

**IN THE COURT OF ANKUR JAIN**  
**ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI**

State

Vs.

Ish Kumar  
S/o Late Sita Ram  
R/o Old Rajender Nagar  
New Delhi

And Also at :  
B-654, New Friends Colony  
Delhi 110065

...Accused.

SC No. :119/16  
FIR No : 1492/14  
PS. : Tilak Nagar  
U/s : 376/506 IPC

Date of receipt of File After Committal : 22.08.2016  
Date of reserving Judgement : 22.07.2020  
Date of Judgment : 04.08.2020  
Final Decision : Acquittal

## JUDGMENT

1. The brief facts of the case are that a complaint was given by prosecutrix Mrs 'SK' on 02.12.2014, in which it was stated that she had met the accused around 4 months back near Subhash Nagar Metro Station as he had committed to provide job. It was further alleged by the complainant that several times she and her husband were called outside the house and the accused several times took



her outside delhi, on the pretext of getting the job, where he tried to misbehave. It is alleged that around 2 ½ months back the accused raped her in Bombay. He thereafter started threatening her by showing her obscene photographs and stating that in case she does not succumb to his demand, he would upload the photographs on net. On this pretext raped her on number of occasions. On 15.11.2014 at around 4:30 accused came to their house and by giving false assurance in respect of job, started drinking alcohol with her husband. The husband of the prosecutrix slept because of excessive drinking. Thereafter, he forcibly established physical relations. At around 8 PM the husband of the victim got up and confronted the accused, as he grew suspicious, the accused got angry and left the house threatening them to implicate in a false case. On these allegations present FIR was registered. Accused was granted anticipatory bail. Investigation was completed and charge sheet was filed in the Court. compliance of provision Under Section 207 Cr.P.C. was made and thereafter file was committed to Session Court. Charge was framed against the accused U/s 376/506 IPC on 23.09.2016.

2. In order to prove its case prosecution has examined as many as 6 witnesses. PW1 is the complainant / victim who has deposed about the facts of the case and supported the case of the Prosecution.



3. PW2 is Lady Ct. Rajni who had taken the prosecutrix to DDU Hospital for medical examination where prosecutrix refused to undergo internal medical examination.
4. PW3 is Desraj, Record Clerk from DDU Hospital who identified the signatures of Dr. Ajay Sharma and Dr. Kamal Kant on the MLC Ex. PW 3/A and Ex. PW3/B.
5. PW 4 ASI Rajender Singh was the Duty officer who recorded the FIR on computer. The FIR was Ex. PW4/A and the endorsement made by him on the original tehrir as Ex.PW4/B. The certificate U/s 65 B of the Indian Evidence Act was exhibited as Ex. PW4/C.
6. PW5 SI Raj Pal accompanied the IO and went to the house of accused on 18.12.2015 where they could not find the accused.
7. PW6 is Inspector Renuka who deposed about the investigation carried out by her. She made endorsement on the complaint of the prosecutrix which is Ex. PW6/A on 15.12.2014 she gave an application for recording of statement U/s 164 Cr.PC which was exhibited as Ex. PW6/B. Ex. PW6/C is the copy of the application seeking copy of the statement U/s 164 Cr.PC. She formally arrested the accused vide arrest memo Ex. PW6/D
8. On 24.01.2020 statement of accused U/s 313 Cr.PC was recorded and he chose not to lead any defence evidence. DE was closed and case was listed for final arguments.



9. Ld Addl. PP for State has argued that on 02.12.2014 the FIR was registered, charges U/s 376/506 IPC were framed. Out of 8 witnesses cited by prosecution 6 were examined and 2 were admitted. It is argued by the Ld. Addl. PP for State that statement of prosecutrix who was examined as PW1 and the IO PW 6 are relevant and for the purpose of convicting the accused the sole testimony of the prosecutrix is sufficient.
10. Ld. Counsel for accused has argued that the present FIR was a counter blast to the complaint given by the accused against the husband of the prosecutrix, which culminated into an FIR bearing no. 589/18, PS Rajender Nagar. It is argued that prosecutrix has admitted in her cross examination that present FIR was registered only after the husband was arrested. On merits it is submitted that the allegation in the complaint even if taken at their face value are vague and unspecific. Name of the hotel or the mode through which the prosecutrix was taken to various places has not been mentioned. The husband of the prosecutrix was never cited as prosecution witness although he was present at the spot on the date of incident.
11. Ld. Counsel for the complainant submits that the present FIR was registered prior to the registration of FIR no. 589/18, PS Rajender Nagar. He further adopted the arguments made by Ld. Addl. PP for State.



12. I have heard Ld. Addl. PP for State, Ld. Counsel for complainant and Ld. Counsel for accused and perused the record.

13. The first point which is required to be examined is whether the present FIR is a counter blast to FIR 589/18, PS Rajender Nagar. The FIR No. 589/18 was marked as Mark A, The perusal of the same shows that, the complaint was made on 15.11.2014 and the FIR was registered on 02.12.2014 at around 09:05 PM, whereas in the present case as per Ex. PW6/A the FIR was registered at around 6:30 PM, both the FIRs were registered on the same day. PW1 in her cross examination conducted by the Ld. Addl. PP for State has stated that incident occurred on 15.11.2014, apart from other days, but the complaint was made by her on 02.12.2014. The accused did not prove as to when he had made the complaint. In the cross examination a suggestion was put to PW1, that accused had lodged a complaint on 19.11.2014, whereas in document Mark 'A' the alleged date of occurrence is shown to be 15.11.2014. In the light of these facts it cannot be stated that the present FIR, was counter blast to the FIR no. 584/14. It appears that both the FIR were registered simultaneously. Thus I do not agree with the submissions of the Ld defence counsel that the present FIR is counter blast to the FIR no 589/14 P.S. Rajender Nagar.



14. It was argued by the Ld Addl.P.P for the state that testimony of the prosecutrix is sufficient to convict the accused. In so far as rape cases are concerned conviction can be based on the sole testimony of the prosecution witness provided the testimony of the witness is of sterling quality and does not require corroboration.

15. The Hon'ble Supreme Court in **Rai Sandeep @ Deepu vs. State (2012) 8SCC 21** has laid down the essentials of sterling witness which are as under:

***“ In our considered opinion, the “sterling witness” should be of a very high quality and caliber whose version of should, therefore, be unassailable. The court considering the version of such witness should be in position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and***

***consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of it. Such a version should have co-relation with each other and every one of other supporting material such as the recovery is made, the weapon used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently matched with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a***



**witness can be called as a “sterling witness” whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting material for holding the offender guilty of the charge alleged.**

16. In the light of the above judgment it has to be seen whether the testimony of PW1 is of sterling quality or not. PW1 has deposed that she was working in a beauty parlour in Tilak Nagar where her friend Shweta was also working. The parlour was at the verge of closure and therefore she asked Shweta to arrange for a job. Shweta provided the number of one Manish. The said Manish provided the number of accused. Accused assured her a job and in this regard they met near Metro Station Subhash Nagar. After about one month the accused called her again and asked her to accompany to Mumbai





for meeting his senior. It is further stated that on the second day accused gave some sedative as a result of which the victim became unconscious and accused started misbehaving. She raised alarm and accused left the room. It is further stated in her deposition that while she was unconscious accused took nude photographs and when they returned to Delhi, after a few days she again received a phone call where accused insisted to meet her. On meeting her accused showed her nude photographs and threatened that he would upload these photographs. The accused came to her house met her husband and spoke to her husband in respect of job. It is further stated that accused took her to Mumbai, Srinagar and different hotels in Delhi and raped her.

17. On 15.11.2014, the accused came to her house, had drinks with her husband. After her husband has slept the accused misbehaved with her and when she resisted, raised alarm, the husband woke up and some confrontation took place. Accused threatened them and left the house. It is further deposed by the PW1 that she did not disclose anything to her husband even at that stage. She went to her mother's house where she disclosed everything to her mother and then came back to her matrimonial home. After about 1 & 1/2 month accused along with 4-5 police officials came to their house and took her husband and brother. In cross examination she admitted that no

complaint was given by her prior to 02.12.2014. She denied the suggestion that the present FIR was counter blast to FIR no. 589/18. She denied the suggestion that she was never taken to Srinagar or Mumbai or to any hotel in Delhi.

18. The testimony of PW1 does not qualify to be one which can form the basis for convicting the accused. There are whole lot of improvements from her complaint Ex. PW1/A. The victim has spoken about having been raped in Mumbai but has not spoken anything about being raped by accused at Srinagar or at hotels at Delhi in Ex. PW1/A. These are important and vital facts. A victim who has been raped at different locations would never forget these facts. It is understandable that victim can forget the exact date, the name of the hotel where she was raped but could not have forgotten that in fact she was raped. There is not even a whisper in the complaint Ex. PW1/A that accused had committed rape at Srinagar and at Hotels in Delhi.

19. This makes her testimony wholly unreliable and untrustworthy. PW1, in her deposition, does not categorically say that she was raped in Mumbai. She only said that accused misbehaved her, she raised alarm and accused left the hotel room. The relevant portion of the testimony is reproduced as under:-

**“ after one month he again contacted me on phone and asked me to accompany him to Mumbai for meeting his seniors for job. There he left me in a hotel room and went to meet his some seniors and asked me that he would made phone call to me after arranging job. He did not turn up for one day. On next day, when he returned, he told me that his seniors would visit the same hotel and would talk to me in respect to the job. But nobody came to meet me. In the evening hours the accused administered some sedative substance in the food. Thereafter, I became semi unconscious and the accused started misbehaving me. I raised alarm. At this accused left the hotel room...”**

20. In the complaint Ex. PW1/A, nothing of this sort is stated. These are vital facts, and PW1 has clearly improved from her version making her testimony unreliable. The act of rape cannot be forgotten and it continues to be etched in one's memory but rape, here has been spoken to so casually. Here the prosecutrix clearly does not say that she was raped in Mumbai, but the content of her complaint are contrary. Not only does the victim has improved her statement , with respect to being not raped in Mumbai. She does not say in her

complaint that she was raped in Srinagar or at hotels in Delhi. Whereas in her testimony she has clearly deposed that accused took her again to Mumbai, Srinagar and to different hotels in Delhi and committed rape. Such a testimony cannot be believed. Either the acts were consensual or no rape at all was committed.

21. There is yet another reason to disbelieve her testimony, the husband who was present on 15.11.2014 was never cited as witness by the prosecution. In Ex. PW1/A the prosecutrix has categorically stated that she was raped by the accused after her husband had slept, whereas in her examination in chief it is stated by her that after her husband has slept accused made an attempt, she resisted and raised alarm and the husband woke up. The relevant portion of her testimony is reproduced hereunder:-

**“.. when my husband slept, the accused started misbehaving with me in my house, I resisted to the same and raised alarm. At this my husband woke up and some confrontation took place between my husband and the accused....”.**

22. This deposition does not suggest that even on 15.11.2014 she was raped. Rape and misbehaviour are two different connotations and carry two different punishments. ‘Rape’ and ‘misbehaviour’ cannot be used interchangeably. A completely different story has been deposed



to from the one which has been described in her initial complaint. The testimony of PW1 does not inspire confidence and is full of improvements.

23. The complainant is a married lady and has accompanied the accused to different places and did not raised any alarm at any point of time. If the prosecutrix did not desire the company of the accused or was being taken to the hotels and places outside Delhi against her will, she would not have visited these places with accused every now and then. The forcible acts would not have gone unnoticed. Thus the story put forward by the PW1 does not inspire any confidence.

24 Accordingly, accused is liable to be acquitted and is acquitted of all the charges. Considering the circumstances prevailing in the country and the fact that physical hearing have been suspended the bail bond of the accused which were submitted by him earlier are treated as the one under Section 437 A Cr.P.C. They same shall remain in force until 6 months from the date of actual opening of the courts.

25 File be consigned to Record Room after due compliance.

Announced through CISCO WEB EX.

(Ankur Jain)

04/08/2020  
Addl. Sessions Judge (SFTC-01) West  
Delhi/04.08.2020