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IN THE HIGH COURT OF DELHI AT NEW DELHI
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
CRL.A. 95/2007; 12th May, 2022
JASBIR SINGH *Versus* **STATE**

Criminal Trial - If the period of deprivation pending trial or disposal of criminal appeal becomes unduly long, the fairness assured by Article 21 of the Constitution of India would receive a jolt. The delay in disposal of criminal appeals pending in the High Court is matter of serious concern to all those involved in the administration of criminal justice. *[Para 39]*

Appellant through: Mr. Yudhishter Sharma and Mr. Vikesh Kumar Singh, Advocates along with Appellant in-person (through VC); Respondent through: Ms. Kusum Dhalla, APP for State along with SI Devender Kumar, P.S. Najafgarh

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed on behalf of the appellant against the impugned judgment and order dated 9th January, 2007 and 15th January, 2007 passed by learned Additional Sessions Judge, Delhi, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months under Section 366 of the Indian Penal Code, 1860 (hereinafter "IPC"), rigorous imprisonment for two years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months under Section 506 of IPC. All the sentences to run concurrently.

Brief Facts

2. The brief facts as per the prosecution case is that on 25th September, 1998, the daughter of the complainant aged about 15 years left the house for purchasing fruits and vegetables but she did not return home. A missing report was lodged vide DD No. 43B on 26th September, 1998. On 28th September, 1998, an FIR was registered on the basis of the said complaint. The victim was recovered from Village Behat, District Gwalior, Madhya Pradesh on 25th November, 1998. On the statement of the prosecutrix, the accused Keshav was arrested by the Police. The statement of prosecutrix was recorded, wherein she stated that on 25th September, 1998, when she had gone to purchase fruits and vegetables, accused Jasbir met her and told her that her friend Sharda had called her at the bus stand of route no. 817. She refused but when Jasbir insisted, she accompanied him. On reaching the bus stand of route no. 817, she found that her friend Sharda was not there but accused Anand Singh and Keshav were present. She was threatened and was taken to a room, where Keshav kept her. She was regularly threatened and raped by co-accused Keshav against her wishes.

3. After completion of investigation, chargesheet was filed against the accused persons, including the present appellant. After complying with the provisions of Section 207 of the Cr. P.C., learned Metropolitan Magistrate committed the case to the Sessions

Court for trial. All the accused persons were charged for the offence punishable under Section 366 read with Section 34 of IPC and Section 506 read with Section 34 of IPC and accused Keshav was also charged for the offence punishable under Section 376 of IPC. The accused persons pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused persons, the prosecution examined 14 witnesses. PW-1 Head Constable Ishwar Singh, PW-2 Lady Constable Urshla, PW-3 the prosecutrix, PW-4 Sh. Moti Ram, complainant (father of the prosecutrix), PW-5 Head Constable Amarjeet, PW-6 Constable Praveen, PW-7 Head Constable Sant Ram, PW-8 SI Narayan Singh, PW-9 Constable Heera Lal, PW-10 SI Suresh Chand, PW-11 ASI Yashpal, PW-12 Dr. Preeti Singh, PW-13 Dr. Vineet Kumar and PW-14 Sh. Praveen Kumar. After completion of the prosecution witnesses, statement of accused persons were recorded under Section 313 of Cr. P.C. wherein they denied all the allegations and stated that they have been falsely implicated. The appellant Jasbir Singh had also stated that he was innocent and he did not know the prosecutrix, friend of the prosecutrix, Sharda, or the complainant, Moti Ram. The appellant prayed to lead defence evidence, but no defence evidence was examined by him.

5. After completion of the trial, learned Additional Sessions Judge, Delhi in Sessions Case No. 76/2002, convicted the present appellant for the offence punishable under Section 366 read with Section 34 of IPC and for offence punishable under Section 506 read with Section 34 of IPC. He was sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months, rigorous imprisonment for two years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months respectively. All the sentences to run concurrently. Hence, the present criminal appeal has been filed by the appellant assailing the impugned judgment of conviction and order on sentence on the ground of validity, propriety and illegality.

Submissions

6. Learned counsel appearing on behalf of appellant submitted that the appellant herein is on interim bail since 24th May, 2007 which has been extended from time to time. It is submitted that neither there is any evidence nor any witness to prove that the prosecutrix was recovered from the house of the accused Keshav in Village Behat, District Gwalior, Madhya Pradesh. It is also submitted that there is no evidence on the record to establish any case against the present appellant. He is not instrumental for the kidnapping of the prosecutrix and no witness has stated in their deposition that the appellant has participated or has any role in kidnapping of the prosecutrix. It is submitted that the place from where prosecutrix was recovered does not belong to the appellant.

7. It is submitted that there are material contradictions in the depositions of the prosecution witnesses. He has categorically submitted that there are material contradictions in the testimony of the prosecutrix i.e., PW-3, and her father, the complainant i.e., PW-4. It is also submitted that such contradictions in the testimony of witnesses create serious doubt and therefore, the prosecution has failed to prove its case beyond reasonable doubt. It is further submitted that the appellant has already undergone three days in the judicial custody and since then, he has been on the bail.

8. Learned counsel appearing on behalf of appellant while relying on the judgment passed by the Hon'ble Supreme Court in the case of ***Krishnegowda & Ors. vs. State of Karnataka*****, AIR 2017 SC 1657,** submitted that the Hon'ble Supreme Court held that the material contradictions create such serious doubt in the mind of the Court about the truthfulness of the witnesses.

9. It is further submitted that after perusal of the entire evidence on record, the prosecution has measurably failed to prove the offence punishable under Section 366 and Section 506 of IPC. Since the prosecution has failed to prove its case beyond reasonable doubt against the appellant, the instant appeal may be allowed and the impugned judgment and order dated 9th January, 2007 of the conviction as well as the sentence order dated 15th January, 2007 be set aside.

10. *Per contra,* Ms. Kusum Dhalla, learned APP for State vehemently opposed the submissions made by learned counsel for the appellant and submitted that after considering the entire deposition of the prosecution witnesses and other materials on the record, learned Additional Sessions Judge, Delhi has rightly convicted the present appellant for offence punishable under Section 366/506/34 of IPC and sentenced him to undergo rigorous imprisonment for three years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months, rigorous imprisonment for two years and a fine of Rs. 5000/- in default, rigorous imprisonment for three months respectively. It is submitted that there is no illegality or error in the impugned order. The prosecutrix, PW-3, and the father of the prosecutrix, complainant, PW-4, have supported the case of the prosecution and there are no material contradictions in their testimonies. The medical report of the prosecutrix also did not deny the facts of commission of rape on her. It is further submitted that oral evidence as well as documentary evidence, both have proved the case of the prosecution for offences punishable under Section 366 and Section 506 of IPC against the appellant. There are sufficient materials against the accused person to convict him for offence punishable under Sections 366/506/34 of the IPC. Therefore, the criminal appeal lacks a merit and is liable to be dismissed.

Analysis

11. This Court has considered the rival submissions made by the learned counsel for the parties and perused the records.

12. The prosecutrix has been examined as PW-3 and the relevant contentions of her chief examination, are as follows: -

"On 25.9.98 I had gone to purchase food and vegetables. On the way xxxxxxx Jasbir met me. He told me that Sharda who is my friend was waiting for me at the bus stand of route no. 817. I told him I am in haste and I had to go to my house. Jasbir insisted me and told me that Sharda was also in haste. I accompanied him to the bus stand. I saw Sharda was not there but there were two boys namely Anand and Keshav. All the three boys extended threats to me not to raise alarm otherwise they would kill my xxx brother. All the three talked among themselves and then I was asked to go with Keshav who took me in a room and confined me in that room and that room was locked from outside. On next morning Jasbir and Keshav came to that room, Jasbir asked Keshav to take me immediately fromwhere. Keshav took me in a TSR and then he took me in a train. I took a journey for 3-4 hours and then Keshav took me in a house where we stayed for about 1-1/2 months. Then I

bought a letter through a boy and wrote my parents. Then my parents reached there with police. Later on I came to know the name of the village where I was kept confined the name of the village was Vaith Distt. Gwalior. Keshav kept me confined under threat he took me at a place where my thumb impression was obtained. I was studying those days in class 10th. My date of birth is 21.6.82. The accused Keshav have physical relation with me forcibly during this period. It was against my wishes. Accused Jasbir, Keshav and Anand are present in the court today. Witness correctly identified each of the accused. I was medically examined in Delhi. I told to the doctor who examined me as to what had happened with me. My statement was recorded by the Magistrate. Statement Ex.PW-3/A bears my sig. at point A."

13. She was cross-examined by the defence. The relevant depositions of her cross-examination are as follows: -

"It is wrong to suggest that I am not Kavita but her sister Priti. When the police came to recovered xxx me my parents accompanied them. I do not know how many police officials were there at that time. When the police came to recovered me I was kept confined and locked in a room. When the door was unlocked I saw my parents first of all. The house were I was recovered the other inmates including the mother and sister of accused Keshav was there. It is correct that I was kept there for approx two months. The other inmates of the house were the mother, brother, sister of accused Keshav as well as one aged lady. From the house I was taken to the local police station. I do not remember how we went to the police station. I do not know whether the police station was at the distance of 4-5 minutes walk from the house. I do not remember how long it took us to reach to the police station. From Vaith village we returned to Delhi in a vehicle hired by my parents.

..... I do not remember how may police officials were there. They were policemen and not police woman. The doctor did not ask me for the alleged history in this case. It is incorrect that I told the doctor that I was staying with accused as man and wife after having got married with him. My statement was recorded by the police only on the day when I was brought back. After my medical I was brought to the Court also and taken to the Nari Niketan. My statement under Section 164 Cr.P.C. was also recorded by a Judge. I had not stated to the Magistrate that Keshav had obtained my thumb impression on certain papers Keshav never took my out on any outing during the two months that he kept me confined. When I had left the house I was wearing a Salwar suit. Keshav never bought any clothes for me. I had not taken any clothes with me as I had gone to the market only to buy vegetables. The house that I was kept confined had a built in toilet, and there was no need to go to the fields. The letter that I had written to my father was given to a small child who posted it for me. It is incorrect that I had informed my parents in my letter that I had got married to accused Keshav and staying happily with him. It is wrong to suggest that I had willingly gone alongwith accused Keshav and on my insistence he had taken me to his village home…

It is correct that I was threatened by all three accused persons. Conf. with statement Ex. PW-3/A where it specifically been recorded that accused Anand had threatened. I did not know accused Jasbir prior to this incident. The time when I was taking to the bus stop there was few persons present there. I was taken to the bus stop by accused Jasbir. I did not raise any alarm at the bus stop as I was threatened by all three accused persons. I did not stated to the police or the Magistrate that all three of them had threatened me. It is correct that the house where I was confined was in the area of Najafgarh at Delhi which is well populated. I did not raise any alarm at night or call for help. I could not say what the surrounding area were as that was the first time I had been taken to that place.

I had never visited that place again. I was taken in auto in the next morning. I do not know many red lights fell on the way to the railway station. The auto was not stopped by the police officials on the way. I did not raise any alarm nor shout for help on the way as I was threatened at the time when I was taken from the house. When we left in the auto besides accused Keshav accused Jasbir was

also there. I had not told the police or the Magistrate that accused Jasbir had also accompanied us. When we reached the railway station Jasbir was also present. I do not know which railway station it was. I did not raise any alarm nor ask for help from the public around at the railway station.

Court Ques: Why did not you raise any alaram or shout for help?

Ans: Because I had been threatened by the accused persons before leaving the house.

Accused Jasbir had procured two tickets for us. I do not know by what train we left or at what time. I do not know whether it was an unreserved compartment or a reserved compartment but there were 3-4 other persons. The train journey of 3-4 hours. I do not remember whether the train stopped at any station. I also did not shout for help at the stations where train had stopped. I did not visit the toilet during the journey nor accused Keshav...."

14. The father of the prosecutrix/complainant herein, has also been examined as PW-4. The relevant depositions made in examination-inchief of PW-4 are as follows:-

"Kavita is my daughter. On 25.9.98 Kavita had gone to purchase fruits and vegetables but she did not return to the house. While I came to my home from my office I came to know that Kavita did not return to home. We searched Kavita on all possible places but she could not be traced. On next day we reported the matter in the police station Najafgarh about the missing of Kavita. Copy of the missing report is Ex. PW-4/A. I had also given about the description of Kavita in the missing report. Police recorded my statement which is Ex. PW4/B which bears my sig. at point A. At that time Kavita was studying in class l0th in Govt. school in Najafgarh. At that time she was about 14/15 years old. About 45/50 days of her missing I received a letter of Kavita. I took that letter to the police station Najafgarh. Then police official accompanied us to Gwalior. On the identification of stamp of that letter we reached to Vait(Village). The police officials accompanied us took help from the local police. They located the house of the accused. The police officials leaving us in the police station then went to the house of accused from where xxx got recovered Kavita and brought to the police station. We came back to Delhi, alongwith my daughter Kavita and police officials. Police handed over to us Kavita during night time...."

15. PW-4 was also cross-examined by the defence. The relevant depositions of cross-examination are as follows: -

"It is correct that I and my wife are in Govt. Service and were in Government service at the time of incident. I left the house for duty at about 6/6.30AM on 25.09.98. My wife had also left the house in the morning for duty. I had three children and all were school going. On 25.09.98 all the three children were in the house as it was holiday on account of Navratra. The school were closed on 25.09.98 due to some reason. But I do not remember why the school were closed. I came back from my duty at about 4.30PM on 25.09.98. My wife had returned to the house from duty at about 2/2.30PM on that day. My daughter Kavita had told me that she would go to purchase vegetables when I left for my duty. The distance between vegetable market and parsad nursing home is hardly 10 paces. It is correct that there are houses between my house and vegetable market. The public person use to come and go on the said road. It is correct that there are several shops in the vegetable market. My wife told to me that my daughter Kavita had gone to purchase vegetable at about 10AM. Statement of my wife was not recorded by police in my presence. I do not remember exactly who told me the colour of clothes worn by my daughter. My wife might have informed me about colour of clothes of my daughter. The distance between my house and the school in which my daughter Kavita was studying is of 10/15 minutes walking distance. It is correct that the way for going to school is main road and several houses are constructed between my house and the school."

16. At this juncture, it is also argued by learned counsel for the appellant that the FIR was lodged by the complainant/father of the prosecutrix informing that on 25th

September, 1998, his daughter has gone to purchase fruits and vegetables but she had not return. He searched in his relations but could not come to know about her whereabouts. This information was given to the police on 28th September, 1998 i.e. after two days and one night. There was no explanation of the delay in lodging of the FIR of missing of his own daughter. Therefore, the said conduct of the complainant creates serious doubt in the story of the prosecution.

17. In the matter in hand, there is nothing on record which shows the date of alleged recovery of the prosecutrix by the Police from the residential house of co-accused Keshav from village Behat, District Gwalior. As per the testimony of PW-6 Constable Praveen, she was recovered on 26th November, 1998 from the house of accused Keshav. It is also stated that on that day he along with Head Constable Sant Ram (PW-7) had gone to Gwalior, Police Station Behat. It is further stated that they came back to Police Station of Behat and from there they went to Delhi along with prosecutrix. After that she was handed over to the parents after reaching to Delhi. The other witness PW-7 Head Const. Sant Ram, deposed in his examination-in-chief that on 26th January, 1998 he was posted at Police Station Najafgarh and on that day he had gone to Gwalior along with Ct. Praveen Kumar (PW-6) and parents of the prosecutrix. But during cross-examination, witness has stated as *"statement of prosecutrix Kavita was also recorded at Village Behat, Gwalior at about 2:30 pm on 26.11.98"*. The father of prosecutrix (PW4) accompanied with PW-7 and PW-6 at the time of the recovery of the prosecutrix from the house of the co-accused. PW-4, the father of the prosecutrix has stated that he does not know the date when she was recovered and also stated that he also doesn't know from where she was recovered. In view of the aforesaid contradictions in the testimonies of PW-4, PW-6 and PW-7 about the date and place of recovery of the victim/prosecutrix, it certainly creates doubt about the truthfulness of the story of the prosecution. The prosecutrix herself has been silent about the date of recovery. The mother of the prosecutrix, who can be relevant witness, has not been examined by the prosecution. As per the prosecution story, the informant Moti Ram, PW-4 was informed by his wife in the evening of 25th September, 1998 that his daughter had gone to purchase fruits and vegetables, thereafter she did not return back. Therefore, the wife of the informant Moti Ram PW-4 is relevant and material witness to prove as to where the prosecutrix had gone to purchase the vegetables or she had left the house for school, or some other pretext.

18. As per the first statement of the prosecutrix recorded by Head Constable, the prosecutrix had gone to the school on 25th September, 1998. From school, she accompanied her friend Sharda to her house and from her house, Sharda, herself alongwith accused Jasbir went to the rented room of the co-accused Keshav. Due to the aforesaid facts, Sharda was a material witness to prove the story of the prosecution as whether the prosecutrix had gone to the school or she did not go to the school on that day and left the house for purchasing fruits and vegetables, or she was voluntarily with the accused Jasbir to the rented room of co-accused Keshav, and thereafter, she accompanied him to his village.

19. Dr. Rachna Yadav, who examined the prosecutrix on 27th November, 1998 has also not been examined. Dr. Preeti Singh, PW-12 was examined to prove the MLC which was conducted by Dr. Rachna Yadav. It is vehemently argued by the defence that the MLC which was conducted by one doctor cannot be proved by another doctor and the statement of another doctor who has admittedly not conducted the MLC is inadmissible under the law.

20. In the present case, as per the prosecution, the role assigned to appellant Jasbir Singh, was that he went to the house of the prosecutrix and told her that her friend Sharda was calling her at bus stand. At the statement of the present appellant, she accompanied him and went to the bus stand, but, she did not find Sharda there. But the present appellant Jasbir in his statement under Section 313 of Cr.P.C. has categorically stated that he did know Sharda, the prosecutrix or the father of the prosecutrix and he has denied entire prosecution story that he was involved in the instant crime.

21. After perusal of the oral testimonies of the prosecutrix (PW-3), her father-PW-4/the first informant and PW-6 Constable Praveen, PW-7 Head Constable Sant Ram, it was found that there are several material contradictions about the facts of kidnapping and recovery of the prosecutrix and it creates serious doubts in the prosecution story.

22. As far as the age of the prosecutrix is concerned, no document has been placed by the prosecution to prove the age of the prosecutrix. The learned Trial Court gave observation that according to the ossification test, she was more than 16 years but less than 18 years. But even, if it is to be taken that she was 18 years on the day of commission of offence, it is well settled principle of law that if two views are possible then the one favouring the accused be followed. Therefore, the age of the prosecutrix at the time of incident was not below 18 years.

23. After taking into consideration of the arguments, the learned counsel for the appellant has argued mainly on four points. 1) there is delay in lodging the FIR without any explanation, 2) the material contradictions in the testimony of the witnesses, 3) the material witnesses have not been examined by the prosecution and 4) Age of the prosecutrix was not less than 18 years.

Delay in lodging in FIR without any explanation

24. In the instant case, the FIR was lodged by the complainant after an inordinate and unexplained delay of three days at Police Station, which renders the FIR in this case wholly unreliable. The delay in lodging the FIR corrodes the credibility of the prosecution story. The Hon'ble Supreme Court in several cases held that delay in loading the FIR creates a doubt, if the said delay is not properly explained.

25. In ***Thulia Kali v. The State of Tamil Nadu, (1972)* 3 SCC 393**, the Supreme Court, emphasising the necessity of explaining the delay in lodging FIR, has held as follows:

"12... First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual

culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...."

26. In ***Meharaj Singh &Ors. v. State of U. P. &Ors*, (1994) 5 SCC 188** the Supreme Court has observed:

"12. … The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR..."

27. In ***Satpal Singh v. State of Haryana, (2010) 8 SCC 714*** the Supreme Court has observed:

*"15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultation, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same of the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [Vide: **State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582**]"*

28. The Hon'ble Supreme Court in ***Kishan Singh Vs. Gurpal Singh*, (2010) 8 SCC 775** with regard to the effect of delay in lodging FIR has held as under:

"22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal

*proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide :**Chandrapal Singh &Ors. Vs. Maharaj Singh &Anr., AIR 1982 SC 1238; State of Haryana &Ors. Vs. Ch. Bhajan Lal &Ors., AIR 1992 SC 604; G. Sagar Suri &Anr. Vs. State of U.P. &Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. &Ors., (2008) 12 SCC 531)**.*

29. In ***Jai Prakash Singh Vs. State of Bihar,* (2012) 4 SCC 379**, Hon'ble Supreme Court has held that extraordinary delay in lodging of FIR raises grave doubt regarding the truthfulness of allegations. The Hon'ble Court held as under:

"12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

30. Relying upon the judgment of ***Jai Prakash Singh (supra)***, in ***Manoj Kumar Sharma and others Vs. State of Chhattisgarh and another,* (2016) 9 SCC 1**, Hon'ble Supreme Court has held that delay in lodging FIR often results in embellishment, which is a creature of an afterthought and on account of delay, FIR not only gets bereft of advantage of spontaneity, danger of coloured version or exaggerated story being introduced in FIR, creeps in. It further held that extraordinary delay in lodging FIR raises grave doubt about the truthfulness of allegations made therein.

The material contradictions in the testimony of witness.

31. The Hon'ble Supreme Court in the landmark case of ***Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* (2010) 13 SCC 657** has held that:

*30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide **State v. Saravanan (2008) 17 SCC 587**)*

*31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide **State of Rajasthan v. Rajendra Singh (2009) 11 SCC 106**)*

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*34. In **State of Rajasthan v. Kalki (1981) 2 SCC 752**, while dealing with this issue, this Court observed as under:*

"8. ... In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (Syed Ibrahim v. State of A.P. (2006) 10 5CC 601 and Arumugam v. State (2008) 15 SCC 590)

*36. In **Bihari Nath Goswami v. Shiv Kumar Singh (2004) 9SCC 186** this Court examined the issue and held:*

"9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the evidence is put in a crucible for being tested on the touchstone of credibility."

37. While deciding such a case, the court has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.

32. In the case of ***Krishnegowda and others vs. State of Karnataka*** **(2017) 13 SCC 98: AIR 2017 SC 1657**, the Hon'ble Supreme Court observed that:

32. … The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. ….. As said by Bentham, "witnesses are the eyes and ears of justice". In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused.

33. In the instant case after perusing the testimony of the PW-3, PW-4, PW-6 and PW-7, this Court finds that there are material contradictions which create a serious doubt on the story of the prosecution and therefore such type of testimony of the witness is liable to be discredited.

Non-examination of the material witness:

34. In the case of ***Manjit Singh Anr. Versus State of Punjab*** **(2013 12 SCC 746)**

22. In *Takhaji Hiraji v. Thakore Kubersing Chamansing* the Court has opined that:

"19. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering

from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, nonexamination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself-whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court? If the answer be positive then only a question of drawing an adverse inference may arise, If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

Proof beyond reasonable doubt

35. Beyond a reasonable doubt is the higher standard of proof that must be met in any trial. Reasonable doubt is a standard of proof used in the criminal trials. When an accused is prosecuted, the prosecution must prove the his guilt beyond reasonable doubt. If the judge has a reasonable doubt as to the defendant's guilt, the judge should pronounce those defendants in guilt. If the judge has no doubt as to the defendant's guilt, then the prosecution has prove its case against the defendant beyond a reasonble doubt and the defendant should be pronounced guilty.

36. In the case of ***State Govt. of M.P. v. Ramkrishna*, AIR 1954 SC 20,** the Hon'ble Supreme Court held that:

"17. *There is considerable force in these contentions. We are, however, unable to find that the High Court was necessarily in error in holding that the circumstantial evidence in the case was not wholly incompatible with the innocence of the accused and that it did not lead to an irresistible presumption that Dattu was murdered by Limsey. It is unlikely that Limsey would have invited Dattu to his own place on 8th October by a letter with the intention of murdering him. There is no evidence of a preconceived plan to that effect. If the estrangement between the two was still continuing Dattu would not have so readily come to Limsey's house. Ganpat having been disbelieved, there is no evidence of any act or conduct on the part of Kisanrao and Shaligram indicating their participation in this affair. In such circumstances the conclusion as to the guilt of the accused cannot be reached except perhaps by introducing an element of conjecture in the case. It may well be that Dattu and Limsey had some quarrel while they were drinking and smoking together and were trying to adjust their differences and that in the heat of the moment he was struck by Limsey in a manner which brought about his end, or that Limsey administered poison to him to finish him as he was obstinate and would not desist from his defamatory propaganda or even that Dattu died of heart failure. All these possibilities cannot be ruled out. These are, however, pure matters of speculation in the absence of any material pointing to a definite conclusion. It cannot therefore be said that the High Court acted improperly when it held that there was no evidence to establish that Dattu was murdered. The strongest weapon in the armoury of the learned Advocate-General is the existence of a freshly constructed tomb in the loft of Limsey's house wherein the dead body of Dattu was entombed. The conduct of Limsey in constructing Dattu's tomb in the third storey of his house more or less verges on lunacy and is not conclusive evidence of the fact that Dattu had been murdered by him, though it raises a very strong suspicion against him. The High Court was dealing with the case of a person whose mind was so perverted that he could not see that such conduct on his part would surely recoil on himself and be the strongest proof against his innocence. The possibility therefore cannot be ruled out that he may have acted in a similar way in case he wanted to conceal,*

for reasons of his own, the death of a person brought about by natural causes in his house. It is not difficult to visualize that Dattu died a natural but sudden death and in a moment of panic and confusion Limsey conceived the idea of concealing his death by entombing him in his own house. There are no such circumstances that militate against the theory that Dattu might have died of alcoholic poisoning or of heart failure while sitting in the company of Limsey and drinking heavily. Limsey having been flabbergasted at what had happened might well have thought of disposing of his body in the manner he did in order to conceal the fact that his death took place while he was in his company and was taking liquor and smoking ganja, his object being to avoid bad repute and his place being described as a den of drunkards and resort of ganja-smokers.

18. *Moreover, it is not quite clear that the strained relations between Dattu and Limsey were continuing till October 1949. In August 1949 Dattu made efforts of reconciliation and it is not unlikely that he was successful in his effort. The informal letter that Limsey wrote to Dattu on 8th October inviting him to come to his house and Dattu's response to his call suggest that apparently at that moment they were on good terms. There was thus no strong motive for Limsey to murder Dattu. No doubt, a very strong suspicion arises against Limsey by reason of the existence of the tomb of Dattu in his house but we are unable to hold that the High Court after taking into consideration all the circumstances in the case was wrong in not treating this circumstance as conclusive of the guilt of Limsey. As against the other two respondents, there is not the slightest evidence to hold that they are in any way responsible for the murder of Dattu."*

37. In the case of ***Sucha Singh v. State of Punjab*****, (2003) 7 SCC 643,** the Hon'ble Supreme Court held that:

"20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh [(1990) 1 SCC 445 : 1990 SCC (Cri) 151 : AIR 1990 SC 209] .) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : AIR 1992 SC 840] .) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn.) [(1978) 4 SCC 161 : 1978 SCC (Cri) 564 : AIR 1978 SC 1091] .] Vague hunches cannot take the place of judicial evaluation.

"A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." [Per Viscount Simon in Stirlandv. Director of Public Prosecution [1944 AC 315 : (1944) 2 All ER 13 (HL)] quoted in State of U.P. v. Anil Singh [1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] (SCC p. 692, para 17).]

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

21. In matters such as this, it is appropriate to recall the observations of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] (SCR pp. 492-93) : (SCC p. 799, para 6)

"The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim

and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. … The evil of acquitting a guilty person light-heartedly as a learned author (Glanville Williams in „Proof of Guilt") has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted „persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. … „a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent…."

22. The position was again illuminatingly highlighted in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] . Similar view was also expressed in Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : (2002) 7 Supreme 276]"

Delay in disposal of criminal appeal

38. The instant criminal appeal has been pending since 2007 in this Court for disposal. The appellant was convicted for offences punishable under Sections 366/506/34 of the IPC vide judgment/order dated 9th January, 2007 of learned Additional Sessions Judge, Delhi. The incident took place on 25th September, 1998.

39. The delay in disposal of criminal appeals pending in the High Court is matter of serious concern to all those involved in the administration of criminal justice. The Hon'ble Supreme Court has repeatedly emphasized the fact that speedy trial or disposal of the criminal appeals pending before High Courts are a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution of India. The aforesaid Article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. It has also been emphasized by the Hon'ble Supreme Court that the procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial/disposal of criminal appeal becomes unduly long, the fairness assured by Article 21 would receive a jolt.

40. In the case of ***Sheela Barse* v. *Union of India* : [1986] 3 SCR 562**, The Hon'ble Supreme Court held that:

"A Division Bench comprising Bhagwati and R.N. Misra, JJ. re-affirmed that the "right to speedy trial is a fundamental right implicit in Article 21 of the Constitution" and observed "the consequence of violation of fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right."

41. In the case of ***Srinivas Gopal* v. *Union of Territory of Arunachal Pradesh, (Now State)* 1988 1 SCR 477**, the Hon'ble Supreme Court held that:

"The Hon'ble Supreme Court quashed the proceedings against the appellant on the ground of delay in investigation and commencement of trial. In this case, investigation commenced in November,

1976 and the case was registered on completion of the investigation in September, 1977. Cognizance was taken by the court in March, 1986. These facts were held sufficient to quash the proceedings particularly when the offence charged was a minor one namely, Section 304-A read with 338 of I.P.C."

42. In ***Strunk* v. *United States*, 37 Law Edn. 2Nd 56**, it was held that an accused's right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial. It was observed that the desires or convenience of the accused or other individuals are of little relevance and make no difference to the prosecutor's obligation to ensure a prompt trial. The main question considered in this case was whether the violation of the said guarantee entails dismissal of the charges. It was held that dismissal of charges is the only possible remedy where a speedy trial has been denied. Indeed, in this case, the court of appeals was also of opinion that the accused's right to speedy trial was denied but it did not quash the charges but directed merely that the sentence awarded to the accused should be reduced by the period of unconstitutional delay.

43. In the case of ***Bell* v. *Director of Prosecution, Jamaica* [1985] 2 A.E.R. 585**, the Privy Council expressly affirmed the principles enunciated in Barker in the following words:

"Their Lordships acknowledge the relevance and importance of the four factors lucidly expanded and comprehensively discussed in Barker *v.* Wingo. *Their Lordships also acknowledge the desirability of applying the same or similar criteria to any constitution, written or unwritten, which protects an accused from oppression by delay in criminal proceedings. The weight to be attached to each factor must however vary from jurisdiction to jurisdiction and from case to case."*

44. In the Criminal Appeal No. 509 of 2017, ***Hussain* v. *Union of India***, the Hon'ble Supreme Court vide judgment dated 9th March, 2017 held that delay in deciding the criminal appeals are violation of right of accused guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court had framed the guidelines for speedy trial and disposal of criminal appeals.

45. Delay in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. No one expects a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case for exceeds its expected life span and that is when we say there is a delay in dispensation of justice. In its 41st Report, the Law Commission had observed that the Criminal Appeals should be heard at earliest by the High Court to avoid miscarriage of justice and to secure a uniform standard in dealing with such criminal appeals.

Conclusion

46. In the instant case, the prosecution has miserably failed to prove its case beyond reasonable doubt. The material contradictions in the ocular testimonies of PW-4, PW-6 and PW-7 about the date and time of the recovery of prosecutrix, age of the prosecutrix and also medical evidence does not support the ocular evidence regarding the rape of the prosecutrix.The present appellant is convicted for the offence punishable under Sections 366/506/34. The FIR was lodged after two days and delay in lodging the FIR

was also not explained. The instant criminal appeal has been pending since 2007 before this Court and the incident had taken place in the year of 1998. The age of the prosecutrix was not less than 18 years at the time of the incident.

47. The appellate court is under an obligation to consider and identify the error in the decision of the trial court and then to decide whether the error is gross enough to warrant interference. The appellate court is not expected to merely substitute its opinion for that of the trial court and it has to exercise its discretion very cautiously to correct an error of law or fact, if any, significant enough to warrant reversal of the verdict of the trial court.

48. The prosecution case, when judged on the touchstone of totality of the facts and circumstances, does not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the appellant. Having regard to the evidence on record as a whole, it is not possible for this court to unhesitatingly hold that charge levelled against the appellant has been proved beyond reasonable doubt. In contrast, the findings of the trial court are decipherably strained in favour of the prosecution by overlooking many irreconcilable inconsistencies, anomalies and omissions rendering the prosecution case unworthy of credit. This court is of the unhesitant opinion that the prosecution has failed to prove the charge against the appellant to the hilt as obligated in law and thus, he is entitled to the benefit of doubt. The appeal thus succeeds and is allowed.

49. In case at hand, this Court finds that the material witness that is the mother of the prosecutrix, the friend of the prosecutrix namely Sharda have also not been examined and there are material contradictions in the testimony of the prosecution witnesses and also there is no explanation for delay in lodging the FIR. There is no certain proof of age of the prosecutrix at the time of the incident.

50. After giving anxious consideration to the submissions made by learned counsel appearing on behalf of appellant and learned APP for State, in the light of circumstances discussed above, this Court finds substance in the contentions of the appellant that the prosecution has failed to prove its case beyond reasonable doubt qua the present appellant as he was convicted for offences punishable under Sections 366/506/34 of IPC.

51. Keeping in view the above facts and circumstances, the criminal appeal filed by the appellant is allowed and the impugned order/judgment dated 9th January, 2007 and order on sentence dated 15th January, 2007 passed by learned Additional Sessions Judge, Delhi is set aside. The appellant is acquitted for the offences punishable under Sections 366/506/34 of the IPC. Consequently, the bail bonds of the appellant, who was granted bail and extended time to time, stand cancelled.

52. Accordingly, the instant appeal is disposed of along with pending application, if any.

53. The judgment be uploaded on the website forthwith.