. (2003) 3 SCC 175***, the Hon’ble Supreme Court has held as under: -

“21. On an overall appreciation of the evidence of the

prosecutrix and her conduct we have come to the conclusion that PW 1 is not a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed.”

40. In **Suresh N. Bhusare v. State of Maharashtra (1999) 1 SCC 220**, the Hon’ble Supreme Court has held that where evidence of the Prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the Prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence.

41. In **Jai Krishna Mandal v. State of Jharkhand (2010) 14 SCC 534**, the Hon’ble Supreme Court while dealing with the aforesaid issue has held as under:

“4. ... the only evidence of rape was the statement of the

prosecutrix herself and when this evidence was read in its totality the story projected by the prosecutrix was so improbable that it could not be believed.

XXX

7. We find this statement to be contrary to the statement of the lady doctor who deposed that she had taken the saree from the prosecutrix and handed it over to the investigating officer. The doctor also does not support the prosecution story. She stated that there was no evidence of rape, no injury on her person and that she was a “multi-persons lady”. We are unable to comprehend what exactly this term means and in the context that it had been used, we assume that she was a lady having regular sexual intercourse with several persons.

8. We also find that as per the prosecution story the appellants were missing from the village on the date that the prosecutrix also disappeared that is 7-2-1999 and though they came back to the village on 11-2-1999, the FIR had been recorded after three days although they had been interrogated by the investigating officer on 11-2-1999 itself. The very fact that the investigating officer has not been examined also causes prejudice to the appellants. As per the doctor's evidence the petticoat and saree had been handed over to the IO. These articles were not sent for examination nor even produced in evidence.”

42. In **Raju v. State of M.P. (2008) 15 SCC 133** the Hon'ble Supreme Court has held as under:

“10.... that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an

injured witness and if the evidence is reliable, no corroboration is necessary.

11. 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 ... 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.”

43. In ***Tameezuddin v. State (NCT of Delhi) (2009) 15 SCC 566***, the Hon’ble Supreme Court held as under:

“9. 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.”

44. In the case of ***Dharmendra v. The State of Maharashtra, Criminal Appeal No. 170 of 2017***, the Hon’ble High Court of Judicature at Bombay, Nagpur Bench vide its judgment dated 8th January 2018, had discussed whether the rupturing of hymen will amount to sexual assault on the victim, to which the Hon’ble Court had stated as under:

“14. No doubt, the medical report suggests that hymen of the victim was torn and that sexual assault had occurred. The victim was aged seven years. PW 8 Dr. Jaya states that it cannot be stated whether the injuries were painful or not at the time of examining the victim. She states that there

may be other reasons for hymen tearing and tearing of hymen is possible if a child is involved in the sports activities. She states that tearing of hymen is possible if a girl child is living in unhygienic condition and there is itching to her private part and if she scratches it by her own finger. She states in response to the query that the minor girl of seven years is capable of sexual intercourse. In view of this, it is not possible to confirm the finding of the Sessions Court that there was a sexual assault on the victim.

15. *In view of above, we are of the view that the oral evidence of the witnesses relied upon by the Sessions Court is untrustworthy and not of credence to hold that the offence against the accused is established. Neither the oral evidence and the medical examination report by PW 8 Dr. Jaya nor the report of the Chemical Analyzer can be relied upon to hold that the accused committed sexual assault on the minor child. The evidence on record is short of connecting the accused with the crime alleged and the possibility of falsely implicating the accused cannot be ruled out. It is, therefore, not possible for us to sustain the findings recorded by the Sessions Court holding the appellant-accused guilty of the offences charged and he is required to be acquitted for want of reliable evidence of committing an act of rape on the minor child, being in relation as niece."*

45. In ***Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111***, the Hon'ble Supreme Court observed as under:-

"It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

46. It is pertinent to mention here that the material contradictions, omissions and improvements, though little in the statement and deposition of the prosecutrix, will prejudice the Appellant's case by affirming the wrongful conviction if overlooked or unappreciated.

47. In the case of *Sadashiv Ramrao Hadbe v. State of Maharashtra*, (2006) 10 SCC 92, the Hon'ble Supreme Court has held that in the cases where there are serious doubts regarding the sexual intercourse, the benefit of doubt has been provided upon the accused. The Hon'ble Supreme Court after analysing the facts of the case, held as under:

“10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version.

XXX

13. The Sessions Court as well as the High Court had not taken into consideration the absence of spermatozoa in the vaginal swab of the prosecutrix. It may also be noticed in the FI statement. In this case the prosecutrix had not given the full description of the incident allegedly taken place but when she was examined in court she had improved her version.

14. On a consideration of the entire evidence in this case, we are of the view that there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of those doubts and we are of the view that the High Court and the Sessions Court erred in finding the appellant guilty. We set aside the conviction and sentence of the appellant....”

48. The Courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of the witnesses which are not of a substantial character.

49. However, even in rape cases, the onus is always on the prosecution to prove, affirmatively, each ingredient of the offence it seeks to establish, and such onus never shifts. It is not the duty of the defense to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case from the side of the defense.

50. It is a settled law that unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused through reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

51. The Hon'ble Supreme Court in **Tukaram v. State of Maharashtra, (1979) 2 SCC 143** has held as under: -

“16. Secondly, it has to be borne in mind that the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and that such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of Section 375 of the Penal Code, 1860 were present in the case of the sexual intercourse....”

52. In **Uday v. State of Karnataka, (2003) 4 SCC 46**, the Hon'ble Supreme Court has held as under:-

“21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and

every ingredient of the offence, absence of consent being one of them.”

53. Thus, the Hon’ble Supreme Court has settled the law that the prosecution must prove its case beyond reasonable doubt and cannot take support from the weaknesses of the case from the defense’s side. There must be proper legal evidence and material on record to convict the accused. The conviction can be based on the sole testimony of the Prosecutrix provided it lends assurance to her testimony. However, in case the court has reason to not accept the version of the Prosecutrix on its face value, it may look for corroboration. However, once the evidence is read in its totality and the story projected by the Prosecutrix is found to be improbable, the Prosecutrix's case becomes liable to be rejected.

54. *In arguendo*, the appellants have also placed reliance on the judgment in ***Sonadhar v. The State of Chhattisgarh*** [SLP (Crl.) No. **529/2021**], wherein the Hon’ble Supreme Court vide order dated 6th October 2021 has held as under:-

“We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications

before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts."

55. Rape is one of the most barbaric and heinous crimes that is committed not only against the dignity of the rape-victim but also against the society at large. Dignity of every citizen is one of the basic precepts of the equality clause enshrined under Article 14 and Article 21 of the Constitution, since these provisions are the "*fons juris*" of our Constitution. These crimes are against the holy body of a woman and soul of the society. The object of the relevant penal law is to protect women from such offences and to keep alive the conscience of the society by weeding out such criminal proclivity. Hence, it is the duty of every court to award proper sentence considering the nature of the offence and the manner in which it was committed. Therefore, regard being had to the gravity of the offence, reduction of sentence without any reasonable ground would be an anathema to the very concept of rule of law, and hence in the facts of the case, no such relaxation can be granted.

CONCLUSION

56. In the instant case, as already analyzed, the version of prosecutrix is ridden with contradictions, and the same wherever not backed by medical or circumstantial evidence cannot be held to be reliable. Applying the same in the case, there are two sets of accused – one against whom there is no medical evidence and the other consists of those who are implicated by the medical evidence.

57. Keeping in view the facts and circumstances of the instant case, the present appeals are decided in the manner as follows:

a. CRL.A.-692/2016, CRL.A.-897/2016 and CRL.A.-815/2016:

In light of the aforesaid settled legal propositions, and their application to the facts and circumstances in the instant case, this Court is of the view that *firstly*, if the evidence of the prosecutrix is read and considered in totality of the circumstances, along with other evidence on record, in which the offence is alleged to have been committed, her deposition *qua* the accused in the aforementioned appeals is ridden with contradictions and does not inspire the confidence of this Court. *Secondly*, Medical Reports also do not substantiate the involvement of these Appellants/Accused persons in CRL.A.-692/2016, CRL.A.-897/2016 and CRL.A.-815/2016 respectively. *Thirdly*, neither the prosecution has been able to produce independent witnesses to substantiate its case. In light of the aforesaid, the burden of proving the case of prosecution beyond reasonable doubt is not discharged. In such facts and circumstances, the Appellants/Accused persons, namely

- Amit @ Sonu Jaat, Satyajeet Biswas @ Satte and Yasin Khan @ Tehna are entitled to the benefit of doubt. Already, the accused have spent a substantial portion of their sentence and despite such glaring loopholes in the case of the prosecution, it would be travesty of justice if the accused as named above are incarcerated any further. Therefore, the impugned judgment is set aside, and the appellants/accused namely - Amit @ Sonu Jaat, Satyajeet Biswas @ Satte and Yasin Khan @ Tehna are acquitted in the present case. Let the Appellants/accused persons be released from the jail forthwith. Accordingly, the appeals bearing number CRL.A.-692/2016, CRL.A.-897/2016 and CRL.A.-815/2016 are allowed and disposed of.

b. CRL.A.-892/2016, CRL.A.-894/2016, and CRL.A.-1053/2016:

In light of the aforesaid settled legal propositions, and their application to the facts and circumstances in the instant case, as well as the appreciation of the material and evidence on record, notwithstanding the fact that there are several contradictions in the version of prosecutrix as well as lack of independent witnesses, there is sufficient material on record in form of medical evidence and forensic report that incriminate the appellants named herein. Thus, this Court is left with no other option but to conclude that the offence as alleged has been committed by the appellants and the same having been substantiated by the medical evidence, the accused as named above have been rightly convicted and sentenced by the Trial Court. Thus, in such facts and circumstances, the Appellants/Accused persons Vicky @ Vijay, Lucky, and Uma Shanker in CRL.A.-892/2016, CRL.A.-

894/2016, and CRL.A.-1053/2016 respectively, are not entitled to any relief, their conviction is upheld and hence, there is no reason to interfere with the impugned judgment of conviction and sentence. Accordingly, the appeals bearing number CRL.A.-892/2016, CRL.A.-894/2016, and CRL.A.-1053/2016 are dismissed.

58. As per the latest nominal roll, as on 24th December 2021, accused Uma Shanker was yet to serve his remaining sentence of one month and eight days. As on date, the sentence ought to have been completed as fully served. Accordingly, the accused Uma Shanker is directed to be released as per the procedure under the Jail Manual. Other Accused persons, who have not been acquitted herein and are yet to complete their respective sentences, shall be released after serving their remaining sentence in accordance with the Jail Manual.

59. Pending application, if any, also stands disposed of.

60. Copy of this order be sent to Superintendent Jail for compliance.

61. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

February 14, 2022
dy/ct/@k